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PACKERS' CONSENT DECREE

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON AGRICULTURE AND FORESTRY UNITED STATES SENATE

SIXTY-SEVENTH CONGRESS

SECOND SESSION

PURSUANT TO

Senate Resolution 211

TO INVESTIGATE MATTERS CONCERNING THE CONSENT
DECREE ENTERED IN THE SUPREME COURT OF THE
DISTRICT OF COLUMBIA IN THE CASE OF THE UNITED
STATES OF AMERICA, PLAINTIFF, v. SWIFT & CO. ET
AL., DEFENDANTS.

MARCH 23 AND APRIL 21, 1922

Printed for the use of the Committee on Agriculture and Forestry



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SUBCOMMITTEE ON SENATE RESOLUTION 211.

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PACKERS' CONSENT DECREE.

THURSDAY, MARCH 23, 1922.

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D. C.

The subcommittee met pursuant to call at 10.30 o'clock a. m., in Room 224, Senate Office Building, Senator Edwin F. Ladd presiding.

Present: Senators Ladd (chairman), Norbeck, and Kendrick.

Senator LADD. I will ask the reporter to put into the record at this point Senate resolution 211.

(The resolution referred to is as follows:)

[S. Res. 211, Sixty-seventh Congress, second session.]

"Whereas it is a current report in the newspapers that the Attorney General of the United States has been considering and is about to apply to the Supreme Court of the District of Columbia for a modification of the decree entered by that court on February 27, 1920, against the Big Five meat packers upon their written consent in an action brought under the Sherman antitrust law, which decree prohibited them, among other things, from (a) continuance of ownership of stockyards and stock-market newspapers, (b) owning and operating retail meat markets, (c) owning capital stock in public cold-storage warehouses, (d) handling fresh milk and cream, except as common carriers, (e) transporting and engaging in the manufacture and sale of certain food and other products not related to the meat industry referred to as unrelated lines; and

"Whereas the Senate at the time of the passage of public act numbered 51, Sixty-seventh Congress, entitled "An act to regulate interstate and foreign commerce in live stock, live-stock products, dairy products, poultry, poultry products, and eggs, and for other purposes," commonly known as the packer and stockyards act, 1921, had before it the decree of the court above referred to, and in determining the various provisions of the said packer and stockyards act, 1921, as finally passed, did so in reliance on said court decree, consented to by the packer defendants in a prosecution under the Sherman Antitrust Act, to cover the subjects contained in said consent decree; and

"Whereas any modification under said decree upon agreement between the Attorney General and the defendant packers, or at the request of either, would entail upon Congress the reconsideration of the subject in part covered by the packer and stockyards act, 1921: Therefore be it

"Resolved, That the Attorney General of the United States be requested to report to the Senate (a) what steps, if any, have been taken to enforce and carry out the terms of said decree, (b) what modification, if any, has been proposed to him, or is being considered by him, with a view to his applying to the court for the adoption thereof, (c) any and all evidence which may have been taken in the recent hearings on the subject before the representatives appointed by the Attorney General's office; and be it

"Resolved further, That the Committee on Agriculture and Forestry be authorized and directed to investigate this entire matter fully and recommend to the Senate what action it deems necessary and desirable."

Senator LADD. I will ask the reporter also to put into the record the correspondence between the chairman of the full committee, the subcommittee, and the Attorney General, together with the inclosures.

(The correspondence and inclosures referred to are here printed in full as follows:)

WASHINGTON, D. C., March 7, 1922.

Hon. H. M. DAUGHERTY,
Attorney General, Washington, D. C.

MY DEAR MR. DAUGHERTY: Senate resolution 211, concerning the consent decree in the case of the United States *v.* Swift & Co. and others was referred to the Committee on Agriculture and Forestry of the Senate, and by vote of the committee referred to a subcommittee with the writer as chairman to make investigation and report to the full committee.

It is the desire of the committee to have a copy of the hearings taken in the Department of Justice for use of the committee, and I am informed by Thorne & Jackson that they have filed with the department an extra copy of this report, which can be had without additional expense to either the Department of Justice or to the committee. If such a report is available, we would appreciate very much receiving the same at an early date in order that we may make careful examination of it, as requested by instructions from the full committee.

Very truly, yours,

E. F. LADD.

DEPARTMENT OF JUSTICE,
Washington, D. C., March 1, 1922.

Hon. GEORGE W. NORRIS,
United States Senate, Washington, D. C.

MY DEAR SENATOR NORRIS: I have your letter of February 21, in which you make inquiry as to information which the Senate Committee on Agriculture and Forestry may desire in considering Senate resolution 211, being a resolution concerning the consent decree in the case of United States *v.* Swift & Co. and others.

I am to-day sending to the Senate, in compliance with such resolution, a report which I believe contains the information which the Senate as well as your committee will desire, and for this reason I am inclosing a copy thereof for your own use.

If after looking over this report you find that there is any further information which you desire, if you will advise me, I will be very glad, indeed, to furnish the same if it is possible to do so.

Sincerely yours,

H. M. DAUGHERTY,
Attorney General.

To the Senate of the United States:

In answer to the resolution of the Senate of the United States, being Senate Resolution 211, dated February 3, 1922, I beg to transmit the following:

Such resolution provides "that the Attorney General of the United States be requested to report to the Senate what steps, if any, have been taken to enforce and carry out the terms of said decree," being the decree entered by the Supreme Court of the District of Columbia on February 27, 1920, in the suit of the United States of America *v.* Swift & Co. and others, in Equity No. 37623, a copy of which which decree is attached hereto and marked "Exhibit A." The decree, among other things, prohibits the defendants from owning capital stock or other interest in public stockyard market companies, stockyard terminating railroads, or stockyard market newspapers, and provides that within 90 days from the entry of such decree such defendants as have any such interests shall file in court a plan or plans for divestment of their interests. It is also provided that if the defendants shall not have disposed of their interests within the time so fixed by the court, and the court upon application shall determine that such defendants have been unable, despite due diligence, to dispose of the same upon reasonable terms, the court may extend the time during which such ownership may continue until the defendants dispose of those interests.

In accordance with the provisions of this decree the defendants filed in court plans for the sale of these interests, and one set of such plans consisted of an offer for the purchase of the same, but upon objection by the Government the plans were rejected by the court. The defendants have since filed other plan

among which were plans for offering such holdings for sale to the public through designated sales agents with a fixed minimum price at which such sales might be made, but these plans, upon the objection of the Government, were likewise rejected by the court. Some small blocks of stock and some stock in small stockyard companies have been disposed of under said decree, and such dispositions have been approved by the court. The Government then filed a petition urging the court to take over these holdings and appoint a trustee or receiver to dispose of them, and after argument the court in a memorandum of decision indicated that it felt the defendants should have reasonable opportunity to dispose of their own holdings, and that whether the defendants had been given such a reasonable opportunity depended upon the adequacy of the offers for such stock which had been made to such defendants, that in order to determine this the court must know the value of such holdings, and therefore the court ordered the taking of testimony to ascertain the value thereof.

The Morris group of defendants then filed a plan substantially like that adopted by the court in the case of *United States v. The Union Pacific Railroad Co.* This plan requested two and one-half years' time for disposing of the holdings, and after objection to the same by the Government the court approved it with modifications. The plan as modified provided for one year within which the defendants were to dispose of their holdings; in the meantime the stock to be deposited with a depository and not to be voted except upon order of court, the dividends to accumulate in the hands of such depository during the life of such plan.

The Wilson group of defendants filed a plan similar to the plan of the Morris group of defendants, which was also approved by the court with some modifications.

The stockyard holdings of Cudahy group of defendants were not large, and they have disposed of considerable of their holdings, which dispositions have been reported to and approved by the court, and they are now engaged in an effort to sell the remainder of their stockyard holdings.

The Armour and Swift group of defendants filed new plans, which are substantially alike, and which were approved by the court. These plans granted one year within which such defendants were to dispose of their holdings. During the life of the plan the stock held by such defendants was to be deposited with a depository appointed by the court. The court also under this plan appointed Hon. George Sutherland, of Salt Lake City, Utah, and Hon. Henry W. Anderson, of Richmond, Va., as trustees to vote the stock coming under such plans and gave to such trustees certain visitorial and inquisitorial powers over the stockyards coming under these plans. The trustees shortly after accepting their appointment, accompanied by a representative of the Department of Justice, made a trip of inspection of the yards in which they were interested and conducted public hearings at the places which they visited. The trustees then made a report to the court as to the results of such investigation, in which they reported the yards were well managed and operated and that there was no reason for a change in management. The approval by the court of these plans abrogated the prior order of the court for a valuation of such holdings.

None of the plans approved by the court have as yet expired, and the extensions of time contained in such plans were allowed by the court upon a showing by the defendants that they had used due diligence in their effort to sell such interests, but they have been unable to sell the same at any reasonable price, principally because of the difficulty, if not impossibility, of disposing of such large holdings during the unsettled business conditions which have existed practically continuously since the entry of this decree.

The decree also enjoins the corporation defendants from using their distributive facilities in any manner for the purchase, sale, handling, transporting, distributing, or otherwise dealing in certain commodities commonly referred to as "unrelated" to the meat-packing industry, which commodities are enumerated in such decree and are principally wholesale grocery lines. The decree also enjoins the corporation defendants from engaging in or carrying on, either for domestic or export trade, the manufacturing, jobbing, selling, distributing, or otherwise dealing in such unrelated commodities, and their owning any capital stock in corporations engaged in manufacturing, selling, distributing, or otherwise dealing in such unrelated commodities. The individual defendants are enjoined from owning, severally or collectively, voting stock aggregating 50 per cent or more in any corporation, or a half interest or more in any firm or association, which corporation, firm, or association is engaged in manu-

facturing, jobbing, selling, transporting, distributing, or otherwise dealing in certain unrelated commodities enumerated in such decree, which enumeration omits some of the articles prohibited to the corporation defendants. The decree also provides that the defendants should at once begin to dispose of their stocks of unrelated commodities on hand and the capital stocks of corporations, or interests in firms and associations, handling, etc., such unrelated commodities, which defendants are prohibited by the decree from owning, and the defendants shall continue to dispose of these goods and interests as rapidly as may be consistent with the nature of the business, but at all events should have completely disposed of the interests connected with unrelated lines within two years from the entry of the decree. The time for the complete divestment of the defendants of the prohibited holdings with reference to unrelated lines has not yet expired. However, some holdings of defendants in some corporations dealing, etc., in such unrelated lines have been disposed of by defendants, and such dispositions have been reported to and approved by the court. The defendants, upon the entry of the decree, began a process of elimination of the stocks of merchandise of the prohibited unrelated lines, and the Department of Justice is now informally informed that some of such interests have been completely eliminated, and others about so, and that when the time for complete divestment of these interests expires the Department of Justice believes it will then be its duty to require a formal showing in court as to such matters. The Armour group of defendants on February 2, 1922, made a showing by a petition to the court that due to the present financial conditions of the country they had been unable as yet to dispose of their interests in certain factories manufacturing such unrelated commodities and asked an extension of time of one year for complete divestment of their unrelated lines. The court granted to such Armour group of defendants an extension of time of six months on these matters, the Government consenting to such six months, but not a year's extension.

The Department of Justice has also been asked to request the court to modify this decree with reference to unrelated lines, all of which will be more fully discussed hereafter in this report.

The decree also prohibits the defendants from owning, operating, or conducting retail meat markets except those conducted by defendants at their several plants for the accommodation of their employees. The decree provides that the defendants shall, within nine months, completely divest themselves of such prohibited interests in retail meat markets. After an investigation the Department of Justice has secured no information showing that defendants now own, operate, or conduct any retail meat markets except those which they are permitted to maintain under this decree and the department is advised that the defendants do not now own, operate, or conduct any such retail meat markets. Therefore, no activity upon the part of the Department of Justice has, as yet, been necessary in carrying out this portion of the decree. The department expects to continue its effort to learn of any such holdings.

The decree also enjoins the defendants from owning any interest whatsoever in public cold-storage warehouses, providing, however, that defendants may own interests in such public cold-storage warehouses now maintained by these defendants at stockyards where they maintain packing plants and may own, maintain or lease cold-storage facilities required for storage of commodities in which they may be interested. The decree also requires defendants, within nine months, to dispose of the prohibited interests in public cold-storage warehouses. The information now in the hands of the Department of Justice, resulting from careful investigation, shows that only very small interests of defendants in public cold-storage warehouses are affected by this decree. Some of these interests consisted of such warehouses operated by defendants upon leased properties, the leases of which have been terminated since the entry of this decree and the operation of such warehouses abandoned by the defendants.

The decree also enjoins the corporation defendants from engaging in the business of buying, collecting, selling, distributing, or otherwise dealing in fresh milk and cream, and enjoins the defendants from owning any interest in any corporation, firm, or association engaged in such business. It is provided, however, that these injunctions shall not prevent such activities upon the part of the defendants in connection with their manufacture of condensed, evaporated, or powdered milk, oleomargarine, butter substitute, butter, ice cream, cheese, or buttermilk. The Department of Justice at this time, after investigation, has no information causing it to believe that these provisions of the decree are being violated and is advised that the corporation defendants are

not so dealing in fresh milk and cream and, therefore, no action by the department has, as yet been necessary in the enforcement of such provisions.

The provisions of the decree with reference to public stockyards, stockyard terminal railroads, and stockyard market newspapers were by the terms of the decree itself the first provisions requiring action, and for this reason the efforts of the Department of Justice in the enforcement of this decree were at first centered largely upon these matters. Because of the difficulties encountered in disposing of these holdings and the importance to the public generally of the questions involved very careful consideration and study has been given to such matters.

The Senate resolution also requests the Attorney General to report to the Senate "what modification, if any, has been proposed to him or is being considered by him with a view to his applying to the court for the adoption thereof."

Some time ago the California Cooperative Canneries Co., a cooperative company owning fruit canneries the stockholders of which are fruit farmers and growers, represented to the Department of Justice that they had been selling their products (canned fruits) under a contract to and thus using the distributing system of one of the defendant companies, namely, Armour & Co. They also contended that this decree deprived them of this outlet for their goods, decreased competition in the distribution of them, and they raised many other questions as to such decree. They requested the Attorney General to petition the court for a modification of this decree so as to remove the injunctions, prohibitions, and orders in such decree relating to unrelated lines. Should the court modify this decree as requested by these applicants, it would mean the elimination of the injunctions, prohibitions, and orders contained in paragraphs 3, 4, 5, and 12 of said decree, and those contained in the following part of paragraph 8 of said decree, to wit, "Not specifically mentioned and described in paragraph 4 hereof"; those contained in the following part of paragraph 14 of said decree, to wit: "*Provided, however, That nothing in this paragraph contained shall limit the effect of the injunction contained in paragraphs 4 and 5 of this decree*"; those contained in the following part of paragraph 16 of said decree, to wit, "Or corporation, firm, or association manufacturing, jobbing, selling, distributing, transporting (except as common carriers), or otherwise dealing in any of the commodities mentioned and described in paragraphs 4 and 5 of this decree"; and those contained in the following part of paragraph 17 of said decree, to wit, "Or incorporations, firms, or associations manufacturing, jobbing, selling, transporting, except as common carriers distributing or otherwise dealing in any of the commodities mentioned and described in paragraphs 4 and 5 of this decree."

Following such request by the California Cooperative Canneries Co., several other interests, including canners, manufacturers, some agricultural organizations, and individual farmers, requested that the decree be so modified. At no time have the defendants or any of them, or anyone claiming to represent the defendants or any of them, either moved in court or requested the Attorney General to move in court for a modification of such decree with reference to unrelated commodities. The Attorney General was considering the request for a modification of this decree when the representatives of the Southern Wholesale Grocers' Association and of the National Wholesale Grocers' Association requested to be heard by the Department of Justice upon this matter. Such hearing was granted before assistants of the Attorney General, at which time counsel for each association appeared and stated their contentions and requested a further hearing at which such associations might produce witnesses to substantiate their contentions. They were informed by those conducting the hearing that the Attorney General was then out of the city and upon his return in a few days their request would be presented to him for his action. The next day following such hearing, without the knowledge of or notice to the Department of Justice or any of its representatives, the Southern Wholesale Grocers' Association filed in court a petition for intervention and procured the entry of an order allowing such intervention. Upon learning of this action, the Government moved to set aside and vacate such order and to strike out the intervention. After argument the court rendered its opinion upon this question in a memorandum of decision, which is as follows:

MEMORANDUM OF DECISION ON MOTION TO STRIKE OUT INTERVENING PETITION OF
SOUTHERN WHOLESALE GROCERS' ASSOCIATION AND OTHERS.

In the Supreme Court of the District of Columbia. Holding Equity Court.
United States of America, plaintiff, *v.* Swift & Co. et al., defendants. In
Equity No. 37623.

Without deciding that petitioners have an undeniable legal right to intervene, it is considered that upon the facts alleged in their petition it is fair and just that they should be allowed to intervene, not to take control of the plaintiff's side of the proceedings, but for the limited purpose stated in their petition, namely, to be heard in opposition to any modification of the decree that would deprive them of the protection now secured by it, for the following reasons when taken together:

1. The decree was, in part at least, the fruit of their own efforts.
2. They abandoned the pursuit of other remedies in reliance upon this decree.
3. The protection afforded them by this decree might have been secured in a proceeding in their own name and behalf.
4. The change suggested would leave them in an embarrassed position in now seeking to secure the same protection.
5. The decree ought not to be modified unless the court is convinced that the public interest requires it; and the petitioners fairly represent a large and well-defined portion of the public whose position will enable them, and whose interest will prompt them, to present to the court facts or reasons which, among others, the court ought to hear and consider before allowing the decree to be changed.

This decision must not be understood as opening the door to all would be intervenors who may consider themselves interested in the decree or any change therein, but as strictly limited to the facts alleged in this petition, which are in law admitted by the motion to strike out.

WENDELL P. STAFFORD.

Following this decision, the court allowed a similar intervention by the National Wholesale Grocers' Association.

Prior to this decision by the court the Attorney General determined to allow the hearings so requested by such wholesale grocers, and as the Department of Agriculture and the Department of Commerce are both vitally interested and greatly concerned with the economic questions which this request presented the Attorney General sought the cooperation and assistance of the Secretary of Agriculture and the Secretary of Commerce in determining this matter and upon his request the Secretaries of Agriculture and Commerce, respectively, each appointed a representative to participate with the representative appointed by the Attorney General in this hearing. In pursuance of the plan for such hearing, the Attorney General caused to be sent to each person, firm, or corporation which had communicated with him, or whose communications to others had been referred to him, a letter of which the following is a copy:

DEPARTMENT OF JUSTICE,
Washington, October 12, 1921.

DEAR SIR: I am directed by the Attorney General to acknowledge for him the receipt of your communication of recent date, expressing your views concerning any modification of the consent decree in the case of *United States v. Swift & Co.* and others, being the so-called "Packers' case."

Of course, any modification of this decree would have to be made by the court which entered the same, and could not be made by the Attorney General or the Department of Justice.

A request has been made to the Attorney General by interests other than the packers, the more important of such interests being growers and canners of fruits and vegetables, that he favor and urge a modification of this decree so as to permit the packers to handle unrelated lines, especially wholesale-grocery lines. The Attorney General is considering this request and in order to enable him to come to a proper conclusion upon the same he has arranged for a committee, consisting of Hon. B. T. Hainer, selected by the Secretary of Agriculture; F. C. Hall, selected by the Secretary of Commerce; and the writer, selected by the Attorney General, to hear the contentions of both those opposing such a modification. After the hearing this committee will render a report, accompanied by the record of such hearing, to the Attorney General, who will then decide what his position will be upon this request.

The committee will receive written statements from anyone (including firms, associations, corporations, etc.) who may wish to present the same, setting out their views as to such a modification, together with the reasons therefor. These statements should be mailed to the Attorney General, Washington, D. C., on or before November 18, 1921.

Beginning November 28, 1921, and continuing so long thereafter as the committee may think necessary, the committee will hear at the office of the Department of Justice at Washington, D. C., anyone who wishes to present orally their views upon this matter. Those desiring to appear personally and present orally their views should advise the Attorney General of such desire before November 18, 1921, as an effort will be made by the committee to notify them of a definite time when they may be heard.

All matters presented, whether orally or in writing, will be given the most careful consideration.

Very truly yours,

HERMAN J. GALLOWAY,
Special Assistant to the Attorney General.

The progress of such hearing and the conclusions of the committee are shown by the report which was rendered by the committee on January 20, 1922, a copy of which is attached hereto and marked "Exhibit B." This report was on such date presented to the Attorney General and copies thereof immediately furnished to the Secretary of Agriculture and the Secretary of Commerce; and after careful consideration of the same by the Secretaries and the Attorney General, and after several conferences with them upon the matter, on February 7, 1922, in agreement and in accord with the views of the Secretaries, the Attorney General approved such report and issued the following official statement thereon:

"On the question of a modification of the consent decree in the case of *United States of America v. Swift & Co.* and others, with reference to unrelated commodities, I have come to the conclusion that such grave and far-reaching questions, which affect not only the provisions of the decree with respect to unrelated commodities, but which also strike at the very foundation of the entire decree and are of such vital interest to the public generally, are matters which, regardless of what position the Department of Justice might assume, must ultimately be decided by the court which entered the decree before any modification could be made; and as those who most strongly oppose any modification (namely, the wholesale grocers) are now parties to this cause by intervention, which intervention has been sustained by the court since the request for this hearing before the Attorney General was granted, it seems that the way is now open for those who urged a modification and who so earnestly contended that they have been seriously injured by this decree and have never had their day in court to present such questions and contentions in the first instance to the court for decision without the same being in any way prejudged by the Attorney General.

Therefore I feel that this request by the California Cooperative Canneries Co. and others for a modification of this decree should be presented in the first instance to the court which entered this decree and not to the Attorney General."

This resolution also requests that the Attorney General be requested to report to the Senate "any and all evidence which may have been taken in the recent hearings on the subject" (of a modification) "before the representatives appointed by the Attorney General's office." The evidence taken at this oral hearing was reported by a reporter appointed by the Department of Justice, and has been transcribed, and consists of 4,067 pages. The Department of Justice has but one copy of the transcript of this hearing in its files and greatly needs the same for its own almost constant use and for its permanent files. However, we are advised by the reporters, Messrs. Hart, Dice & Carlson, 301 Columbian Building, Washington, D. C., that they have available a complete transcript of the same, the cost of which at the regular rate is \$1,230.45. The appropriations of the Department of Justice are limited and the funds thereof greatly needed for carrying on the actual necessary work which the department is required to perform.

The National Wholesale Grocers' Association purchased extra copies of this transcript and has very kindly offered to give one copy thereof to the Department of Justice for transmission to your honorable body, but the Department

of Justice doubts the propriety of its accepting such an offer from a party in interest.

If the Senate, after receiving this report, still wishes the Department of Justice to procure by either of the methods above mentioned and forward to it a copy of this transcript, upon such desire being expressed the department will gladly comply therewith.

Respectfully submitted.

H. M. DAUGHERTY, *Attorney General.*

FEBRUARY 25, 1922.

EXHIBIT A.

DECREE AND CONSENTS.

In the Supreme Court of the District of Columbia. The United States of America, petitioner, v. Swift & Co. and others, defendants. No. 37623. Equity.

This cause having come on to be heard on this 27th day of February, in the year 1920, before the Hon. Walter I. McCoy, Chief Justice, and the petitioner having appeared by the Hon. A. Mitchell Palmer, Attorney General of the United States, by its district attorney, John E. Laskey, and by Isidor J. Kresel, John H. Atwood, and Joseph Sapinsky, special assistants to the Attorney General, thereto duly authorized, and having moved the court for an injunction in accordance with the prayer of its petition; and it appearing to the court that the allegations of the petitioner state a cause of action against the defendants under the provisions of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplemental or additional thereto, and that the court has jurisdiction of the persons and the subject matter; and the several defendants having accepted service of process and having appeared and filed answers to the petition, which answers are on file in the office of the clerk of this court; and the parties having this day entered into a stipulation in this action, which stipulation is on file in the office of the clerk of this court, and from which it appears, among other things, that while the defendants and each of them maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, has consented and do consent to the making and entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States.

Now, upon the petition, the answer of the defendants, and the aforementioned stipulation and consents of the parties, all on file in the office of the clerk of this court, and on motion of the petitioner, it is ordered, adjudged, and decreed as follows:

First. That the corporation defendants and each of them be, and they are hereby, jointly and severally perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, in any manner maintaining or entering into any contract, combination, or conspiracy with each other, or with any other person or persons, in restraint of trade or commerce among the several States, or from either directly or indirectly, by themselves or through their officers, directors, agents, or servants, either jointly or severally monopolizing or attempting to monopolize or combining or conspiring with each other, or with any other person or persons, to monopolize any part of such trade or commerce.

Second. That the defendants and each of them be, and they are hereby, jointly and severally perpetually enjoined and restrained from owning, either directly or indirectly, individually or by themselves, or through their officers, directors, agents, or servants, any capital stock or other interest whatsoever in any public stockyard market company in the United States, or in any stockyard terminal railroad in the United States, or in any stockyard market newspaper or stockyard market journal published in the United States, except in so far as the court may permit any of the individual defendants to retain any such interests upon

the conditions and in such circumstances as are provided for in paragraph tenth of this decree; and said defendants and each of them are hereby further enjoined and restrained from accepting or permitting to be given, directly or indirectly, on any pretext whatever, to any of them, or to any of their officers, directors, servants, or employees, for the use and benefit of the corporation defendants or any of them, any capital stock or other interest in any public stockyard market company, stockyard terminal railroad, or stockyard market newspaper, or stockyard market journal.

Third. That the corporation defendants and each of them and their successors and assigns be, and they are hereby, perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, through any device or arrangement whatsoever, using or permitting any other person, firm, or corporation to use their distributive system and facilities, including their branch houses, route cars, and auto trucks, or any of them, in any manner for the purchase, sale, handling, transporting, distributing, or otherwise dealing in any of the articles or commodities named and described in paragraph fourth of this decree, except in so far as permitted in said paragraph fourth, and except refrigerator cars when in good faith leased to common carriers, or furnished to them for their use as common carriers.

The corporation defendants or any of them may from time to time lease, sell, or otherwise dispose of any of the items of their distributive system free from any of the restrictions of this decree when they have a surplusage thereof or when such items have become obsolete or are otherwise not required for the business of the defendants or any of them. But no sale, lease, or other disposition of a substantial part of defendants' respective distributive systems or such distributive system as an entirety shall be made without submitting the same to the court for the court's investigation and determination as to whether said proposed sale, lease, or other disposition is in accordance with the spirit and purpose of this decree, and without notice of the application for such approval first given to the Attorney General. Nothing herein contained shall be construed to prohibit the defendants or any of them from mortgaging or otherwise creating liens on said distributive system or parts thereof.

Fourth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise, either for domestic trade or for export trade, the manufacturing, jobbing, selling, transporting (except as common carriers), distributing, or otherwise dealing in any of the following products or commodities, except when such products or commodities are purchased, transported, or used (1) as supplies in operating their packing houses, branch houses, or other facilities used by them, or as an incident in the processes of manufacturing soap or packing-house products; (2) in the construction and physical maintenance of their packing houses, branch houses, or other facilities used by them; (3) in the operation of their restaurants, laundries, or other conveniences, primarily for the benefit of their employees; or (4) in combination with meat, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following, to wit: Canned oysters, canned mackerel, bulk mackerel, bulk, canned, and cured herring, canned salmon, canned sardines, canned shrimp, and canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit: Asparagus, navy beans, lima beans, peas, beets, corn, okra, potatoes, tomatoes, celery, garlic, horse-radish, and pumpkins.

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mincemeat, to wit: Ginger, cherries, apple butter, apricots, blackberries, peaches, pineapple, raspberries, currants, figs, gooseberries, oranges, strawberries, apples, prunes, raisins, and dates.

4. Confectionery, sirups, soda-fountain supplies and sirups and soft drinks (grape juice is not included in this paragraph 4; see paragraph 14), including therein, but in nowise limiting the foregoing general description, the following, to wit: Apple cider, cherry juice, Coca-Cola, creme de menthe, crushed nut frappe, ginger ale, green pineapple sirup, lemon extract, marsh-mallow topping, orange extract, root beer, vanilla extract, vin fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.
6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit: Catsup, chili sauce, cinnamon, cloves, mustard, mustard seed, olives, oyster cocktail sauce, pepper, pickles, spinach chili, and tomato catsup.
7. Coffee, tea, chocolate, and cocoa.
8. Nuts, including therein the following, to wit: Almonds, pecans, and walnuts, but not including peanuts.
9. Flour, sugar, and rice.
10. Bread, wafers, crackers, and biscuits.
11. Cereals, including therein, but in no wise limiting the foregoing general description, the following, to wit: Grits, oats, hominy, hominy feed, horse feed, brewers' flakes, brewers' grit, brewers' meal, buckwheat, canned hominy, clipped oats, corn grits, ground meal, ground oats, ground corn, cracked corn, crushed white oats, feed barley, feed meal, feed wheat, rolled oats, standard middlings, standard spring bran, spaghetti, vermicelli, macaroni, corn flakes, and wheat foods.
12. Grain.
13. Miscellaneous articles, to wit: Cigars, china, furniture, bluing, starch, fence posts and wire fences, alfalfa meal, babbitt, bar iron, binding and twine, brass castings for heavy ordnance, brick, builders' hardware, bumping posts for railroads, cement, lime, plaster, doors and windows, dried brewers' grains, lath, pitting and fruit-handling machinery, roofing, sand and gravel, shingles, soda fountains or parts thereof, structural steel, tile, and waste.
14. Grape juice.

And the corporation defendants and each of them be, and they are hereby, further perpetually enjoined and restrained from owning, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants any capital stock or other interest whatsoever in any corporation, firm, or association except common carriers, which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, except as common carriers, distributing, or otherwise dealing in any of the above-described products or commodities.

Fifth. That the individual defendants, and each of them, be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their agents, servants, or employees, owning voting stock which in the aggregate amounts to 50 per cent or more of the voting stock of any corporation, except common carriers, or any interest in such corporation resulting in a voting power amounting to 50 per cent or more of the total voting power of such corporation, or which interest by any device gives to any such defendant or defendants a voting power of 50 per cent or more in any such corporation, or a half interest or more in any firm or association which corporation, firm, or association may be, in the United States, in the business of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of the following products or commodities, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following, to wit: Canned oysters, canned mackerel, bulk mackerel, bulk, canned, and cured herring, canned salmon, canned sardines, canned shrimp, and canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit: Asparagus, navy beans, lima beans, peas, beets, corn, okra, potatoes, tomatoes, celery, garlic, horse-radish, and pumpkins.

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mince meat, to wit: Ginger, cherries, apple butter, apricots, blackberries, peaches, pineapples, raspberries, currants, figs, gooseberries, oranges, stawberries, apples, prunes, raisins, and dates.

4. Confectionery, sirups, soda fountain supplies, and sirups and soft drinks, not including grape juice, including therein, but in nowise limiting the foregoing general description, the following, to wit: Apple cider, cherry juice, Coca Cola, creme de menthe, crushed nut frappe, ginger ale, green pineapple, sirup, lemon extract, marshmallow topping, orange extract, root beer, vanilla extract, and vin fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit: Catsup, chili sauce, cinnamon, cloves, mustard, mustard seed, olives, oyster-cocktail sauce, pepper, pickles, spinach chilli, and tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following, to wit: Almonds, pecans, and walnuts, but not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

And further perpetually enjoining and restraining said individual defendants and each of them from individually or jointly, either directly or indirectly, by themselves or through their agents, servants, or employees, adopting any device or arrangement which by reason of the relation of said individual defendants or any of them to the corporation defendants or any of them would have the purpose or effect of giving to such business of dealing in the articles hereinbefore in this paragraph mentioned and described, in which business such individuals or any of them may be substantially interested, an advantage over their competitors similar in purpose or effect to any advantage now enjoyed by any of the corporation defendants through their distributing system.

Sixth. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, owning and operating or conducting, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants, any retail-meat markets in the United States: *Provided, however,* That nothing contained in this decree shall prohibit said defendants or any of them from continuing to conduct the retail-meat markets located at their several plants and maintained by said defendants primarily for the accommodation of their own employees as long as said retail-meat markets shall be continued to be operated for that purpose.

Seventh. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from owning, directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, any capital stock or other interest whatsoever in public cold-storage warehouses in the United States: *Provided, however,* that nothing herein contained shall be construed to prevent the defendants or any of them from owning capital stock or other interests in any corporation, firm, or association owning or operating, or from themselves owning or operating, the public cold-storage warehouses now maintained by the defendants or any of them at stockyards where said defendants or any of them now maintain packing plants, nor to prevent any of said defendants, directly or indirectly, from establishing, owning, maintaining, or leasing necessary cold-storage facilities or space required in good faith for the storage of commodities in which they or any of them may be interested, nor from renting space in any cold-storage warehouse directly or indirectly owned or leased by any of them to the public whenever such space is not in good faith required or needed by the defendants for their own use, nor from storing products for the public whenever the space used for that purpose is not in good faith required by the defendants for their own use.

Eighth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from engaging in the United States, either directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, in the business of buying, collecting, selling, transporting, except as common carriers, distributing or otherwise dealing in fresh milk and cream, and further perpetually enjoining and restraining said defendants and each of them by themselves or through their directors, officers, agents, and servants, from either directly or indirectly owning any capital stock or other interest in any corporation, firm, or association engaged in the business of buying, collecting, selling, transporting (except as common carriers), distributing, or otherwise dealing in fresh milk or cream: *Provided, however,* That nothing herein contained shall be construed as preventing the corporation defendants or their subsidiaries from buying, collecting, and transporting fresh milk and cream to be used by them or any of them in manufacturing condensed or evaporated or powdered milk or oleomargarine or other butter substitutes, or butter, ice cream, cheese, or buttermilk, or to be used as feed or in combination with any commodity not specifically mentioned and described in paragraph fourth hereof; and further provided that nothing herein contained shall be construed as preventing said defendants

from selling or otherwise disposing of milk and cream bought or collected for manufacture, when such sale or disposition is necessary to avoid waste.

Ninth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, jointly or severally, by themselves or through their officers, directors, agents, or servants, engaging in, carrying on, or using any illegal trade practices of any nature whatsoever in relation to the conduct of any business in which they or any of them may be engaged.

Tenth. That within 90 days after the entry of this decree such of the defendants as have interests in public stockyard market companies, stockyard terminal railroads, or market newspapers, shall file in this court, for the court's approval, a plan or plans for divesting themselves of all ownership or interest in: (1) public stockyard market companies; (2) stockyard terminal railroads; (3) market newspapers; *Provided, however*, That the court may, in the event that it deems such provision necessary in order to enable the defendants to divest themselves of their interests in public stockyard market companies and stockyard terminal railroads, upon reasonable terms, permit the individual defendants, or some of them, to retain an interest by way of stock ownership; or otherwise, in any public stockyard market company or stockyard terminal railroad, or in any corporation organized to take over such public stockyard market companies or stockyard terminal railroads or the stock thereof; but no defendant or defendants shall at any time, either individually or jointly, own a controlling interest in any such stockyards or stockyard terminal railroads. Within such period of time after the entry of this decree and the approval of said plan or plans as the court may determine, the defendants shall, in good faith, completely divest themselves of all such ownership or interests in public stockyard market companies, stockyard terminal railroads, and market newspapers. If, within the time so fixed, the defendants shall not have disposed of said interests ordered by the court to be disposed of, and the court upon application shall determine that the defendants have been unable, despite due diligence, to dispose of the same upon reasonable terms, the court may extend the time during which such ownership, control, or interest may continue until the same can be disposed of.

Eleventh. That immediately upon the entry of this decree the defendants shall in good faith and with due diligence proceed to dispose of their interests in, and shall completely divest themselves (to the extent required by this decree) of all ownership or of interest in all public cold-storage warehouses and retail meat markets; but in no event shall the defendants, or any of them, make final disposition of any of their interests in such public cold-storage warehouses and retail meat markets without first obtaining the court's approval to such final disposition. If, within nine months after the entry of this decree, the defendants shall not have finally disposed of their interests in public cold-storage warehouses and retail meat markets, the Attorney General may apply to the court for an order specifying the time within which the defendants shall finally dispose of all said interests.

Twelfth. That immediately upon the entry of this decree the defendants and each of them shall commence to dispose of such commodities owned or handled by them as are described in paragraphs fourth and fifth of this decree and which are to be disposed of by them under this decree, and shall likewise immediately upon the entry of this decree commence to divest themselves of all interests which are to be disposed of by them as and to the extent required by this decree in firms, corporations, and associations, including departments of the business of any of the corporation defendants when any of such departments is sold as a going concern, manufacturing, selling, or otherwise dealing in any of the commodities so mentioned and described in paragraphs fourth and fifth of this decree, and shall continue in good faith to dispose of said commodities required to be disposed of hereunder, and to divest themselves of such interests required to be disposed of hereunder as rapidly as may be consistent with the nature of the business and the seasonal nature of the merchandise involved, and that in any event the defendants and each of them shall completely dispose of said commodities and shall cease to manufacture, job, sell, transport, except as common carriers, distribute, or otherwise deal in the same, and shall completely divest themselves of said interests within two years from the date of the entry of this decree; provided, however, to the end that the provisions of this decree may be complied with, the approval of the court shall be obtained prior to the final disposition of said interests in firms, corporations, or associations manufacturing, selling, or otherwise dealing in

any of the commodities mentioned and described in paragraphs fourth and fifth of this decree. At any time within said two years the Attorney General may apply to the court for an order or orders to compel the defendants, and each of them, to make report to the court as to the progress being made by them in disposing of said commodities and in divesting themselves of said interests.

Thirteenth. That the purchaser or purchasers of the defendants' interests in any stockyard shall, as a part of said purchase, agree with such of the defendants as now maintain packing plants in said stockyards that for a period of at least 10 years after the date when such purchase shall be consummated said purchasers, their successors or assigns, will continue to maintain and efficiently operate such stockyards and each of them, and such of said defendants as now maintain packing plants at any of said stockyards shall agree with said purchasers that during the same period of 10 years said defendants, their successors or assigns, will continue to maintain and operate said packing plants at the points where the same are now located, unless strikes, shortage of supplies, or other causes beyond the control of either the purchasers, the stockyard companies, or said defendants shall prevent the carrying out of said agreement. Performance by either party shall be a condition concurrent to performance by the other.

Fourteenth. That nothing in this decree contained shall be construed to prohibit anything that may be otherwise lawfully done by the defendants or any of them in the United States in connection with or for the purpose of export trade or foreign commerce or business of the defendants; provided, however, that nothing in this paragraph contained shall limit the effect of the injunction contained in paragraphs fourth and fifth of this decree.

Fifteenth. That nothing contained in this decree shall be held to preclude the petitioner from proceeding against any or all of the defendants, either civilly or criminally, for any violation of any law in connection with the carrying on by them of the business of buying and selling poultry, butter, eggs, and cheese, or any other business or activity not specifically mentioned in this decree; nor shall anything contained herein prejudice the Government in any such proceeding; nor shall this decree interfere with or prejudice any legal rights, business, or activity of the defendants, or any of them, not prohibited or covered by this decree.

Sixteenth. That for the purpose of (1) enabling the petitioner to ascertain whether the defendants are in good faith carrying out the terms of this decree; and (2) for the purpose of enabling the Attorney General to determine and advise the court whether in any transaction consummated or begun at any time prior to the entry of this decree the defendants, or any of them, have retained and now retain such an interest in or control over any public stockyard market company, stockyard terminal railroad, stockyard market newspaper, stockyard market journal, cold-storage warehouse, retail meat market, or corporation, firm, or association manufacturing, jobbing, selling, distributing, transporting (except as common carriers), or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, which would constitute a violation of this decree if the retention of such interest or control had been the result of a transaction consummated or begun subsequent to the date of the entry of this decree; and (3) for the further purpose of enabling the Attorney General to determine and advise the court whether any leases, contracts, or arrangements concerning their, or any of their, distributing systems made or entered into by the defendants, or any of them, prior to the entry of this decree, and in force on the day when it shall be entered, are in violation of the terms thereof, then, in the event that the Attorney General in writing notifies the defendant or defendants concerned with respect to such alleged violation, reciting in reasonably specific terms the nature thereof, the corporation defendants are hereby directed to make full and complete discovery to the petitioner with respect thereto, and the corporation defendants are further directed to submit to the Attorney General or to any Assistant Attorney General by him duly authorized all of their books, records, correspondence, or other documents in so far as the same refer to the alleged violation, and to furnish all information concerning the same.

Seventeenth. That all sales, transfers, or other disposition made by any of the defendants since the first day of October, nineteen hundred and nineteen, of any of their interests in public stockyard market companies, stockyard terminal railroads, stockyard newspapers or journals, public cold-storage warehouses and retail meat markets, or incorporation, firms, or associations manufacturing, jobbing, selling, transporting, except as common carriers, distributing or other-

wise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, and all leases, contracts, or arrangements or other disposals made by any of the defendants since the first of October, nineteen hundred and nineteen, affecting their delivery systems, shall be submitted by the defendants to the court for its investigation and determination as to whether the same were made in accordance with the spirit and purpose of this decree, in the same manner and with the same force and effect as though the said sales, dispositions, leases, contracts, or arrangements had been made subsequent to the entry of this decree.

Eighteenth. That jurisdiction of this cause be, and is hereby, retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purposes of entertaining at any time hereafter any application which the parties may make with respect to this decree.

WALTER I. MCCOY, *Chief Justice.*

FEBRUARY 27, 1920.

EXHIBIT B.

REPORT OF THE INTERDEPARTMENTAL COMMITTEE ON THE QUESTION OF A MODIFICATION OF THE CONSENT DECREE IN THE CASE OF UNITED STATES OF AMERICA *v.* SWIFT & CO. AND OTHERS, WITH REFERENCE TO UNRELATED COMMODITIES.

THE ATTORNEY GENERAL:

Your committee, consisting of Bayard T. Hainer, selected by the Secretary of Agriculture at your request, Frank C. Hall, selected by the Secretary of Commerce at your request, and Herman J. Galloway, selected by you to conduct a hearing upon the question of a proposal to modify the consent decree entered by the Supreme Court of the District of Columbia on February 27, 1920, in the suit of the United States of America *v.* Swift & Co., and others, in equity, by removing the restrictions and prohibitions upon the defendants with reference to the manufacture, handling, and distribution of the unrelated commodities referred to in said decree, submits the following report.

The committee, before entering upon the hearing, gave full notice to the parties interested and to the public generally of the time, place, and the purpose of such hearing, and extended an invitation to all of those interested, including the Federal Trade Commission, to present their views if they so desired.

Pursuant to the plan for such hearing, written communications expressing the views of interested parties were received by the committee up to and including November 18, 1921. Several thousand of such communications were received. Also, pursuant to the plan for such hearing, and in accordance with the notices given, oral hearings were held by the committee beginning November 28, 1921, and concluded with a hearing on December 15, 1921, 17 days being consumed in the actual taking of testimony. At the conclusion of the testimony January 12, 1922, was fixed as the time for hearing oral arguments and for the filing of briefs. At the oral hearings 56 witnesses appeared and were heard, and the stenographic transcript of this hearing covers 4076 pages and is submitted herewith.

Your committee has carefully examined and considered all testimony and communications received in this matter, together with the arguments and briefs, and is of the opinion that the following questions are raised for consideration:

1. Did the court have jurisdiction to render a valid decree in this matter, in view of the allegations in the answers and of the statements in the stipulations and decree that:

" * * * while the defendants and each of them maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication

that the defendants or any of them have in fact violated any law of the United States."

2. Did the court have jurisdiction to grant the relief awarded in this decree, as to unrelated commodities, in view of the contentions that:

(a) The bill does not allege any violation of law with reference to unrelated commodities.

(b) The relief granted is an absolute prohibition of the corporate defendants in engaging in the manufacture and distribution of unrelated lines and is not confined to a restraint of the defendants from committing unlawful acts in carrying on this business, which is not of itself an unlawful business.

(c) The relief granted is broader than either the allegations of the bill or the relief prayed for therein.

(d) The decree imposes penalties in excess of those authorized by the anti-trust laws. The remarks of Chief Justice White, at pages 77 and 78 in the decision in the case of *Standard Oil Co. v. United States of America* (221 U. S., 1), are urged upon the committee in support of this contention. Such remarks are as follows:

"As penalties which are not authorized by law may not be inflicted by judicial authority, it follows that to meet the situation with which we are confronted the application of remedies two-fold in character becomes essential. First. To forbid the doing in the future of acts like those which we have found to have been done in the past which would be violative of the statute. Second. The exertion of such measure of relief as will effectually dissolve the combination found to exist in violation of the statute, and thus neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about.

"In applying remedies for this purpose, however, the fact must not be overlooked that injury to the public by the prevention of an undue restraint on, or the monopolization of trade or commerce, is the foundation upon which the prohibitions of the statute rest, and moreover that one of the fundamental purposes of the statute is to protect, not to destroy, rights of property."

3. Is the decree as to the unrelated commodities proper in view of the fact that the Federal Trade Commission, in the testimony given at the hearing, stated that they have no evidence of a monopoly by the defendants or of a combination or conspiracy among the defendants with reference to unrelated commodities, but that they justify such decree upon the ground of the menace of the potential power of the defendants to acquire such a monopoly (see pp. 2143, 2148, 2149, 2150, 2170, 2171, and 2304 of hearing before interdepartmental committee), and in view of the further fact that the Supreme Court of the United States, in the case of *United States of America v. United States Steel Corporation and others* (251 U. S., 417), decided on the 1st day of March, 1920, after the entry of the decree in this case, at pages 450 and 451 of such decision, says:

"The Government, therefore, is reduced to the assertion that the size of the corporation, the power it may have, not the exertion of the power, is an abhorrence to the law, or as the Government says, 'the combination embodied in the corporation unduly restrains competition by its *necessary effect* (the italics is the emphasis of the Government), and therefore is unlawful regardless of purpose.' 'A wrongful purpose,' the Government adds, 'is matter of aggravation.' The illegality is statical, purpose, or movement of any kind only its emphasis. To assent to that, to what extremes would we be led? Competition consists of business activities and ability—they make its life; but there may be fatalities in it. Are the activities to be encouraged when militant, and suppressed or regulated when triumphant because of the dominance attained? To such paternalism the Government's contention, which regards power rather than its use the determining consideration seems to conduct. Certainly conducts we may say, for it is the inevitable logic of the Government's contention that competition must not only be free, but that it must not be pressed to the ascendancy of a competitor, for in ascendancy there is the menace of monopoly.

"We have pointed out that there are several of the Government's contentions which are difficult to represent or measure, and the one we are now considering—that is, the power is 'unlawful regardless of purpose'—is another of them. It seems to us that it has for its ultimate principle and justification that strength in any producer or seller is a menace to the public interest and illegal because there is potency in it for mischief. The regression is extreme, but short of it the Government can not stop. The fallacy it conveys is manifest."

4. It is also urged that the operation of the decree with respect to unrelated commodities is a restraint of trade and commerce in such lines, and is, therefore, in conflict with the purpose and intent of the antitrust laws.

5. The further contention is made that the enforcement of the decree works an injury to the public generally, and especially to producers, growers, and canners of fruits and vegetables, in that it deprives them of one method of distribution of their products, which method was formerly open to them and entirely eliminates the defendants as one class of competitors, leaving only one other class, namely, the wholesale grocers, to dominate the entire field of distribution.

6. It is also contended that the decree with respect to unrelated lines is contrary to public policy, in that it prohibits and restrains the defendants from engaging in export trade of the farm products of the United States and would also hinder and prevent the defendants from participating in the organization or operation of such an export company as is authorized by the Webb Export Trade Act.

7. Is the retention of the provisions of this decree with reference to unrelated commodities contrary to public policy, or do such provisions longer serve any useful purpose in view of the fact that it is contended that the packers and stockyards act, 1921, enacted by Congress since the entry of this decree, confers upon the Secretary of Agriculture full power and jurisdiction to supervise and regulate the activities of the meat packers with reference to the unrelated commodities mentioned in the decree, as well as other matters, and thus fully protects the public interest therein?

There are several other questions of more or less importance raised and presented in the consideration of this request for a modification, which it is unnecessary to here state.

All of the questions presented by this request for a modification, and at the hearing conducted thereon were strenuously opposed and ably argued by counsel for the wholesale grocers.

Your committee has come to the conclusion that such grave and far-reaching questions, which affect not only the provisions of the decree with respect to unrelated commodities but which also strike at the very foundation of the entire decree and are of such vital interest to the public generally, are matters which, regardless of what position the Attorney General might assume, must be ultimately decided by the court which entered the decree before any modification could be made, and as those who most strongly oppose any modification—namely, the wholesale grocers—are now parties to this cause by intervention, which intervention has been sustained by the court since the request for this hearing before the Attorney General was granted, it seems that the way is now open for those who urged a modification and who so earnestly contended that they have been seriously injured by this decree and have never had their day in court to present such questions and contentions in the first instance to the court for decision, without the same being in any way prejudged by the Attorney General.

Therefore, your committee feels that this request by the California Cooperative Canneries Co. and others for a modification of this decree should be presented in the first instance to the court which entered this decree and not to the Attorney General.

Respectfully submitted.

BAYARD T. HAINER,
FRANK C. HALL,
HERMAN J. GALLOWAY, *Chairman,*
Interdepartmental Committee.

JANUARY 20, 1922.

(The subcommittee thereupon adjourned to meet at the call of the chairman.)

PACKERS' CONSENT DECREE.

THURSDAY, APRIL 21, 1922.

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D. C.

The subcommittee met, pursuant to call, at 2 o'clock p. m., in room 339, Senate Office Building, Senator Edwin F. Ladd (chairman) presiding.

Present: Senators Ladd, Norbeck, and Kendrick.

Senator LADD. Since our last meeting the committee has obtained authority to have printed as a part of the proceedings the record of the joint hearing before the Attorney General, the Department of Agriculture, and the Department of Commerce. I will ask the reporter to have the record printed in the proceedings; also some additional correspondence, with inclosures, from the Attorney General.

(The correspondence and record referred to are here printed in full, as follows:)

DEPARTMENT OF JUSTICE,
Washington, D. C., April 20, 1922.

Hon. E. F. LADD,

United States Senate, Washington, D. C.

MY DEAR SENATOR LADD: As my original report upon Senate Resolution 211, dated February 3, 1922, was addressed to the Senate of the United States and sent to the Secretary of that honorable body, which official had formally forwarded a copy of such resolution to me, I have addressed a supplemental report to such resolution to the Senate and sent the same to the Secretary thereof. This supplemental report contains information concerning developments in this matter since my original report, and I wish to hand you, as chairman of the subcommittee considering such Senate resolution, a copy of such supplemental report, together with the inclosures attached thereto.

Very truly yours,

H. M. DAUGHERTY,
Attorney General.

APRIL 20, 1922.

To the Senate of the United States:

In view of certain recent developments in the case of *United States v. Swift & Co.* and others, being the suit in equity No. 37623, in the Supreme Court of the District of Columbia, commonly known as the packers' consent decree, I wish to supplement my report to the Senate, dated February 25, 1922, in reply to Senate Resolution 211, dated February 3, 1922.

The important developments since my report, briefly stated, are as follows:

The Morris group of defendants, the Armour group of defendants, and the Swift group of defendants, each filed a report of their efforts to sell their interests in public stockyard-market companies, which showed that they had so far not disposed of their larger holdings in such companies, and alleged that despite diligent efforts they had been unable to dispose of the same. They requested a year's additional time under the existing plans within which to make disposition of these holdings as provided in the original decree. The Government appeared in court and stated that it felt a year's extension should not be granted at this time, but that the Government would be willing to consent to four

months' extension, and if the defendants, after using reasonable efforts, had then been unable to dispose of such holdings they might then come to the court and make a showing and procure such orders from the court as were just and proper. The court, however, overruled the objections of the Government and extended the time for such dispositions to March 3, 1923.

Hon. George Sutherland and Hon. Henry W. Anderson, who are trustees appointed by the court under the stockyards plans filed by the Swift and Armour groups of defendants, have filed a report in court, a copy of which is attached hereto for your information.

The California Cooperative Canneries Co., who have been the chief proponents of a modification of this decree, on yesterday (April 19, 1922) filed in court a petition for intervention, a copy of which was formally served upon this department to-day. For your information I also inclose a copy of such petition.

I am forwarding to Hon. E. F. Ladd, chairman of the subcommittee appointed to consider Senate Resolution 211, a copy of this letter together with a copy of such inclosures.

Respectfully submitted.

H. M. DAUGHERTY, *Attorney General.*

In the Supreme Court of the District of Columbia. In equity No. 37623.
United States of America, petitioner, v. Swift & Co., Armour & Co., Morris & Co., Wilson & Co., and Cudahy Packing Co. et al., respondents.

To the honorable justices of the Supreme Court of the District of Columbia:

The undersigned, George Sutherland and Henry W. Anderson, who were appointed trustees under the plan for deposit of the stock of the Swift and Armour interests in certain stockyards, as more fully set forth in said plan approved by decree entered in the above-entitled cause on April 12, 1921, beg leave to submit the following report:

First. The provisions of said plan with respect to the appointment and duties of the individual trustees, in so far as pertinent to the matters herein reported, are as follows:

"Upon the approval of this plan by the court, these defendants will execute and deliver to Henry W. Anderson, of Richmond, Va., and George Sutherland, of Salt Lake City, Utah, as trustees, powers of attorney, irrevocable during the time this plan remains in effect, authorizing said trustees jointly to vote all of the stock of said defendants in said last-mentioned stockyard companies and stockyard terminal railroad companies, or such portion thereof as from time to time shall remain unsold pursuant to this plan.

"Said individual trustees shall be charged with the duty of acquainting themselves with the conduct and operation of said stockyard companies and stockyard terminal railroads, but shall not vote said stock so as to interfere with the management and conduct of said public stockyard market companies or the stockyards operated by them, or said stockyard terminal railroads, unless both of said trustees shall be of the opinion that said stockyards or stockyard terminal railroads, or some of them, are being used in violation of the antitrust laws of the United States or the decree herein.

"In case said trustees shall disagree as to the voting of said stock, they, or either of them, or the petitioner, or the defendants, may apply to the court for an order directing how said stock shall be voted, with the right of either party hereto to be heard and to except to the order of the court and to appeal therefrom.

"It shall be the duty of said trustees to keep themselves informed as to the progress made in the sale of the stock in accordance with this plan and report the same to the court as and when directed by it, or upon their own initiative, and with such recommendations and suggestions as the may deem proper."

Second. That in pursuance of the provisions of the said plan the corporations and individuals constituting the Swift and Armour groups of the defendants during the latter part of April, 1921, and the early part of May, 1921, executed and delivered to your trustees powers of attorney to vote said stock in the respective stockyards mentioned and described in said plan, in the amounts therein stated, under and pursuant to the terms and provisions thereof. Your trustees are advised that on May 12, 1921, the said corporations and individuals composing said Swift and Armour groups of defendants deposited with the

Illinois Trust & Savings Bank, as depository, certificates of stock duly indorsed in blank representing their respective shares of stock in the various stockyards mentioned in said plan, or where such certificates of stock were pledged as collateral they deposited an order from the pledgee to exchange said certificates upon negotiable receipts from said depository, as provided in the plan. This deposit was made under escrow agreement, and copies of the said agreement and other papers in connection therewith were furnished to your trustees, and your trustees are advised the same were also filed in the record in the above entitled cause.

Third. The provisions of said plan for deposit of said stocks and vesting the voting power thereof in your trustees having thus been carried out by the defendants named, your trustees proceeded as rapidly as practicable to familiarize themselves with the conditions surrounding the discharge of the duties imposed upon them by the provision of said plan quoted above. After due consideration and a study of such portions of the record in the above entitled cause as bore upon the performance of their duties as trustees under said plan, they determined that it would be wise for them to visit personally a number of the stockyards the stocks of which were deposited under said plan, and to familiarize themselves by personal investigation of the conditions surrounding said yards and the operations thereof, and to secure by interview with persons conducting business in said stockyards such information as would enable them to discharge intelligently the duties imposed. With this object in view, your trustees left Washington on the 22d day of May, 1921, accompanied by Herman J. Galloway, Esq., special assistant to the Attorney General representing the Department of Justice of the United States in this litigation. Arriving at Chicago on May 23, 1921, your trustees, together with Mr. Galloway, spent the days of May 23 and 24 in conference with the officers of Armour & Co. and Swift & Co. and other defendants constituting the Armour and Swift groups of defendants, with a view to familiarizing themselves as far as practicable with the general conditions and methods of operation prevailing at the various stockyards, the stocks of which were deposited as aforesaid.

As a result of these conferences, arrangements were perfected for your trustees, accompanied by Mr. Galloway and a competent stenographer, to visit the more important stockyards, inspect the same personally, and hold hearings at which it was proposed to secure information from various interests concerned as to the methods of operation prevailing at said yards, and the general conditions surrounding the same. Arrangements were also made to give notice at each of the points at which said stockyards proposed to be visited were located, of the proposed visit of your trustees and the purposes thereof, by notices posted at the stockyards and published in the local press, and by such notices to invite all persons interested in the stockyards, or doing business therein, or in any manner interested in any question affecting the duties of your trustees under said plan, as well as the leading citizens of said districts to meet with your trustees at said stockyards and give them any information which would enable them intelligently to discharge the duties imposed upon them by said decree.

These arrangements having been perfected, your trustees, accompanied by Mr. Galloway, as aforesaid, and by a representative of the defendants, arranged a schedule for a visit to the principal yards the stocks of which were deposited under said plan, so that they could spend at least one day at each of said yards. The yards visited and inspected and the dates of said visits were as follows:

St. Paul Union Stockyards, St. Paul, Minn., Wednesday, May 25, 1921.

Sioux City Stockyards, Sioux City, Iowa, Thursday, May 26, 1921.

Union Stockyards Co. of Omaha (Ltd.), Omaha, Nebr., Friday, May 27, 1921.

Denver Union Stockyards, Denver, Colo., Saturday, May 28, 1921.

Kansas City Stockyards, Kansas City, Mo., Monday, May 30, 1921.

St. Louis National Stockyards, East St. Louis, Ill., Tuesday, May 31, 1921.

Having completed this itinerary and inspection of said yards, and holding hearings at each as hereinafter stated, your trustees returned to Chicago from East St. Louis and spent Wednesday, June 1, 1921, in conference with the representatives of the Swift and Armour groups of defendants, at which the results of the inspections and hearings aforesaid were discussed and suggestions submitted based thereon, as well as certain suggestions with respect to the sale of the stocks of the Swift and Armour groups of defendants deposited under said plan.

Your trustees have not visited personally the remaining yards mentioned in said plan, as these yards are all comparatively small and the amounts of stocks held by the Swift and Armour groups of defendants therein not large.

Your trustees have, however, inquired into the methods of operation prevailing at the yards not visited, and have obtained written reports as to a number of said yards covering substantially the grounds covered by the hearings at the yards visited, and they are informed that the conditions and methods of operation prevailing at these smaller yards not visited or inspected are substantially the same as those prevailing at the yards which your trustees visited as aforesaid. Your trustees have not, therefore, deemed it necessary to make a personal visit to these yards.

Since the inspections of and the hearings at the yards mentioned your trustees have endeavored to keep themselves informed in accordance with the provisions of said plan with the conditions and methods of operation at said yards and all other matters affecting their duties under said plan. They have held conferences from time to time with the representatives of Swift and Armour groups of defendants, and by correspondence and otherwise have kept in touch with the situation, to the end that they might be in a position at any time to inform the court of any matters as to which it might desire information from them within the scope of their duties under said plan.

The general results of the investigations and conferences aforesaid will be summarized below under appropriate headings.

I. THE CONDUCT AND OPERATION OF SAID STOCKYARD COMPANIES AND STOCKYARD TERMINAL RAILROADS.

The stockyards visited and inspected by your trustees, as aforesaid, were all constructed and operated on the same general plan, subject to such minor changes in detail as were made necessary by physical and local conditions, and your trustees are advised that the same general conditions and methods of operation prevailed at those yards not actually visited. In general, the stockyards consist of a series of pens of varying size, adapted to the requirements of the business, divided into sections by alleys or driveways, through which the cattle are driven to and from the pens, such alleys or driveways being equipped with suitable gates for cutting out and directing the movements of the cattle. The partitions and gates are constructed of wood or planking. A few of the pens in some of the yards are still unpaved, but the large majority of the pens, as well as the driveways, are paved with either brick or concrete, the present tendency being to provide concrete pavements which insure greater permanency and better sanitary conditions.

The yards are divided into sections for the accommodation of horses and mules, cattle, hogs, and sheep in varying proportions to meet the requirements of the several markets. The cattle pens are generally single deck and uncovered, while the sheep and hog pens are generally of concrete, double-deck construction, with incline planes for driving from one level to another. Where the horse and mule markets are large, as in Kansas City and East St. Louis, proper stable facilities with auction houses are provided. All of the yards are provided with facilities for feed distribution, generally by overhead galleries, with running water in the pens. The unloading railway tracks are located at one side of the yard and connected therewith by unloading platforms and chutes of wood or concrete, through which the animals are driven from the cars into unloading pens, and thus distributed throughout the yard. Wood or concrete runways extend from the yards to the various adjoining packing plants, and reloading facilities are provided for the reshipment of cattle not slaughtered at the local plants. The modern tendency in all yards is toward reinforced concrete construction.

Adjoining the stockyards in each instance is an administration building owned by the company. In this building are located the operating officers of the stockyard and terminal railroad companies, and facilities are provided for the accommodation of shippers, dealers, and others doing business in the yards. In addition to the offices and services of the stockyard company, offices are provided and rented in the administration building to a stockyard bank and a newspaper, as well as commission men, traders, and speculators doing business on the yards. In connection with some of the larger yards, a hotel is provided for stock raisers and others who visit the yard on business. The hotel building is owned by the stockyard company but is operated under lease entirely separate from the stockyards themselves.

The handling of cattle upon and through said yards is conducted substantially as follows:

By arrangement with the various railroad companies, telegraphic notice is given in advance of cattle in transit to the yards; and these notices are posted upon a bulletin board in the administration building, showing the commission men or others to whom said cattle are consigned and the probable time of arrival. On arrival of these cattle trains at point of destination the cars are delivered to the terminal railroad company, which maintains a connection with the various railway lines and operates the tracks into the yards. The cars are then moved by the terminal railroad to the unloading chutes, and the cattle are unloaded by the stockyard company into unloading pens and driven into the alleyways or driveways where they are delivered to the commission men or others to whom they are consigned and taken to the pens of such commission men or consignee. The commission men then get in touch with the various buyers operating upon the yard and offer these cattle to the buyers, the price being negotiated with the various buyers. The purchaser may be a representative of the packing house operating plants near the yards, an order buyer buying on order from other and distant plants, a trader purchasing for the purpose of stocking and feeding cattle in the territory contiguous to the yards, or a speculator who buys on the yards, feeds the cattle, sorts them, and then resells them either to stockers or traders or packers at the best price obtainable. The cattle are fed and watered immediately upon their arrival, and any crippled animals are cut out and taken to special pens where they are treated.

When a sale has been effected the cattle are driven to the scale houses and weighed and delivered to the purchaser upon passing from the scales after weighing. They are then driven either to the packing houses if purchased by packers or to the pens of the stocker, feeder, or speculator, or, if intended for reshipment, to the reloading pens.

In some States the yards are under control of State public-utility commissions, as in Minnesota and Missouri. In such cases the handling of the cattle and the feeding and weighing is supervised by representatives of such commission. The cattle are inspected by representatives of the United States Government on their arrival in order to eliminate diseased cattle or others unfit for the markets. Further details as to the various matters involved in the conduct of the yards and the management thereof will be given below with reference to the testimony in the record of the hearings held by your trustees bearing specifically thereon.

For full and detailed information as to the organization, conduct, and operation of said stockyards, the court is referred to the following testimony and exhibits filed as a part thereof:

St. Paul yards.—T. E. Goode (record, pp. 2-13); R. J. Wells (record, pp. 14-36).

Sioux City yards.—R. L. Eaton (record, pp. 108-149).

Omaha yards.—E. Buckingham (record, pp. 205-233).

Denver yards.—J. A. Shoemaker (record, pp. 301-337).

St. Joseph yards.—J. O. Barkley (record, pp. 399-424).

Kansas City yards.—George R. Collett (record, pp. 425-428).

East St. Louis yards.—E. F. Bisbee (record, pp. 430-464).

The following subjects of special inquiry may be specifically mentioned for the information of the court:

(1) *Terminal railroads.*—Terminal railroads exist in connection with the stockyards at all yards visited by your trustees and, as your trustees are advised, at other yards not so visited. These terminal railroads are owned and operated by a corporation which is separate from the stockyard company, but the stock of which is owned by the stockyards company. In some instances the terminal railroad companies own their own locomotives and equipment from moving trains, while in other instances they own no equipment, but simply own the tracks and railroad facilities upon which the trains are moved with the equipment of the railroads connecting therewith.

The terminal railroads are connected with the main transportation lines reaching the point at which the stockyards are located and upon which stock is hauled to and from the yards. The railroad companies deliver the shipments in cars to the terminal railroad, which in turn moves these shipments to the unloading yards and receives cars from the connecting railroads and places them at the reloading pens for the handling of such cattle as may be reshipped. These railroads also handle cattle which may be unloaded, fed, and watered at the yards while in transit from and to other points.

These terminal railroads are under the supervision of the Interstate Commerce Commission and of the State public utility commissions within the limits of their jurisdiction. Their rates are on file with the Interstate Commerce Commission. The details as to the ownership and operation of these terminal railroads are given in the evidence of the various managers of the yards cited above and the exhibits filed therewith. The court is referred especially to the following pages of volume 1 of the record as bearing upon this subject: Pages 6, 7, 130, 212, 307, 414, and 446.

(2) *Assignment of space in the yards.*—Your trustees made special inquiry into the methods followed in assigning pens or space to the various commission men, traders, and speculators who operated in the yards. This inquiry was especially directed to the question as to whether there was any discrimination in this regard. It appears that no charge is made by the stockyards company for the use of the pens by the commission men, traders, and speculators. The pens are assigned to the various commission men in one section of the yard, to traders in another section, and to speculators in another section, the object being to arrange these assignments in such way as best to promote the convenience and expeditious handling of the cattle in the yards, and to avoid movements in different directions. The amount of space assigned to each of the commission men, traders, and speculators is based generally upon the amount of business done the preceding year. These assignments of space are readjusted from time to time to meet the changes in the development of the business of the various commission men, traders, and speculators. If a new buyer enters the yard he is given the best available space, the amount thereof being based upon his probable business, and thereafter adjusted in accordance with experience. While each of the commission men, traders, and speculators naturally desire to secure the best locations possible in the yard, we found no evidence of discrimination in the assignment of pens, and there was no testimony that this phase of the business was not handled with fairness and justice to all concerned.

For detailed evidence on this subject, the court is referred to the following pages of volume 1 of the record: Pages 10, 138, 225, and 231.

(3) *Weighing.*—As stated above, after a sale of cattle is effected they are driven on to the scales and weighed. These scales are constantly checked and tested in order to maintain their accuracy, and weighing tickets are furnished to the commission men, the purchaser, and a record is kept by the company. In some instances, as in St. Paul, the weighing is under the supervision of the State utilities commission. Your trustees were unable to find any ground for complaint as to the conduct of the weighing operation, and there was no suggestion that it was not fairly and justly done. For details as to weighing the court is referred to the testimony of the managers of the yards cited above, and specifically to the following pages of the evidence: Pages 12, 14, 16, and 34.

(4) *Charges and revenues.*—The revenues of the stockyards are derived from three sources: (a) A charge of \$1 per car for unloading cattle, which is paid by the transportation companies and absorbed in the rate; (b) the sale of feed for the cattle while in the yards; and (c) a yardage charge upon all cattle handled upon the yards.

The first charge is fixed by agreement with the transportation companies. The yardage charge is fixed by the stockyard company except where the yard is subject to the jurisdiction of the public utility commission of the State, as in St. Paul, when such charges are under the control of such commissions. The charge is substantially the same in all yards, since any material variation would lead to a discrimination against the yards having higher charges.

The feed charges will be discussed below. They are regulated by the prevailing market prices for hay, corn, and other feed. In the St. Paul yards the Public Utility Commission of Minnesota has undertaken to fix the price for feed to be charged by the yards, and the matter is still in litigation.

Your trustees found no objection to or criticism of the stockyard charges for the services rendered except in the matter of charges for feed, as to which there was some complaint with the various yards. Since no charge is made for the use of the yards by the commission men, traders, and speculators, it is necessary in order to provide adequate revenue that the stockyard companies should charge a profit upon the feed used for cattle while on the yards, and this charge, as well as the yardage charge, is, of course, charged back against the

producer or shipper of the cattle. Since the farmers who are also stock raisers produce and sell the feed, the difference in the price realized by them for their feed on the market and the price charged to them for feed given their cattle in the yards is a subject of some complaint. This might possibly be relieved to some extent by making a rental charge for the pens and reducing to a corresponding degree the profit on feed, but the result to the shipper of cattle would be the same, and this would necessarily involve a complete readjustment of present charges which have grown up as a result of experience, and with which the public are familiar. With the exception of some complaints as to the feed charges, and in a few instances as to the character of the feed furnished, which latter complaints the witnesses testified were always adjusted by the stockyard companies upon proper showing, your trustees found no serious objections as to the present charges of the stockyard companies. Since the enactment by Congress of the "packer and stockyards control act of 1921," these matters of detail administration seem to be under the control of the Secretary of Agriculture, where relief can no doubt be obtained if just ground be shown therefor. For details of the evidence on this subject the court is referred to the following pages of the record: Pages 11, 12, 16, 21, 55, 60, 86, 133, 159, 191, 221, 264, 367, 384, 468, 486, and 492.

(4) *Rendering plants.*—At each of the stockyards there is operated a rendering plant where dead animals and others not fit for marketing are converted into grease and other commercial products. Your trustees were advised that there had been some complaint of the limitation of this business to one company at each yard, and they directed their inquiries to this subject to find out if there was anything in this method of conduct of the business contrary to the law or to the decree of this court. The evidence showed that in no instance was the rendering plant controlled by the stockyard company, and, in fact, your trustees found no instance in which the stockyard company had any interest in the company operating the rendering plant. Your trustees found, however, that it was the practice in all of these yards to limit this business to one company. It was claimed that this course was necessary in order to insure efficient operation of this business and to give to the stockyard company some responsible agency to which it could look for the prompt removal of dead animals, which was essential to the sanitary condition of the yards. The reason given for this method of conducting this branch of the business seemed to your trustees to be substantial and adequate, and they found nothing in the dealings between the stockyard companies and the rendering plants which they deemed a violation of the antitrust laws of the United States or of the decree of this court.

For the details of the evidence on this subject the court is referred to the following pages of the record: Pages 134, 136, 223, 332, 423, and 460.

(5) *Stockyard bank.*—There is maintained and operated at the administration or exchange building at each of the stockyards visited, and as your trustees are advised at the other company yards also, a stockyard bank. This institution leases its quarters in the administration building from the stockyards company, but in no instance did the testimony show that the stockyards company was in anywise interested in the stock of the bank or had any control over the operation thereof.

This bank is conducted by a separate corporation in each case for the convenience of stock raisers, commission men, traders, and others doing business upon the yards and for making loans upon cattle. Your trustees could find nothing in the relation between these banks and the stockyard companies in violation of the antitrust laws of the United States or of the decree in this cause. The officers of these banks testified in a number of instances before your trustees at the hearings. The court is referred for further details to the testimony (pp. 137 and 229), as well as to the evidence of the managers of the stockyards above cited.

(6) *Stockyard newspaper.*—At each of the stockyards there is operated a newspaper published for the information of those interested in the cattle business and circulating generally in the territory served by these yards. This newspaper in each instance is conducted in the administration or exchange building owned by the stockyards company, leasing its offices and quarters therein from the stockyard companies. While it appeared that in some instances in the past the stockyards company had been interested in the newspaper, the testimony was that such interest where it had existed had now been

disposed of, and these newspapers are now owned by individuals or separate companies not connected with the stockyards companies in any way, and the stockyards companies have no interest therein. The testimony was that the stockyards companies did not in any way control or influence the policy or operation of these papers. In a number of instances the owners or managers of these papers testified at the hearings. For further information on the subject, the court is referred to the following pages of the record: Pages 137, 151, 230, 285, 335, and 496.

(4) *The packing plants.*—Adjoining each of the stockyards visited by your trustees are located a number of packing plants, cattle for the operation of which are purchased upon the yards. In some instances these packing plants are located upon land owned by the stockyards company. These packing houses constitute the principal buyers for cattle upon the local yards.

While the larger packing companies maintain packing houses at nearly all of these yards, and some of them have packing houses at every yard, there are also operated near to or within the territory served by these yards a number of so-called independent packing plants. Your trustees directed their inquiry at each yard to the question as to whether there was any discrimination by the stockyard companies against such independent plants, either in leasing land upon which to locate said plants, or in any other manner. The testimony both of the officers of the stockyard companies and of the managers or owners of such independent plants was unanimously to the effect that no such discrimination existed, and that the stockyard companies did everything in their power to encourage the location of plants at or near their yards, with a view to the development of their markets and resulting increase in their business. For further details on this subject, the court is referred to the testimony in the record at the following pages: Pages 261, 271, 282, 298, 309, 313, and 395.

(8) *Ownership of stock by large packers and effect on competition among buyers on the yards.*—Your trustees directed an inquiry at each place to the question of the effect if any of the ownership by the large packing companies of stock in the stockyard companies upon the operations of the market, and especially upon competition between buyers upon the yards, with a view to carrying out the instruction of the decree to ascertain if there was in the management of the stockyard companies any violation of the antitrust laws of the United States or of the decree of this court.

The general testimony of the managers of the yards, commission men, traders, speculators, stock raisers, and other persons examined by your trustees was to the effect that the ownership of stock in the stockyard companies did not and could not affect the competition among buyers on the yards or the price of cattle sold thereon; that the sole function of the stockyards was to provide a market place for the cattle and to take care of them while they were on the market until they were delivered to the purchaser; that the buyers, consisting of the representatives of packing houses, independent traders, and speculators, were in no way under the control of the stockyard companies, except that they were all required to conform to the police regulations for the conduct of the yards and to conduct their business in accordance with the proper standards of business ethics or integrity. In some instances the opinion of witnesses was expressed to the effect that there was no real competition between the larger packers, because the bids of each of the buyers were controlled by the same market conditions with which all were familiar, but the testimony was generally to the effect that there was competition in buying upon the yards, not only as between buyers for the packers, but between buyers for the packers and traders and speculators, and there was no evidence or suggestion of any unlawful combination as between the packers in this regard. It was generally conceded that the ownership of the stock in the stockyards companies had no bearing upon the question of competition between the buyers and did not result in any discrimination by the companies in favour of the packers. There were witnesses who expressed the opinion that it was contrary to the interests of the cattle trade, and especially the cattle growers to have the stockyards controlled by the packers, their view being that they should either be controlled by the Government or independent owners, but the large preponderance of the evidence was to the effect that the control of the stockyards by the large packers who were interested in maintaining a good market place which would attract shipments to these markets, and who were also interested in the efficient management of the yards and the proper handling of the cattle which they were

to purchase and slaughter, was in the interest of the market and of the cattle trade generally. The view of those opposed to the ownership of stock by the packers will be found set forth in the testimony of E. L. Burke, page 253; A. E. DeRichols, page 373; and T. W. Tomlinson, page 385, while the view of those of the opposite opinion will be found scattered throughout the evidence referred to below.

The evidence of those opposed to the ownership of stock in the stockyards by the packers as a matter of policy failed, however, to disclose any facts showing that the ownership of such stock was used to give to the packers any advantages as buyers upon said yards, and the overwhelming evidence of all classes of witnesses who appeared before your trustees was to the contrary.

For details of this subject, with the views of the various witnesses who testified with relation thereto, the court is referred to the following pages of the testimony: Pages, 22, 26, 42, 58, 69, 92, 94, 140, 144, 148, 154, 161, 165, 167, 185, 200, 202, 239, 240, 244, 248, 255, 268, 269, 279, 287, 296, 342, 347, 348, 351, 353, 360, 367, 374, 386, 388, 391, 458, 472, 475, 490, 499, and 502.

(9) *The management of the yards.*—The provisions of the plan under which your trustees were appointed requiring them so to vote the stock of the Swift and Armour groups of defendants in the yards mentioned in said plan as not "to interfere with the management and conduct of said public stockyard market companies or the stockyards operated by them, or said stockyard terminal railroads, unless both of said trustees shall be of the opinion that said stockyards or stockyard terminal railroads, or some of them, are being used in violation of the antitrust laws of the United States or the decree herein."

Your trustees directed their inquiries especially to the management of the yards, with a view to ascertaining if there was any violation of the antitrust laws of the United States or of said decree which would require them to vote the stock for change of management.

Nearly all of the large number of witnesses interrogated by your trustees were asked for direct statements on this subject. It was the unanimous testimony of these witnesses, regardless of their view as to the policy of the ownership of stock in the yards by the packers, that the present management of the yards visited was excellent, and they could suggest no improvement in said management. As already indicated, the only specific complaint was as to the charges for feed, and in some few cases there was objection to the feed supplied, which latter objection, however, it was admitted, had been remedied when brought to the attention of the stockyards company. Even those persons who were strongly opposed on principle to the ownership of stock in the stockyards companies by the packers admitted that the management was good, and could suggest no improvement therein. After most careful investigation, your trustees were unable to discover anything in the present management of these yards which was in violation of the antitrust laws of the United States, or of the decree of this court in this cause. For the testimony on this subject, the court is referred to the following pages of the record: Pages 35, 38, 48, 54, 64, 77, 82, 87, 90, 95, 152, 161, 164, 170, 177, 187, 191, 195, 242, 254, 259, 263, 271, 277, 281, 286, 294, 341, 346, 358, 359, 364, 366, 369, 375, 380, 383, 389, 396, 419, 459, 467, 475, 482, 485, 492, 494, 498, and 502.

Conclusion.—Your trustees having thus acquainted themselves with the conduct and operation of said stockyard companies and stockyard terminal railroads both by personal inspection and through the evidence of representatives of every class of persons interested in the conduct of business upon said yards to the extent and in the manner aforesaid, have reached the conclusion that said stockyards and stockyard terminal railroads are not now being used in violation of the antitrust laws of the United States or of the decree of this court entered in this cause.

II. AS TO THE SALE OF THE STOCK HELD BY THE SWIFT AND ARMOUR GROUPS OF DEFENDANTS IN SAID STOCKYARD COMPANIES IN ACCORDANCE WITH SAID PLAN.

In the conferences held by your trustees with the representatives of the Swift and Armour groups of defendants in Chicago before and after the inspection of said yards as aforesaid, plans for the sale of the stock held by the Swift and Armour groups of defendants in pursuance of the plan approved by this court were discussed, and suggestions from your trustees were requested. Your trustees did not feel that they were charged with the obligation either

to sell or to suggest methods for the sale of the stock of said groups of defendants, but merely to keep themselves informed as to the progress made to that end. They did, however, submit certain suggestions as to the sale of said stocks, and especially suggested that the same be advertised for public sale, which was subsequently followed by the said Swift and Armour groups of defendants.

On the occasion of the visits of your trustees to the various stockyards as indicated above, they undertook to ascertain from bankers, representatives of the agricultural interests, traders upon said stockyards, and others who might be informed on the subject, whether it would be practicable to make a sale of the stock of the several yards either to the business or financial interests or to stock raisers or others in the communities served by said yards respectively. With one exception hereinafter mentioned the testimony of those who appeared before your trustees was generally to the effect that a sale of said stock to any of the interests mentioned, or in the communities served by said stockyards at any reasonable price under prevailing conditions would be impracticable. At the hearing at Denver, Mr. A. E. DeRichols, representing the American Live Stock & Loan Co., stated that this company would buy the Denver stockyards at a fair price, and he was assured that if he could get together a syndicate of people who would buy the stock, there would be no difficulty in getting it (see record, p. 379). So far as your trustees are advised, no further steps have been taken by him or his company in this connection.

Your trustees are informed that about the month of May, 1921, negotiations were opened up by Channing M. Ward, Esq., of Richmond, Va., with the representatives of the Swift and Armour groups of defendants looking to the purchase of the stock held by them in the various yards mentioned in the plan. These negotiations were continued for some months by correspondence and by conference with the representatives of these groups of defendants. Mr. Ward succeeded in interesting certain large banking interests in New York in the undertaking; but, after careful investigation, they advised that they would be unable to handle the matter at the present time. These negotiations were therefore discontinued. No definite offer was made for these stocks or any part thereof.

The Swift and Armour groups of defendants having been unable to secure any definite offers of purchase of these stocks or any substantial part thereof by private negotiation, adopted the suggestion of your trustees that they should advertise the same for public offering. Your trustees are advised that the following advertisement was prepared and inserted in the various newspapers hereinafter named:

"PUBLIC OFFERING OF INTERESTS IN STOCKYARD COMPANIES.

"Under the plan for the disposition of stockyards interests, filed with and approved by the Supreme Court of the District of Columbia, the shares of stock owned by Armour and Swift groups in public stockyards market companies are offered for sale, subject to such terms and conditions as may be agreed upon between the owners and the purchasers; and subject to the approval of the Supreme Court of the District of Columbia.

"The stock is offered subject to prior sale and to the right of the owners to reject in whole or in part any or all bids.

"Bids will be received up to April 1, 1922, by the Illinois Trust and Savings Bank, of Chicago, for such shares of stock as are owned by these groups in public stockyards market companies.

"The stock ownership of such groups in public stockyards market companies includes also the stock ownership in stockyard terminal railways serving the respective stockyards."

ILLINOIS TRUST AND SAVINGS BANK,
Chicago.

Your trustees are informed that this advertisement was inserted in the following newspapers on the dates named below, in the year 1922:

Place.	Name of paper.	Dates of issue, 1922.
Boston.....	Boston News Bureau.....	Feb. 7, 14, and 21.
	Boston Financial News.....	Do.
	Boston Commercial.....	Do.
New York.....	Wall Street Journal.....	Do.
	Commercial and Financial Chronicle.....	Do.
Washington.....	Washington Times.....	Do.
	Washington Star.....	Do.
	Washington Herald.....	Do.
	Washington Post.....	Do.
Chicago.....	Drovers Journal.....	Do.
	Journal of Commerce.....	Do.
South Omaha.....	Drovers Journal Stockman.....	Do.
South St. Paul.....	South St. Paul Reporter.....	Do.
East St. Louis.....	National Live Stock Reporter.....	Do.
Denver.....	Record Stockman.....	Do.
South St. Joseph.....	Stock Yards Journal.....	Do.
Fort Worth.....	Live Stock Reporter.....	Do.
Sioux City.....	Live Stock Record.....	Do.
Kansas City.....	Drovers Telegram.....	Do.
Des Moines.....	Wallace's Farmer.....	Feb. 7 and 14.
	Iowa Homestead.....	Feb. 16 and 23.
St. Paul.....	St. Paul Farmer.....	Feb. 18 and 25.
Topeka.....	Farmers Mail and Breeze.....	Do.
Chicago.....	Prairie Farmer.....	Do.
	Breeders Gazette.....	Feb. 16 and 23.
Fort Worth.....	Orange Judd Farmer.....	Feb. 15 and Mar. 1.
Denver.....	The Cattleman.....	Feb. 18.
	The Producer.....	Do.

Your trustees are advised that no bids were received by the Illinois Trust & Savings Bank for any substantial amounts of the stocks of the Swift and Armour groups of defendants in the various yards mentioned in said plan in response to said advertisements, and that the effort to sell the same by public offering as stated in said advertisement has not been successful. A report from said depository showing the results of said offering is returned as an exhibit with this report.

For information as to the views and opinions of the banking and cattle interests in the territory served by the various yards visited by your trustees as to the feasibility of making sale of said stocks at the present time, the court is referred to the testimony of these witnesses at the following pages of the record: Pages 44, 48, 61, 63, 64, 66, 74, 80, 89, 98, 163, 188, 192, 196, 198, 235, 246, 249, 256, 273, 297, 338, 349, 361, 362, 371, 378, 420, 462, 471, 476, 479, 488, 500, and 505.

Conclusion.—Your trustees therefore report that they have kept themselves informed as to the progress made in the effort to sell the stock covered by said plan, in accordance therewith; that they are of opinion that the Swift and Armour groups of defendants have made reasonable and sincere efforts to sell said stock, and that up to the date of this report their efforts in this regard have been unsuccessful.

III. VOTING THE STOCK UNDER THE PLAN.

The plan provides that the trustees shall not "vote said stock so as to interfere with the management and conduct of said public stockyard market companies or the stockyards operated by them, or said stockyard terminal railroads, unless both of said trustees shall be of the opinion that said stockyards or stockyard terminal railroads, or some of them, are being used in violation of the antitrust laws of the United States, or the decree herein."

As already stated, your trustees directed their investigations largely to the question of whether the stockyards or stockyard terminal railroads, or any of them, were being used in violation of the antitrust laws of the United States, or of the decree of this court in this cause, to the end that they might exercise the voting power vested in them of the stocks of the Swift and Armour groups of defendants in pursuance of the terms of said decree. Your trustees have not been able to find or to obtain any testimony to the effect that the stockyards or stockyard terminal railroads are being used in violation of the antitrust laws of the United States or of said decree, and have therefore, under the terms of the said plan, exercised said voting

power for the continuance of the management as it existed when said plan was approved by this court.

Your trustees have only been called upon to vote said stock at the annual meetings of said corporations for the election of directors and the conduct of such other business as usually comes before meetings of that character in the ordinary course. In view of the fact that there was nothing to require or justify your trustees in voting the stock for any change in management under the terms of said plan your trustees did not feel that they were called upon to incur the expense necessary to attend these formal meetings in person. They therefore executed proxies to designated persons to vote said stock at the annual meetings of said stockyard companies, which have been held in accordance with the by-laws, for the election of boards of directors of said companies as they existed at the date of the adoption of said plan, except in such cases as those who controlled the companies desired to substitute other directors, but few of which substitutions were made, and in no case has there been sufficient change in the board of any of such corporations to change the management in any respect.

In giving these proxies your trustees were careful to do so only upon condition that the stock, the voting power of which was vested in them, should not be voted to ratify any previous acts of these companies, or any of them, but simply to elect the necessary board of directors and to perform those formal acts usually incident to annual meetings.

IV. EXHIBITS RETURNED.

Your trustees return herewith as a part of this report the following exhibits:

Exhibit 1. Volume I of the testimony taken at the hearings by your trustees at the various stockyards as indicated above.

Exhibit 2. Volume II of the testimony taken at said hearings, consisting of exhibits filed with the evidence of various witnesses as indicated therein.

Exhibit 3. Written reports upon the Fort Worth stockyards and Fort Worth Belt Railway, which were filed with the trustees at their request.

Exhibit 4. Report of depository, the Illinois Trust and Savings Bank, Chicago, of the stock of the Swift and Armour groups of defendants under said plan, showing the results of the public offering of said stocks by said depository.

Your trustees hold themselves in readiness to furnish to the court any additional information on any point on which the court may desire the same within the scope of their duties under the said plan, and to submit to the court upon its request any recommendations or suggestions which may be desired pertaining to the matters within the scope of their duties as prescribed by said plan.

Respectfully submitted.

GEORGE SUTHERLAND,
HENRY W. ANDERSON,
Trustees.

APRIL 8, 1922.

INTERVENING PETITION OF CALIFORNIA COOPERATIVE CANNERIES.

In the Supreme Court of the District of Columbia. Equity No. 37623. United State of America v. Swift & Co., Armour & Co., Morris & Co., Wilson & Co., Cudahy Packing Co., et al.

The petition of the California Cooperative Canneries respectfully shows as follows:

PARAGRAPH I.

Your petitioner, California Cooperative Canneries, is a corporation organized under the laws of the State of California, having its principal office and officers and agents in the city of San Francisco, in the said State of California, and carrying on its business in the said State of California and elsewhere, throughout the United States of America, and in foreign countries. Your petitioner is a fruit growers' cooperative canning organization, and its canneries are owned and operated by its members. Its canneries are located in the counties of Tulare, Stanislaus, and Santa Clara, in the said State of California. The fruit is delivered to the canneries by the growers, and after the expenses of canning are paid, the money received from the sales of the finished product is paid to the

growers, except that a small percentage of the receipts is held as a reserve fund, and shares of stock of the corporation are issued to the growers to cover the amount retained. The volume of your petitioner's business is approximately \$4,000,000 per annum, and its membership is very large. Your petitioner was originally incorporated in the said State of California under the name of the Producers Warehouse Co., but its name was duly changed to its present name of the California Cooperative Canneries, in accordance with the statutes of the said State of California in such case made and provided. Your petitioner is engaged in intrastate and interstate and international trade and commerce. A vital requisite to the proper conduct of your petitioner's said business is an efficient, expeditious, and economical system of distribution of its products in the said State of California and in the other States and the Territories of the Union and in foreign countries, in order to prevent an excessive spread of price between the producer and the consumer, and to insure the marketing of its said products.

PARAGRAPH II.

Heretofore, to wit, May 9, 1919, your petitioner, under its former name of Producers' Warehouse Co., entered into a certain written contract with the defendant, Armour & Co., a corporation, organized and existing under and in virtue of the laws of the State of New Jersey, with its principal office in the city of Chicago, in the State of Illinois, which contract provided, among other things, that it should be and remain in full force and effect from the date thereof until January 1, 1929, and which contract was and is in the words and figures following:

This agreement, made and entered into this 9th day of May, 1919, by and between the Producers' Warehouse Co., a corporation of the State of California, with principal office in San Francisco, Calif., first party, and Armour & Co., a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with principal office in the city of Chicago, Ill., second party, witnesseth:

1. First party hereby agrees to sell and deliver to second party, and second party agrees to purchase and receive from first party all the California canned fruits required by the business of second party and Armour & Co., a corporation of the State of Illinois, during the life of this contract, except that purchased by second party from the California Growers Association under its contract with that association, dated May 7, 1919, limited by the capacity of the factories operated by first party. Not later than January 1, of each year, second party shall furnish to first party a list showing the quantity of the various canned fruits which will be required by the business of said companies from the pack of the current calendar year, which list, in addition to the quantity, shall show the size of the container, the brand, grade, and variety. All containers shall be furnished by first party.

2. Said goods shall be shipped by first party from time to time and to points designated by second party, as ordered, in carload lots, delivered f. o. b. cars at points in California, taking rates not higher than the rates from intermediate rate points in California. Goods to be shipped locally to points in California shall be delivered f. o. b. cars at factories, it being understood, however, that whenever possible such goods shall be furnished from those factories located nearest to the point of destination.

3. The price to be paid by second party for said goods delivered as aforesaid during any year shall be the prices used by the California Packing Corporation in confirming its sales to the trade generally, provided, however, that first party shall not be required to sell any particular grade of goods to second party at prices which, less the discounts mentioned below in this paragraph and paragraph 4 hereof, are less than the fair value of the fruit plus its actual cost of manufacture, and in case the parties are unable to agree upon a price to be paid for such grades, second party shall not be required to accept the same. Said prices shall be subject to a discount of 5 per cent plus a further discount for cash of 1½ per cent.

Subject to the provision aforesaid, it is the understanding that the first party shall meet the competition of the California Packing Corporation with respect to prices and should the California Packing Corporation during any year in good faith reduce its prices to the trade generally for that year, and make such prices retroactive, or should first party make prices to others lower than those of the California Packing Corporation, it is agreed that second party shall have

the benefit of such reduced prices, whichever are the lower, with respect to all goods unshipped and also all goods which second party has on hand unsold at any of its places of business. Such reduced prices—either those of the California Packing Corporation, or those of first party, whichever are the lower—shall be the prices which second party shall pay first party for such goods less the discounts mentioned above. The prices for goods intended for shipment to foreign countries shall be the prices of the California Packing Corporation for such goods, less the discounts herein specified, provided the net prices are not less than the fair value of the fruit plus the actual cost of manufacture.

First party shall have the right after December 31 of each year of selling any goods which it has on hand and not taken by second party, at any price it may see fit, without affecting the prices paid by second party for fruit therefore delivered to it, provided first party first offers such goods to second party.

Sight drafts are to be drawn by first party on second party at its Chicago office covering shipments, payable in New York or San Francisco exchange 10 days from date of invoice. The drafts shall be accompanied by the original bill of lading and invoice, and copy of the bill of lading and copy of the invoice shall be sent to second party's branch house to which the particular shipment is destined.

4. Any goods remaining unshipped and subject to the orders of second party on December 31 of each year, shall be billed on that date and drafts drawn against warehouse receipts for the goods and second party agrees to pay said drafts within 10 days from receipt of documents. Where goods remain in storage after December 31 of any year, the storage charges are to be the regular lawful rates, and the insurance is to be taken care of by second party. First party shall not be required to store any goods for second party for a period longer than four months after December 31 of any year.

A further discount of one-half of 1 per cent is to be allowed to cover claims for swells. No further allowance shall be made on this account, excepting in case of some product which may show defective processing at time of delivery, and be promptly reported for investigation. If an adjustment can not be agreed upon the goods shall be rejected by second party and accepted by first party and the price paid therefor plus freight charges, refunded to second party.

5. Second party shall be at liberty to increase or decrease the quantity of products specified in the lists above referred to for each year to an amount not exceeding 10 per cent, provided notice thereof is given first party by June 1 of each year, and provided also that the change in quantity shall be in direct proportion on all of the varieties in said lists, excepting as may be hereafter agreed upon.

6. The labels required for goods covered by this contract shall be supplied and affixed by first party. On or about January 1 of each year, first party shall order sufficient labels to cover second party's requirements of canned fruits as shown in the lists above mentioned and such additional labels as second party may specify, at the lowest prices obtainable, subject to second party's approval. All such labels shall be stored by first party at their expense in suitable storage and under warehouse receipts issued to second party, and shall be covered by first party with insurance in reliable insurance companies payable to second party. Second party shall pay for all such labels as purchased, but first party shall repay second party therefor the actual cost thereof as they are used by first party in labeling the goods intended for second party under this contract, the amount thereof to be deducted by second party from the invoices covering such goods. The freight and expense of handling the additional labels above specified shall be borne by second party.

The designs for all labels shall be furnished by second party. First party shall furnish a supply of box plates for printing the heads of cases in one color in designs satisfactory to second party.

7. Should any question arise as to the quality or condition of the products delivered under this contract, owing to any error or negligence on the part of the first party, the second party agrees to notify first party promptly upon the examination of the products and a determination of their quality or condition, and first party shall be given full opportunity for the inspection of the goods, and second party shall not make any disposal of the same to the detriment of the first party. Disagreement as to any matter of fact arising out of this contract to be settled by arbitration. Buyer and seller each to select one arbitrator, who, if unable to agree, shall jointly select a third. The decision and award of a majority of said arbitrators shall be binding and complied with by all parties hereto. The party against whom decision is rendered shall pay

arbitration fees and expenses incurred. If decision is rendered that seller has complied with contract, invoice, if unpaid, shall become due and payable at once. When decision is rendered against seller, arbitrators shall determine and fix the amount of allowance, which amount shall be deducted from the invoice, and the correct net amount paid immediately. If payment shall already have been made, the amount or allowance awarded shall be immediately refunded.

8. It is agreed that all goods shipped under this contract are to be strictly up to the grades specified in the lists hereinbefore referred to. They are to be of first-class quality for the grades sold, sound, wholesome, and prepared and packed according to the highest standards of the fruit-canning industry. They are also guaranteed by first party to be not adulterated or misbranded within the meaning of the food laws of the United States, as well as the laws of any state, city, or municipality, and that they are manufactured in accordance with the Federal child labor act, it being understood, however, that first party is relieved from any responsibility for misbranding, in view of the fact that the labels are to be prepared in accordance with designs and specifications of second party, provided the contents of the containers shall, in all respects, conform to the labels so applied as to statements regarding the quality of the goods, weights, etc. In view of the changing character of State and municipal regulations, it is understood, however, that where the requirements of the Federal food and drug acts have been met, any variations or local peculiarities arising under the municipal food and health regulations shall not relieve the buyer of contractual obligations or be considered a breach of warranty. Second party shall have the right to have its representatives present at any or all of first party's canning factories for the purpose of inspecting the canning of fruits intended for second party under this contract.

9. The first party shall advise the second party from time to time as to market and crop conditions and shall assist the second party in every reasonable way to further its sales.

If either party hereto finds itself unable to perform any of the obligations of this contract by reason of fires, strikes, or other causes beyond its control, the performance of the contract in such respect is to be suspended until a reasonable opportunity is afforded to remove the cause of such suspension, and in case governmental action materially interferes with the performance of this contract by second party, then and in that case it shall have the right to cancel and terminate this agreement by giving 60 days' written notice to first party of its intention so to do, and shall not be held liable for any loss resulting therefrom. First party shall not be liable for the failure of transportation companies to furnish cars or transportation facilities.

In case of short pack, by reason of which the seller is unable to make full delivery of any of the grades specified, it is agreed that the deliveries are to be prorated.

10. The first party agrees to supply f. o. b. factory free of cost to the second party, a reasonable supply of such samples as the said second party may consider necessary for the proper development of the business. The second party agrees to pay freight or express charges on such samples.

11. This contract shall be subject to all the effective rules and regulations of the Federal Food Administration, the Federal Trade Commission, and other Federal agencies.

12. The agreement made and entered into on the 5th day of October, 1918, by the first party hereto and the California Growers' Association, a nonprofit, nonstock corporation of the State of California, with its principal office at Los Angeles, Calif., as first parties thereto and the second party hereto as the second party thereto is hereby canceled so far as said contract affects the parties hereto.

13. This agreement shall not be assigned by either party hereto without first securing the written consent of the other and shall be and remain in full force and effect from the date hereof until January 1, 1929.

In witness hereof the parties hereto have caused this instrument to be executed in duplicate by their duly authorized agents in this behalf and day and year first-above written.

PRODUCERS' WAREHOUSE CO.,
JAMES MADISON, *President*.
ARMOUR & CO.,
ARTHUR MEEKER, *Vice President*.

Compared, R. G. Spencer.

101416—22—3

I hereby certify that this is a true and correct copy of the original contract between the Producers' Warehouse Co., now known as the California Cooperative Canneries, and Armour Co.

ALBERT HAENTZE, *Secretary*.

PARAGRAPH III.

Your petitioner further avers that by reason of the aforesaid contract between it and the defendant, Armour & Co., it has a special legal interest in this litigation and in the subject of this suit, and is entitled to assert its rights by intervention herein, and is a real party in interest.

PARAGRAPH IV.

Your petitioner further avers that under its aforesaid contract with the defendant, Armour & Co., the latter, prior to the entry herein of the injunction decree of February 27, 1920, took approximately 52 per cent of your petitioner's entire output of canned fruit, at a greater profit to the producer and a smaller cost to the consumer, by reason of the fact that the said defendant, Armour & Co., owned and operated one of the most efficient, expeditious, and economical systems of distribution of food products, including the product of your petitioner, that has ever existed in this or any other country, and the value of the aforesaid contract to your petitioner was very great, and the benefit to the ultimate consumer was even greater. The direct and immediate effect of the aforesaid injunction decree was not merely to impair, but absolutely to destroy the aforesaid contract, if the said decree be valid, but whether valid or not, your petitioner alleges that after its entry the said defendant, Armour & Co., notified your petitioner that it could not further keep the said contract, by reason of the said decree, and declined to proceed further with the performance thereof, whereby the said defendant breached the said contract and caused irreparable injury to your petitioner, and ever since has continued, and still continues, to do so. The loss caused and to be caused to your petitioner by reason of the refusal of the defendant, Armour & Co., to perform the said contract, on account of the said decree, is incalculable and can not be compensated by a mere money judgment, and your petitioner is therefore without any plain, adequate, or complete remedy at law, and is entitled to invoke the aid and assistance of this court to secure the relief which is necessary, and which should be granted to protect its special interest in the premises.

PARAGRAPH V.

Prior to the filing of this suit and the entry of the said decree, the defendant, Armour & Co., and the other defendants, at a large expense, had carefully and skillfully built up, and owned and operated, most efficient, expeditious, and economical systems of distribution of food products, including meats, fruits, and other commodities, throughout this country and abroad; and in such distribution the defendants were not only in competition with each other but also in competition with other distributing concerns, including particularly members of the wholesale grocers' associations in the United States, among which the most active were the Southern Wholesale Grocers' Association and the National Wholesale Grocers' Association of the United States, both of which associations, together with certain affiliated wholesale grocery concerns, have already been given leave to intervene in this suit, and have intervened herein for the protection of their alleged special interest in the subject-matter of this suit, as will more fully appear by reference to the record and proceedings herein.

PARAGRAPH VI.

Your petitioner further avers that the said decree is void for want of jurisdiction or power apparent on the face of the record, for reasons here'n set forth; and your petitioner further avers that if the said decree be apparently valid on the face of the record, it is invalid because its direct and immediate effect was to restrict and not promote competition in the distribution of food commodities, in favor of the wholesale grocers' associations and particularly the aforesaid Southern Wholesale Grocers' Association and the National Wholesale Grocers' Association of the United States, with the result that

the profit of the producer has been greatly diminished and the cost to the consumer has been greatly increased. Your petitioner further alleges that the prevention of competition with its members constitutes the real interest which the aforesaid wholesale grocers seek to continue by intervention herein and is the real and only reason why they seek to avoid the modification or vacation of the aforesaid injunction decree; in that the elimination of the defendants from the business of handling and distributing food commodities other than meats and related products, as their only real competitors, wholly relieved them from all substantial competition and left the entire field of the distribution of such commodities open to the members of such associations alone and thus effected a monopoly thereof in their favor. However, if the said decree be not void, it is so gravely improvident and erroneous that it should be vacated in its entirety or radically modified. The said decree is merely interlocutory and not final, and is expressly made subject to the continuing power of the court to vacate or modify it at any time and for any sufficient reason.

PARAGRAPH VII.

Your petitioner further avers that the aforesaid injunction decree was passed without any notice whatever to it, and without any opportunity whatever afforded to it to be heard in opposition thereto, and that ever since your petitioner became cognizant thereof, it has been actively engaged in various ways and before various tribunals and officials in efforts to have the plaintiff and/or the defendants ask the vacation or modification thereof, but without success. In addition, your petitioner alleges that the plaintiff and defendants, and particularly the defendant Armour & Co., were cognizant of the aforesaid contract between your petitioner and the said Armour & Co., and of the rights of your petitioner thereunder, and of the aforesaid effect of the said decree thereon. On information and belief your petitioner further says that many other similar contracts were likewise affected by the said decree.

PARAGRAPH VIII.

Subsequent to the entry of the said decree your petitioner learned, and on information and belief now avers, that during the month of December, 1919, and prior to the 25th day of the said month the then Attorney General of the United States secured from the defendants the execution of a certain memorandum evidencing their agreement to the matters and things therein set forth, which memorandum constituted the basis of the filing of this suit and the entry of the aforesaid decree. Heretofore, to wit, January 7, 1920, the then Attorney General appeared before the United States Senate Committee on Agriculture and Forestry, in the Senate Office Building, and among other things stated as follows:

"I have here a memorandum signed by the representatives of the five great packers as evidence of their agreement to its terms. This memorandum is a complete statement of the plan of adjustment which the Department of Justice proposes to put into effect. It provides a method by which a decree shall be entered, and embodies the stipulation of that decree."

The aforesaid memorandum, signed by the representatives of the five great packers, namely, the defendants Swift & Co., Armour & Co., Morris & Co., Wilson & Co., and Cudahy Packing Co., was and is in full as follows:

1. A suit in equity will be brought by the Government against the following corporations and individuals, to wit:

Armour defendants:

Armour & Co. (Illino's), J. Ogden Armour.

Armour & Co. (New Jersey), Charles W. Armour.

Armour & Co. (Kentucky), A. Watson Armour.

Armour & Co. (Texas), Laurence H. Armour.

Armour & Co. (Ltd.) (Louisiana), Arthur Meeker.

Anglo American Provision Co. (Illinois), R. J. Dunham.

Colorado Packing & Provision Co. (Colorado), F. Edson White; George M. Willetts.

Fowler Packing Co. (Maine), Frederick W. Croll.

Hammond Packing Co. (Illinois), George B. Robbins.

New York Butchers Dressed Meat Co. (New York).

Atlantic Hotel Supply Co.

Swift defendants:

Swift & Co. (Illinois), Louis F. Swift.
 Swift & Co. (West Virginia), Edward F. Swift.
 Swift & Co. (Inc.) (Kentucky), Charles F. Swift.
 Swift & Co. (Maine), Harold H. Swift.
 Swift & Co. (Ltd.) (Louisiana), Gustavus F. Swift, jr.
 Swift Beef Co. (Maine), Alden B. Swift.
 United Dressed Beef Co. (New York), George H. Swift.
 J. J. Harrington & Co. (Inc.) (New Jersey), Laurence A. Carton.
 Bimble Co. (New Jersey), Frank S. Hayward.
 G. H. Hammond Co. (Michigan), Charles A. Peacock.
 Omaha Packing Co. (Kentucky), Wilfred W. Sherman.
 Plankton Packing Co. (Wisconsin), Wellington Leavitt.
 Beef & Supply Co. (Maine), William B. Traynor.
 E. K. Pond Packing Co. (Illinois).
 Van Wagenen & Schickhaus Co. (New Jersey).
 Western Packing Co. (California).
 Hammond Beef Co. (Michigan).
 Omaha Meat Co. (California).
 Canfield Commission Co. (New Jersey).
 H. C. Derby Co. (New York).
 Metropolitan Hotel Supply Co. (New York).
 Vermont Supply Co.
 Hotchkiss Beef Co.
 F. & C. Crittenden Co.
 George Nye Co.
 H. L. Handy Co.
 Swift Coates Co.
 Andrews, Swift & Co.
 New England Dressed Meat & Wool Co.
 North Packing & Provision Co.
 Sperry & Barnes Co.
 John P. Squire Co. (Maine).
 John P. Squire Co. (Inc.) (Massachusetts).
 John P. Squire Co. (Inc.) (Rhode Island).
 Springfield Provision Co.
 White Peavy & Dexter Co.

Morris defendants:

Morris & Co. (Maine), Edward Morris.
 Morris Packing Co. (Maine), Nelson Morris.
 Morris & Co. (New Jersey), L. H. Heymann.
 Morris & Co. (Ltd.) (Louisiana), C. M. McFarlane.
 Morris & Co. (Pennsylvania), H. A. Timmins.
 Brooklyn Beef & Provision Co.
 Condit Beef & Provision Co.
 Corwin Wilde Co.
 Donnelly & Co. (Inc.).
 National Hotel Supply Co.
 Chamberlain & Co. (Inc.).
 J. M. Wilson & Co.
 Middletown Beef & Provision Co.
 Glenn & Anderson Co.

Wilson defendants:

Wilson & Co. (Inc.) (New York), Thomas E. Wilson.
 Wilson & Co. (Inc.) (New Jersey), Arthur Lowenstein.
 Wilson & Co. (Inc.) of California (Nevada), Jacob Moog.
 Wilson & Co. (Oklahoma), A. L. Smith.
 Wilson & Co. (Inc.) (Louisiana), V. D. Skipworth.
 South Dakota Provision Co., J. A. Hamilton.
 Gotham Hotel Supply Co., George D. Hopkins.
 Standard Beef Co., A. E. Peterson.
 Steifel-O'Mara Co., G. H. Cowan.
 Drexel Packing Co., William C. Bueth.
 Albert Lea Co. (Inc.), C. F. Burrell.
 Mississippi Packing Co., James C. Good.
 Morton-Gregson Co. (Delaware).

Wilson defendants—Continued.

Paul O. Reymann Co.
Standard Provision Co.
Central Products Corporation,

Cudahy defendants:

Cudahy Packing Co. (Maine), Edward A. Cudahy, sr.
Cudahy Packing Co. (Nebraska), Edward A. Cudahy, jr.
Cudahy Packing Co. (Alabama), Guy C. Shephard.
Cudahy Packing Co. (Ltd.) (Louisiana), John E. Wagner.
Nagle Packing Co.
A. W. Anderson.
E. A. Strauss.
Frank E. Wilhelm.
George Marples.
Western Meat Co.
Nevada Packing Co.
Oakland Meat & Packing Co., F. L. Washburn—

in such district court of the United States as the Attorney General may select, by a bill alleging such facts and circumstances as the Attorney General may deem necessary and material, including the various activities and businesses as to which the defendants, or some of them, are to be enjoined as hereinafter specified, to wit: (1) The ownership of capital stock or other interests in (a) public stockyard market companies; (b) stockyard terminal railroad companies; (c) stockyard market newspapers or journals; (2) the manufacturing, jobbing, selling, distributing, or otherwise dealing in any of the commodities described in Schedule A hereto annexed; (3) the ownership and operation, either by concert of action or severally, of retail meat markets; (4) the ownership of capital stock or other interest in public cold-storage warehouses.

2. The defendants will then answer to such denials and affirmative matter relating to the allegations of the bill as they may be advised are material and necessary.

3. Thereupon a stipulation shall be made by and between the parties to said action, by the terms of which it shall be agreed that a decree upon consent without any findings of fact shall be entered in said action, which consent shall be in form substantially the same as Schedule B, hereto annexed. Said stipulation shall recite that the corporation and individual defendants, while maintaining the truth of their answers and asserting their innocence of any violation of law in fact or intent, nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, consent to the making and entry of a decree embodying substantially the terms and provisions hereinafter enumerated, but that the stipulation shall not constitute or be considered as an admission and the rendition or entry of the decree or the decree itself shall not constitute or be considered as an adjudication that the defendants, or any of them, have in fact violated any law of the United States.

4. The decree, in addition to the foregoing reservations respecting the effect thereof, and including substantially the recitals contained in the stipulation and referred to in the foregoing section, shall be in substance as follows:

(a) An injunction perpetually enjoining the corporation defendants from, directly or indirectly, maintaining or entering into any contract, combination, or conspiracy with each other or with any other person or persons in restraint of trade or commerce among the several States, or from, directly or indirectly, monopolizing or attempting to monopolize or combining or conspiring with each other or any other persons to monopolize any part of such trade or commerce.

(b) An injunction perpetually enjoining and restraining the defendants, and each of them, from owning any capital stock or other interest, either directly or indirectly, in any public stockyard market companies, or in any stockyard terminal railroad companies, or in any stockyard market newspapers or journals, except in such circumstances as are provided for in subdivision G of paragraph 4 hereafter, and upon such conditions as may be approved by the court; and enjoining and restraining them from accepting or permitting to be given, directly or indirectly, on any pretext whatever, to any of them or to any of their officers, agents, servants, or employees, for the use and benefit of the corporation defendants, or any of them, capital stock or other interests in any public stockyard market companies, stockyard terminal railroad companies, or stockyard newspapers or journals.

(c) An injunction perpetually enjoining and restraining the corporation defendants, and each of them, their successors and assigns, from owning any

capital stock or other interest in any corporation which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of the commodities described in groups 1 and 2 of Schedule A, hereto annexed; and further perpetually enjoining and restraining said corporation defendants from, in the United States, directly or indirectly, engaging in or carrying on, either by concert of action or otherwise, either for the domestic trade or for export trade, the manufacturing, jobbing, selling, transporting and distributing, or otherwise dealing in any of the commodities described in said Schedule A, hereto annexed, except as therein provided. Said injunction shall perpetually enjoin and restrain the individual defendants (1) from individually or jointly owning 50 per cent or more of the voting stock in any corporation, or a half interest or more in any firm or association which, in the United States, may be in the business of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of the commodities enumerated in group 1 of said Schedule A; (2) from adopting any device or arrangement which, by reason of their relation to the corporation defendants, or any of them, would have the purpose or effect of giving to such business or dealing in the articles mentioned in group 1 of Schedule A in which such individuals may be substantially interested an advantage over their competitors similar in purpose or effect to any advantage now enjoyed by any of the corporation defendants through their distributing systems.

(d) An injunction perpetually enjoining and restraining the defendants, and each of them, directly or indirectly, from owning, operating, or conducting, either by concert of action or severally, retail meat markets in the United States, but providing that said injunction shall not apply to the retail markets located at the companies' plants and maintained by the companies primarily for their own employees.

(c) An injunction perpetually enjoining and restraining the defendants, and each of them, from owning, directly or indirectly, any capital stock or other interest whatsoever in public cold-storage warehouses in the United States. Nothing in this subdivision shall be construed to prevent the defendants, or any of them, from owning the capital stock or other interests in any corporation owning or operating; or from themselves owning or operating the public cold-storage warehouses now maintained by them, or any of them, at stockyards where they, or any of them, have packing plants; nor to prevent any of the defendants, directly or indirectly, from establishing, owning, maintaining, or leasing necessary cold-storage facilities or space required in good faith for the storage of commodities in which they, or any of them, may be interested; nor from renting space in any cold-storage warehouse, directly or indirectly, owned or leased by any of them, to the public; nor from storing commodities for the public whenever such space is not required or needed in good faith for their own use.

(f) An injunction perpetually enjoining and restraining the corporations defendants, and each of them, from engaging, either directly or indirectly, in the United States in the business of buying, collecting, selling, transporting, distributing, or otherwise dealing in fresh milk and cream; provided, however, that nothing herein contained shall prevent such defendants or their subsidiaries from buying, collecting, and transporting fresh milk and cream to be used by them, or any of them, in manufacturing condensed or evaporated or powdered milk, or oleomargarine, or other butter substitutes, or butter, ice cream, cheese, or buttermilk, or to be used as feed or in combination with any commodity not specifically mentioned and described in Schedule A, and further provided that nothing herein contained shall prevent such defendants from selling or otherwise disposing of milk bought or collected for manufacture when such sale or disposition is necessary to avoid waste.

(g) The decree shall provide that within 90 days after the entry thereof such of the defendants as have interests in public stockyard market companies, stockyard terminal railroads, or market newspapers shall file in the court where said action shall be brought, for the court's approval, a plan or plans for divesting themselves of all ownership or interest in: (1) Public stockyard market companies, (2) stockyard terminal railroads, (3) market newspapers; provided, however, that the court may, in the event that it deems such provisions necessary in order to enable the defendants to divest themselves of their interests in stockyards and stockyard terminal railroads, upon reasonable terms, permit the individual defendants, or some of them, to retain an interest by way of stock ownership, or otherwise, in any stockyards or stockyard terminal railroads, but no defendant or defendants shall at any time, either indi-

vidually or jointly, own a controlling interest in any such stockyards or stockyard terminal railroads.

Within such period of time after the entry of said decree and the approval of said plan or plans as the court may determine the defendants shall, in good faith, completely divest themselves of all such ownership or interests in stockyards, stockyard terminal railroads, and market newspapers. If, within the time so fixed, the defendants shall not have disposed of, and the court upon application shall determine that the defendants have been unable, despite due diligence, to dispose of the same upon reasonable terms, the court may extend the time during which such ownership, control, or interest may continue until the same can be disposed of.

To the end that the provisions of this decree may be complied with, the approval of the court shall be obtained thereto prior to the final disposition by any of the defendants of their ownership of or interest in: (1) Public cold-storage warehouses, (2) retail meat markets, and (3) corporations, including departments of the business of any of the corporation defendants (when any of such departments is sold as a going concern), manufacturing, selling, or otherwise dealing in any of the commodities mentioned and described in Schedule A.

The decree shall provide that immediately upon entry of the decree the defendants shall commence to dispose of such commodities owned or handled by them as are described in Schedule A (except as therein provided), and which are to be disposed of by them under this agreement, and as required by this agreement shall commence to divest themselves of interests in firms, corporations, and associations dealing in any of the commodities so mentioned or described in Schedule A, and shall continue in good faith to dispose of said commodities and to divest themselves of said interests as rapidly as may be consistent with the nature of the business and the seasonal nature of the merchandise involved, and that in any event they shall have completely disposed of said commodities and completely divested themselves of these interests within two years from the date of the entry of this decree. The Attorney General may apply to the court at any time within said two years to compel the defendants, or any one of them, to make report to the court as to the progress being made by the defendants in divesting themselves of said interests. If within nine months after the entry of said decree the defendants shall not have disposed of their interests in public cold-storage warehouses and retail meat markets, the Attorney General may apply to the court for an order specifying the time within which each of said interests shall be disposed of.

(h) The decree shall provide that the purchaser or purchasers of said stockyards shall agree that for a period of at least 10 years they, their successors or assigns, will continue to maintain and efficiently operate said stockyards, and each of them, and such of the corporation defendants as now maintain and operate packing plants at any of said stockyards agree that during the same period of time they, their successors or assigns, will continue to maintain and operate said packing plants at the points where their respective plants are now located, unless strikes, shortage of supplies, or other causes beyond control of either the purchasers or the defendants shall prevent the carrying out of said agreement.

(i) The decree shall contain a perpetual injunction enjoining and restraining in general terms the corporation defendants, and each of them, from engaging in any illegal trade practices of any nature in relation to the conduct of any business in which they, or any of them, may be engaged.

(j) Nothing in this decree shall be construed to prohibit anything that may be otherwise lawfully done by the defendants, or any of them, in the United States in connection with or for the purpose of export trade, or foreign commerce, or business of the defendants; provided, however, that nothing herein contained shall limit the effect of the injunction provided in subdivision G of paragraph 4 hereof.

(k) The decree shall provide further that nothing therein contained shall be held to preclude the Government from proceeding against any or all of the defendants either civilly or criminally for any violation of any law in connection with the carrying on of the business of buying and selling poultry, butter, eggs, cheese, and milk, or any other business or activity not specifically mentioned by said decree, nor prejudice the Government in any such proceedings; nor shall said decree interfere with or prejudice any legal rights, business, or activity of the defendants, or any of them, not prohibited or covered by said decree.

(l) The decree shall further provide that jurisdiction shall be retained by the court for the purpose of taking such other action or adding at the fact of the decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree; and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree.

(m) The decree shall also contain an injunction perpetually enjoining and restraining the corporation defendants, and each of them, directly or indirectly, through any device or arrangement whatsoever, from permitting their branch houses, route cars, or motor trucks to be used for the sale, handling, or dealing in any of the articles or commodities named in Schedule A.

5. Armour & Co., Swift & Co., Morris & Co., Wilson & Co., and Cudahy Packing Co. agree that they will obtain the consent of all the other proposed defendants to the entry of said proposed decree, which consent shall be in form substantially the same as Schedule B, hereto annexed and heretofore referred to.

6. For the purpose of enabling the Government to draw the petition and decree in the proposed suit, and from time to time to ascertain whether the defendants are in good faith carrying out the terms of this decree, the corporation defendants will make full and complete discovery to the Government of all their books and records and will furnish to the Government all information requested in that connection.

THOS. CREIGH, *for Cudahy, Defendants.*

CHAS. J. FAULKNER, JR., *for Armour, Defendants.*

J. P. LIGHTFOOT, *for Wilson, Defendants.*

HENRY VEEDER, *for Swift, Defendants.*

M. W. BORDERS, *for Morris, Defendants.*

SCHEDULE A.

Group 1.—Commodities which the defendants, both corporation and individual, are prohibited by the terms of subdivisions (c), (g), (i), and (m) of section 4 of this agreement from manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in. This restraint, however, shall not apply to the corporation defendants when purchasing, transporting, or using said commodities (1) as supplies in operating their packing houses or branch houses or other facilities used by them or as an incident in the processes of manufacturing soap or packing-house products; (2) in the construction and physical maintenance of their packing houses, branch houses, or other facilities used by them; (3) in the operation of their restaurants, laundries, or other conveniences primarily for the benefit of their employees; or (4) in combination with meat.

1. Fresh, canned, dried, or salted fish, including therein, but in no wise limiting the foregoing general description, the following, to wit: Canned oysters; canned mackerel; bulk mackerel; bulk, canned, and cured herring; canned salmon; canned sardines; canned shrimp; and canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in no wise limiting the foregoing description, the following to wit: Asparagus, navy beans, lima beans, peas, beets, corn, okra, potatoes, tomatoes, celery, garlic, horseradish, and pumpkins.

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein but in no wise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mincemeat, to wit: Ginger, cherries, apple butter, apricots, blackberries, peaches, pineapples, raspberries, currants, figs, gooseberries, oranges, strawberries, apples, prunes, raisins, and dates.

4. Confectionery, sirups, soda fountain supplies and sirups, and soft drinks, not including grape juice, including therein, but in no wise limiting the foregoing general description, the following, to wit: Apple cider, cherry juice, coca cola, crème de menthe, crushed nut frappé, ginger ale, green pineapple sirup, lemon extract, marshmallow topping, orange extract, root beer, vanilla extract, and vin fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein but in no wise limiting the foregoing general description, the following, to wit:

Catsup, chili sauce, cinnamon, cloves, mustard, mustard seed, olives, oyster-cocktail sauce, pepper, pickles, spinach chili, and tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following, to wit: Almonds, pecans, and wal-nuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits, spaghetti, vermicelli, and macaroni.

Group 2.—Commodities which the corporation defendants only are prohibited by the terms of subdivisions (c), (g), (i), and (m) of section 4 of this agreement from manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in. This restraint, however, shall not apply to the corporation defendants when purchasing, transporting, or using said commodities (1) as supplies in operating their packing houses, or branch houses, or other facilities used by them, or as an incident in the processes of manufacturing soap or packing-house products; (2) in the construction and physical maintenance of their packing houses, branch houses, or other facilities used by them; (3) in the operation of their restaurants, laundries, or other conveniences primarily for the benefit of their employees; or (4) in combination with meat.

11. Cereals, including therein but in no wise limiting the foregoing general description the following: Grits, oats, hominy, hominy feed, horse feed, brewers' flakes, brewers' grit, brewers' meal, buckwheat, canned hominy, clipped oats, corn grits, ground meal, ground oats, cracked corn, crushed white oats, feed barley, feed meal, feed wheat, rolled oats, standard middlings, and standard spring bran.

12. Grain.

13. Miscellaneous articles, to wit: Cigars, china, furniture, bluing starch, fence posts, and wire fences, alfalfa meal, babbitt, bar iron, binding and twine, brass castings for heavy ordnance, brick builders' hardware, bumping posts for railroads, cement, lime, plaster, doors and windows, dried brewers' grains, lath, pitting and fruit-handling machinery, roofing, sand and gravel, shingles, soda fountains or parts thereof, structural steel, tile, and waste.

14. Grape juice.

SCHEDULE B.

[To be printed at foot of decree.]

The defendant ——— (here insert defendant's name) appears generally herein and does hereby consent that the foregoing decree may be entered herein without further notice.

————— (If individual, sign in person and acknowledge. If corporation, sign by duly authorized officer and acknowledge. Attach corporate seal and resolution of directors authorizing execution.)

The Attorney General explained his views concerning the said memorandum to the said Senate committee, in substance as follows:

The paper signed by the representatives of the packers contains the entire plan of adjustment. I am in harmony with that plan, and I propose to put it through. As to whether I think the plan will be entirely satisfactory to the other side, the packers, "satisfactory" is not the word. But they have agreed to go along, and they have attested that agreement by their representatives signing this very document which I have in my hand, which is the original paper. (At this point Senator France asked the Attorney General whether the agreement "is to put an end to a long-continuous violation of the law, or was there any violation of the law? That is the question in my mind.") I will briefly state how this position, which is now taken by the Department of Justice, as wise and proper under all the circumstances, developed. When I entered the office of Attorney General, in March last (1919), I found that portions of the report of the Federal Trade Commission, which had been for a couple of years investigating the great packers, had been published and turned over to the Department of Justice for such action as the department saw fit to take. I learned also that the bureau of investigation of the Department of Justice had made a comprehensive examination of the operations of these corporations and their subsidiaries. I also found that committees of the Congress, both in the Senate and House, had held extensive hearings, with the idea, undoubtedly, of appropriate legislation, which hearings had developed many facts in relation to the method and conduct of the business of these packers. Amongst the first things that I did was to make inquiry about the

state of this examination, and I found that the report of the Federal Trade Commission was not yet complete. I asked the Trade Commission to send me everything they had as promptly as possible, and then I selected three lawyers, two of whom had had connection with the packers case in its earlier days, and had participated in an earlier criminal case. The third was a New York lawyer, who I was confident, because of his ability, could examine the record, analyze it, and make a report as to what sort of case that record had presented. That lawyer had been for many years assistant to the district attorney. He had done work of that sort for me while I was Allen Property Custodian, and I knew that it would be thoroughly done. I then dumped into the lap of this committee of lawyers all of the evidence which had been accumulated from the Federal Trade Commission, our bureau of investigation, and the hearings before the committees of Congress. After several months, a comprehensive report was made to me in writing, which I carefully studied—I did not have time to study the evidence—and from which I concluded that the Department of Justice would be justified in bringing action against the packers.

These lawyers agreed on the report. As to what I mean by "action," I had the feeling that in view of the long-time investigation of the packers, the way in which that question had been mauled and hauled around in the country, they were entitled either to a vindication, or the Government was entitled to a judgment—that the time had approached for a show-down in the courts. I was, of course, immediately faced with the question whether the proceedings should be in the criminal courts or on the civil side. The Sherman antitrust law is both a criminal and a civil statute. It provides a penalty and provides a civil remedy. I have felt that the Attorney General was the counsel for the Government and through him the people for whom the Government is built to serve. I believe it was his duty to do with respect to those clients as he would in private life; that is, decide which courts, if more than one were open, would be in the public interest and would bring justice to all parties. Without having definitely decided whether we would proceed in the criminal courts or in the civil courts, I instructed my assistants to develop some further facts in relation to the case before a grand jury. They went to Chicago and called some witnesses, "not with any definite idea of getting an indictment, but with the purpose of getting out some further evidence that we needed." Of course, it had not been an easy matter to decide in a case of this kind whether the civil or the criminal processes should be invoked. The Sherman antitrust law has been upon the statute books 30 years without any Attorney General having succeeded in putting anybody in jail under it, "and the prospect of the criminal prosecution was not bright." While the case was pending before the grand jury in Chicago, and about the time that I had issued orders to have a grand jury investigation in the city of New York, to develop some further evidence that we felt we needed, I received intimations that these packers desired to see me with respect to this case, that they desired to present their side of it to the Department of Justice, that they felt they had never been accorded a proper hearing before the Federal Trade Commission, and that, before I acted, they would like an opportunity to present their side. I replied to that message that if the five great packers desired to see me with the idea of dissuading me from taking any action against them, if they desired to see me for the purpose of arguing with me "as to the merits of the controversy. I did not care to meet them." I stated, however, that if they desired to come to me with the idea that they would surrender to the Government, or desired to see how far they could go in complying with such requirements as the Government's law officers should lay down, I should be perfectly willing to see them. I told them that if they desired to come, they should come through their principals, in order that we might discuss the matter as a business proposition, and not as a lawyer's proposition. I thought that would be the end, but I was advised they would like to send a representative, competent, who would speak for all of them and who would discuss the matter with me from the point of view of my reply, and that point of view only, "without argument as to the merits of the case," without any attempt to persuade me to stop any contemplated action, but only with the thought that they would put themselves in the position of law-abiding citizens, "and do what the Government required them to do," if they could. With that understanding, negotiations, if you may call them negotiations, began.

A representative of the company came to me, and I discussed it with him. The first man to come to me was the vice president of Armour & Co., who came to me with satisfactory credentials to show that he was in effect speaking

for all of them. After that, for a matter of a couple of months, we discussed what I thought the packers ought to do, and they answered as to what they felt they could do and what they could or would not do. And this discussion proceeded for a considerable time, "until finally I prepared a draft of a plan which I was willing to put into effect, and after a very great deal of hesitancy and strong objections, they finally assented to it." The suit had not yet been commenced. Pending these discussions, I withheld a further proceeding before the grand jury in New York, without any agreement so to do. I hoped that possibly we would come to a point where I could call it a finished piece of business, without a grand jury investigation. I started in Chicago, but I moved to New York. An indictment, even if followed by a conviction, and even if that were followed by putting somebody in jail, would not of itself have brought any relief directly to the situation. "A bill in equity under the Sherman antitrust law, bitterly contested, might not have achieved some of the things that I felt, and thought everybody else who had given this question any study felt, ought to be accomplished, if we were going to have any real results from some disintegration of this business." It seemed to me that it was perfectly proper, if I could, to require, in the circumstances, "that certain things be done, which, under other circumstances, we might not be able to accomplish, and if I were able to get that much, I would do more for my client, the Government of the United States and the people, than if I blazed away in an adverse proceeding, either in criminal or civil court." I wanted to accomplish five things, namely, first, take these packers, their subsidiaries and their principal stockholders, out of the stockyard business and keep them out, take them out of the terminal railroads which entered the stockyards and keep them out, and take them out of the live-stock or market publications and keep them out. Under this decree, all of these packers, and all of their subsidiary companies, and all of their large individual stockholders, are put out and kept out forever from the stockyard business, the terminal railroad business, and the live stock or market publications, and their interests in those concerns are to be disposed of under such a plan as the courts may determine. The plan is worked out so that the defendants themselves may present a plan to dispose of their interests, and if that plan is not approved by the court, then a method is made by which the court may fix the plan. "That is designed for the purpose of permitting the producers themselves, if they desire, to be substituted in the ownership of the stockyards and terminal railroads for the packers." The second thing was to take them out and keep them out forever from the public storage warehouse business, and that is done in this decree. "The third thing I desired particularly to do was to take them out, and particularly to keep them out, in order to answer the menace which we felt in the country was really competitive business, of the retail business and every line and of every kind. That is done by this decree." And the next thing I desired to do "was to take them out and keep them out of all of the unrelated lines of business." This agreement speaks very plainly for itself in regard to how that is done.

All those things I have mentioned I insisted upon, and would not under any circumstances recede from. And this last is accomplished, so that the defendants, being the companies, their subsidiary companies, and most of the individual stockholders, are restrained from owning any controlling interest in any business of a kind which deals in the goods which are scheduled in this decree, and those goods cover the entire range of commodities in which the packers and their subsidiary companies have heretofore dealt, outside of meat and its by-products, and outside of butter, milk, eggs, cheese, and poultry. The treatment of these accepted particular lines is a separate treatment. (At this point the Attorney General read an excerpt from the aforesaid memorandum.) Another clause in this decree will perpetually restrain and enjoin these defendants, their successors and assigns, "from using or permitting to be used their distributing system in any way, shape, or manner for the purpose of dealing in any of this business in the unrelated lines." I have understood it that the vice of their engaging in the business of unrelated lines lay in the fact that "they were able to destroy effective competition by reason of the advantage which they had with their distributing system and their branch houses. They could go into the wholesale grocery business without additional fixed charges by way of overhead expense, and thus destroy the wholesale grocery or other dealer in the community who was dealing in the same kind of article." Under this decree neither these companies nor anybody else who acquires any right, title, or interest in them in any way, shape, or manner, can ever use by purchase, by lease, or

any other kind of an arrangement "this distributing system for that purpose," nor can they resort to any other device or arrangement which has the purpose and effect of giving that kind of an advantage to them. They are clever and able and ingenious in business, and I insisted upon the clause that they "should not be permitted to devise anything which would give them the chance to do with the wholesale grocery business what their distributing system has permitted them to do." Under this decree only the individual stockholders can own interests in these various corporations, the corporation defendants can not. They must sell out—the subsidiary corporation defendants must sell out—but the individuals who are named as defendants and who are stockholders in these companies may own less than a control of concerns which deal in this business. Under this decree Mr. Armour or Mr. Swift could own an interest, providing it was not a controlling interest, but they could not, each one being a minority stockholder, have together their interest, constituting a majority. Of course, there we are met by a matter of the individual right of an individual to invest his money as he might see fit. Mr. Armour's contention was that if he sold out these millions of dollars in businesses which he had to sell out he would have money to invest, and while he did not expect to go into the grocery business in any way, shape, or form, he assumed he would have to take stock in some of the companies that would buy this business, to some little extent, until he finally should get out, and I did not see any direct way of requiring the individuals themselves never to invest in any of this kind of property.

Under the decree they are prohibited singly and collectively from owning a majority of the stock. I have not had the bill filed, but we are going to file shortly. I have an agreement for the decree, although the bill is not filed. No action has actually been commenced. This was finally concluded just before the Christmas holidays. I will not call this an agreement. These gentlemen have agreed to my plan, if that be called an agreement. I did not sign this as agreeing to it on the part of the Government. I announced what I would do, and they said they would go along, and it provides that suit in equity will be brought against the following corporations and individuals, naming nearly 200 corporations and individuals, "and then provides what shall be the result of that suit. The defendants, without admitting guilt, are agreeable to a decree being presented by the Government and signed by the court which shall contain these provisions." I at first very strongly insisted that butter, eggs, cheese, and poultry should be included amongst the businesses which these defendants, both individually and as corporations, would go out of. But the more I studied that question the more doubtful I became of whether justice would be done to the people as well as to the packers if I insisted upon it. They are refrigerated products, "which the distribution system of the packers makes possible to collect and sell, and keep and sell in a way that has an economical value." I do not care to argue that proposition, but I think it is at least involved in doubt. And what I finally did with that was to enter a stipulation in the decree that this case should be opened for the purpose of permitting the Government, at any time it might see fit, in this very case to produce evidence designed to show that the control or interests of the packers in those businesses was unlawful or inimical to the public interest, so that further adjudication might be granted by the court in the case. In other words, "I left the door open for such future action as the conditions might seem to warrant," so that in case the butter people should ask for the same relief that the wholesale grocers have asked for, it still would be possible for them to get it, if the court agreed with them. There would be a fight on that, I suppose.

(At this point, the chairman of the committee stated as follows: "The main fight, of course, that has been carried on before this committee—at least during our hearings this session—has been by the wholesale grocers, claiming that it was impossible for the wholesale grocers to compete, because, you stated a moment ago, the overhead expense would be the same for the packers, whether they carried on this grocery business or not, and that they were also favored with respect to refrigerator cars, and that they owned their own cars." The Attorney General: "I should think likely that you would have fewer visitors of that kind after this goes into effect than you have had in the past." The Chairman: "Yes. But, of course, there is still a very important question to be decided, unless the matter of butter, eggs, and poultry is taken care of, because while those industries are owned by smaller people—the majority of them—owned by little grocers throughout the country, and they have not been heard, so far as I know; so far as I know they have not been here, although

the grocers have been here." The Attorney General: "I think there is a very wide difference of opinion amongst men, outsiders, who deal in butter, eggs, poultry, and cheese, as to whether it is a wise thing to take that business away from the packers or not." The Chairman: "It was not my intention to say that it could be taken away; I do not know.")

The Attorney General then proceeded in substance as follows: Under this decree the packers may be engaged in the butter and cheese business. I suppose that means owning creameries. They can not handle fresh milk at all, they can not sell fresh milk. They can buy milk for the purpose of making cheese, "but we take them out of the sale and distribution of milk." I think they could still retain creameries.

(At this point the Attorney General read another excerpt from the aforesaid memorandum.)

The Government is not prohibited from commencing an action, either civil or criminal, in the cheese, poultry, and egg business, and is not prohibited from bringing a civil or criminal action in any other way. There is nothing in this decree, either directly or indirectly, that would prohibit the Government from proceeding against the packers or any of them in regard to any illegal action in the past, about meats, for instance, but on the contrary there is specifically permitted the Government may do so, and that is the very clause which I read. That does not apply only to butter, eggs, and poultry, but it is "or any other business or activity." We do not restrain the manufacture of butter and cheese by these defendants, but we simply leave the door open for the purpose of making such further showing as the Government might desire to make in the future to ask for further relief in reference to those things. So far as this suit is concerned, practically it has nothing to do with the manufacture of butter and cheese, except that, as I say, we leave the door open. We have taken these defendants out of every business except that which is usually the business of the butcher, the meat business, and these products which are generally handled by butchers—butter, cheese, and poultry. I do not mean to be as brutal as it sounds, but we have made "butchers" of them. We have gotten them back, it seems to me, to the business which they originally went into, and as to that business we have bound them by perpetual injunction, restraining them and all these defendants from amongst themselves or with anybody else agreeing or combining or arranging to do anything which is an attempt to "monopolize that business, or in restraint of trade in that business." As to the meat business we have an injunction of exactly the kind that the Sherman antitrust law contemplates for the Government to get against any men "charged" with a conspiracy in restraint of trade. The effect of that is that as to the meat business and its by-products and these things which they are permitted to continue in, the Government, in the future, if there be evidence of monopoly or restraint of trade, will be able to go into court in this very case, "and present the facts to a judge," and hold these defendants guilty for contempt of court if there be a violation, so that we shall not have to proceed through all of the processes of either the criminal or the civil courts in respect to that.

The second thing we have done is to restrain and enjoin them forever collectively and individually and in every other fashion "from engaging in any unlawful trade practices." The result of that would be that any person or any concern, the Government, or any individual who was able to show an unlawful practice by these defendants or any of them, will be permitted to come into court in this very case, and present a showing which would entitle them to adjudication against the defendant for contempt. "Those are all the things that we could possibly accomplish by a bill and an adverse decree." Anybody establishing unfair practice can go into this court and get his remedy instant. I do not know whether these defendants will obey the injunction or not, but if there is any power left in the courts of the United States, the Government can compel them to obey this injunction, if they do not, upon a showing made in this case before a judge of the United States court that the injunction, "which is general in terms," has been violated in any "specific particular." I got a decree for all that I saw any prospect of getting, and with that decree, "any party at interest can come in and protect its rights by the rule for contempt." I won the lawsuit, and I got a decree which "I would not have seen much prospect of getting if I had gone into court." I have said that we have "a general injunction" which makes it possible for the Government or any aggrieved party to proceed under this decree by contempt proceedings, if he pleases, that the Sherman antitrust law, with respect to the meat business, is particularly

obeyed by these defendants and all the subsidiaries and principal stockholders. We have "the same kind of an injunction" which permits of the same kind of relief with reference to the "unlawful practices that they may engage in." We take them out and keep them out forever, directly and indirectly, from the control of the stockyards, "and make it possible for the producers themselves to be substituted for them in that control." We take them out and keep them out forever, directly and indirectly, from the terminal railroads which own the stockyards, and from the live-stock market publications. "We make it impossible for them ever to engage in the retail business in any line whatever—these defendants, their successors and assigns, and all that." They have been accused of engaging in the retail business, and they have been "accused of having designs upon it." There is a great deal of evidence of the unfair manner in which they have used that competition, "and the tendency to destroy competition as a result of it." They can not rent space in their refrigerator cars to wholesale merchants for distribution. "They can not use their distributing system or permit anybody else to use it in any form whatever for the purpose of distributing any of these side lines." And neither can they devise any other scheme or arrangement which has the same purpose or effect.

"Senator SMITH of Georgia. You have gotten a decree for what the present law authorizes the Government to obtain in protection of public rights?"

"The ATTORNEY GENERAL. That is right, Senator.

"Senator SMITH of Georgia. And you have gained your lawsuit for everything that the Sherman antitrust law authorized you to gain?"

The ATTORNEY GENERAL. I was tending strictly to my own business. I think you have stated it correctly when you say I have "won this case." I have gotten a judgment which, to my mind, is all that the Government can hope to get, and I have left the case in such shape that if anything has been overlooked we have got a splendid remedy in this particular court. I have made no agreement or arrangement or suggestion with anybody as to what the future course of the Government is going to be with respect to litigation. I could go into court to-morrow against these people if I desired to do so. I would like to see this thing tried out. I believe this is a great, long step forward. I believe we have gotten things that we have been fighting for for years, apparently without hope of getting. I do not promise it is going to mean immediate lowering of prices. "There is great strength in the argument of an efficient, big concern, resulting in lower prices to the consumer, but it is the argument of the efficiency of autocracy." At any rate, what we have done, "if we have destroyed that efficiency, which might result in lower prices," we have destroyed autocracy and returned to the form of our democratic kind of Government for business. We have made it possible for men of all kinds, in all classes, to get into these businesses, and if that does not result in benefit to the American people, then our whole theory of competition is wrong. This is the first time I have ever announced it, but I do not expect to proceed against the defendants criminally for violation of the Sherman antitrust law. By this decree we do not forgive any criminal offense they may have committed; we forgive nothing in the Department of Justice. "I have never said a word about criminal prosecutions; but having forced them into the position where they have agreed to go as far as that in meeting the Government's position," I would think I would be doing a very improper thing to attempt to convict the individuals in a criminal court, and I would be moved to that consideration a good deal by "the practical difficulties in the way of getting convictions."

Senator FRANCE. Was the department satisfied beyond any reasonable doubt that these gentlemen had committed a criminal act, or any of them?

The ATTORNEY GENERAL. I was not sitting in the jury box, and the rule of reasonable doubt does not govern the Attorney General of the United States. I was convinced that the time had come for the Government to take action, and the responsibility was upon the Attorney General of the United States to decide whether to bring the action in the criminal or the civil courts, and the Attorney General decided to bring the action in the civil courts, "when he found he could get this kind of a decree." This is not an agreement; they signed their names to it as agreeing; but that was my proposition, which they came to. In the case of the miners, when we got to the very point of contempt proceedings we made no agreement with them.

The Government of the United States makes no contract with defendants, but we told them what the law was, what the Government's position was, and that they could take it or leave it, and the miners surrendered to the Government,

"just as the packers have surrendered to the Government." There was no agreement in either case.

Senator NORRIS. It looks to me like an agreement; maybe it is not.

Senator FRANCE. You talked it over before the suit?

The ATTORNEY GENERAL. Talked it over with the Government. You may call it an agreement if you like. You may call it an agreement, but I do not call it an agreement when the law officer of the Government sits down before a defendant and says, "This is the law. This is what the Government demands, and we ask you to come to it." If they come to it and put their name to a paper showing they will go along, that is not agreeing with a law violator. Setting up an agency that gave its particular attention to the stockyards and market situation and brought to it all necessary publicity certainly would not hurt my decree. I would not have the slightest objection to it. My only thought is that "such an agency would be duplicating the work of the United States court, which has really now supervision of all this business under this decree. But I see no objection to it." [The packers and stockyards act was passed August 15, 1921, 42 Stat. L. 159, 163.]

Senator KENDRICK. Would not this be true, that the courts had so much of other things to engross their attention that it would better be lodged in some agency? That is the reason that within the past day or two we have suggested a plan by a proposed draft of the bill by which we would have a commission look primarily after those great markets and investigate them and study where it was necessary, and to supervise the operations of those markets.

The ATTORNEY GENERAL. That is, stockyard markets?

Senator KENDRICK. Stockyards. I ask of you if such a commission would not have the effect of tremendously strengthening the force and effect of this decree?

The ATTORNEY GENERAL. I should think it might. It might be in a position to advise the court. I do not mean to be advocating that kind of legislation, because my opinion is that we might try the thing as we have it for awhile. But I can not see any harm in it. It might result in good.

The foregoing testimony was given and published in the reports of the Senate committee, and on January 17, 1920, prior to the entry of the decree in this suit, the testimony was copied and sent to the wholesale grocers of the United States.

PARAGRAPH IX.

Your petitioner further avers that heretofore, to wit, February 27, 1920, in accordance with the aforesaid memorandum, the plaintiff, United States of America, filed the original bill of complaint in this cause, alleging that the defendants had entered into certain unlawful contracts and combinations to restrain trade and commerce and to prevent competition among themselves in the prices for which meat and meat products were sold, and inferentially averring that the defendants had attempted to monopolize interstate trade in fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other substitute foods ordinarily handled by wholesale grocers or produce dealers, but the said bill fails to expose any act or acts showing or tending to show any such contracts or combinations or monopoly. The same date, to wit, February 27, 1920, in accordance with the aforesaid memorandum and simultaneously with the filing of the said bill, the defendants filed their respective answers, directly denying the accusations of the said bill, and expressly asserting that the defendants had not entered into any contract or combination in restraint of trade or commerce, and had not created or attempted to create any monopoly in any food commodities, and all of the allegations of the said bill necessary to empower the court to grant the plaintiff the relief prayed, or any other similar relief, were fully and explicitly denied by the said answers, and thereby an issue of fact was effected as to all of the material allegations of the said bill. The same date, to wit, February 27, 1920, in accordance with the aforesaid memorandum and simultaneously with the filing of the said bill and answers, a certain stipulation, dated February 27, 1920, between the plaintiff and defendants was filed in the words and figures following:

"It is hereby stipulated by and between the parties hereto that the decree hereinafter contained may, upon consent of the parties and without any findings of fact, be entered in this cause.

"The corporation and individual defendants, while maintaining the truth of their answers and asserting their innocence of any violation of law in fact or intent, nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, consent to the making and entry of said decree; but this stipulation shall not constitute or be considered as an admission, and the rendition or entry of the decree, or the decree itself, shall not constitute or be considered as an adjudication that the defendants, or any of them, have in fact violated any law of the United States.

"The decree above referred to is as follows:

"(Here follows the draft of the decree which was entered the same date, but is omitted to avoid unnecessary repetition.)

The same date, to wit, February 27, 1920, in accordance with the aforesaid memorandum and stipulation, and simultaneously with the filing of the said bill, answers, and stipulation, the injunction decree of February 27, 1920, was thereupon presented to and signed by the court, as a mere matter of form, without any hearing or consideration of the merits or the issues of fact presented by the pleadings, and regardless the legal effect of the reservations of the defendants in the aforesaid stipulation, and regardless the legal effect of the following provisions of the said decree itself:

"This cause having come on to be heard on this 27th day of February, in the year 1920, and the petitioner * * * having moved the court for an injunction in accordance with the prayer of its petition; and it appearing to the court that the allegations of the petitioner state a cause of action against the defendants under the provisions of the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' and acts amendatory thereof and supplemental or additional thereto, and that the court has jurisdiction of the persons and the subject matter; and the several defendants having accepted service of process and having appeared and filed answers to the petition, which answers are on file in the office of the clerk of this court; and the parties having this day entered into a stipulation in this action, which stipulation is on file in the office of the clerk of this court, and from which it appears, among other things, that while the defendants and each of them, maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States.

"Now, upon the petition, the answers of the defendants, and the aforementioned stipulation and consents of the parties, all on file in the office of the clerk of this court, and on motion of the petitioner, it is ordered, adjudged, and decreed as follows."

The rest of the said decree was and is in the words and figures following:

First. That the corporation defendants and each of them be, and they are hereby, jointly and severally, perpetually enjoined and restrained from either directly or indirectly, by themselves or through their officers, directors, agents, or servants, in any manner maintaining or entering into any contract, combination, or conspiracy with each other or with any other person or persons, in restraint of trade or commerce among the several States; or from either directly or indirectly, by themselves or through their officers, directors, agents, or servants, either jointly or severally monopolizing or attempting to monopolize or combining or considering with each other or with any other person or persons to monopolize any part of such trade or commerce.

Second. That the defendants and each of them be, and they are hereby, jointly and severally perpetually enjoined and restrained from owning, either directly or indirectly, individually or by themselves or through their officers, directors, agents, or servants, any capital stock or other interest whatsoever in any public stockyard market company in the United States, or in any stockyard terminal railroad in the United States, or in any stockyard market newspaper or stockyard market journal published in the United States, except in so far as the court may permit any of the individual defendants to retain any such interests upon the conditions and in such circumstances as are provided for in paragraph 10 of this decree: and said defendants and each of them are hereby further enjoined and restrained from accepting or permitting

to be given, directly or indirectly, on any pretext whatever, to any of them or to any of their officers, directors, servants, or employees, for the use and benefit of the corporation defendants or any of them, any capital stock or other interest in any public stockyard market company, stockyard terminal railroad, or stockyard market newspaper or stockyard market journal.

Third. That the corporation defendants and each of them and their successors and assigns be, and they are hereby, perpetually enjoined and restrained from either directly or indirectly, by themselves or through their officers, directors, agents, or servants, through any device or arrangement whatsoever, using or permitting any other person, firm, or corporation to use their distributive system and facilities, including their branch houses, route, cars, and auto trucks, or any of them, in any manner for the purchase, sale, handling, transporting, distributing, or otherwise dealing in any of the articles or commodities named and described in paragraph 4 of this decree, except in so far as permitted in said paragraph 4 and except refrigerator cars when in good faith leased to common carriers or furnished to them for their use as common carriers.

The corporation defendants or any of them may from time to time lease, sell or otherwise dispose of any of the items of their distributive system free from any of the restrictions of this decree when they have a surplusage thereof or when such items have become obsolete or are otherwise not required for the business of the defendants or any of them. But no sale, lease, or other disposition of a substantial part of defendants' respective distributive systems or such distributive system as an entirety shall be made without submitting the same to the court for the court's investigation and determination as to whether said proposed sale, lease, or other disposition is in accordance with the spirit and purpose of this decree, and without notice of the application for such approval first given to the Attorney General. Nothing herein contained shall be construed to prohibit the defendants or any of them from mortgaging or otherwise creating liens on said distributive system or parts thereof.

Fourth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise, either for domestic trade or for export trade, the manufacturing, jobbing, selling, transporting (except as common carriers), distributing, or otherwise dealing in any of the following products or commodities, except when such products or commodities are purchased, transported, or used (1) as supplies in operating their packing houses, branch houses, or other facilities used by them, or as an incident in the processes of manufacturing soap or packing-house products; (2) in the construction and physical maintenance of their packing houses, branch houses, or other facilities used by them; (3) in the operation of their restaurants, laundries, or other conveniences primarily for the benefit of their employees; or (4) in combination with meat, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following, to wit: Canned oysters, canned mackerel, bulk mackerel; bulk, canned, and cured herring; canned salmon, canned sardines, canned shrimps, and canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit: Asparagus, navy beans, lima beans, peas, beets, corn, okra, potatoes, tomatoes, celery, garlic, horse-radish, and pumpkins.

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mincemeat, to wit: Ginger, cherries, apple butter, apricots, blackberries, peaches, pineapple, raspberries, currants, figs, gooseberries, oranges, strawberries, apples, prunes, raisins, and dates.

4. Confectionery, sirups, soda-fountain supplies and sirups and soft drinks (grape juice is not included in this paragraph 4; see paragraph 14), including therein, but in nowise limiting the foregoing general description, the following, to wit: Apple cider, cherry juice, coca cola, creme de menthe, crushed-nut frappe, ginger ale, green pineapple sirup, lemon extract, marshmallow topping, orange extract, root beer, vanilla extract, and vin flz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit: Catsup, chili sauce, cinnamon, cloves, mustard, mustard seed, olives, oyster cocktail sauce, pepper, pickles, spinach chili, tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following, to wit: Almonds, pecans, and walnuts, but not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

11. Cereals, including therein, but in nowise limiting the foregoing general description, the following, to wit: Gr'ts, oats, hominy, hominy feed, horse feed, brewers' flakes, brewers' grit, brewers' meal, buckwheat, canned hominy, clipped oats, corn grits, ground meal, ground oats, ground corn, cracked corn, crushed white oats, feed barley, feed meal, feed wheat, rolled oats, standard middlings, standard spring brand, spaghetti, vermicelli, macaroni, corn flakes, and wheat foods.

12. Grain.

13. Miscellaneous articles, to wit: Cigars, china, furniture, bluing, starch, fence posts and wire fences, alfalfa meal, babbitt, bar iron, binding twine, brass castings for heavy ordnance, brick, builders' hardware, bumping posts for railroads, cement, lime, plaster, doors and windows, dried brewers' grains, lath, pitting and fruit-handling machinery, roofing, sand and gravel, shingles, soda fountains or parts thereof, structural steel, tile, and waste.

14. Grape juice.

And the corporation defendants and each of them be, and they are hereby, further perpetually enjoined and restrained from owning, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants any capital stock or other interest whatsoever in any corporation, firm, or association except common carriers, which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, except as common carriers, distributing, or otherwise dealing in any of the above-described products or commodities.

Fifth. That the individual defendants, and each of them, be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their agents, servants, or employees, owning voting stock which in the aggregate amounts to 50 per cent or more of the voting stock of any corporation, except common carriers, or any interest in such corporation resulting in a voting power amounting to 50 per cent or more of the total voting power of such corporation, or which interest by any device gives to any such defendant or defendants a voting power of 50 per cent or more in any such corporation, or a half interest or more in any firm or association which corporation, firm, or association may be, in the United States, in the business of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of the following products or commodities, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following, to wit: Canned oysters, canned mackerel, bulk mackerel, bulk, canned, and cured herring, canned salmon, canned sardines, canned shrimp, and canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit: Asparagus, navy beans, lima beans, peas, beets, corn, okra, potatoes, tomatoes, celery, garlic, horse-radish, and pumpkins.

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mincemeat, to wit: Ginger, cherries, apple butter, apricots, blackberries, peaches, pineapples, raspberries, currants, figs, gooseberries, oranges, strawberries, apples, prunes, raisins, and dates.

4. Confectionery, sirups, soda-fountain supplies, and sirups and soft drinks, not including grape juice, including therein, but in nowise limiting the foregoing general description, the following, to wit: Apple cider, cherry juice, Coca Cola, creme de menthe, crushed nut frappe, ginger ale, green pineapple sirup, lemon extract, marshmallow topping, orange extract, root beer, vanilla extract, and vin fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit: Catsup, chili sauce, cinnamon, cloves, mustard, mustard seed, olives, oyster-cocktail sauce, pepper, pickles, spinach chilli, and tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following, to wit: Almonds, pecans, and walnuts, but not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, and biscuits.

And further perpetually enjoining and restraining said individual defendants, and each of them, from individually or jointly, either directly or indirectly, by themselves or through their agents, servants, or employees, adopting any device or arrangement which by reason of the relation of said individual defendants, or any of them, to the corporation defendants, or any of them, would have the purpose or effect of giving to such business of dealing in the articles hereinabove in this paragraph mentioned and described, in which business such individuals or any of them may be substantially interested, an advantage over their competitors similar in purpose or effect to any advantage now enjoyed by any of the corporation defendants through their distributing system.

Sixth. That the defendants, and each of them, be, and they are hereby, perpetually enjoined and restrained from, in the United States, owning and operating or conducting, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants, any retail meat markets in the United States: *Provided, however*, That nothing contained in this decree shall prohibit said defendants, or any of them, from continuing to conduct the retail meat markets located at their several plants and maintained by said defendants primarily for the accommodation of their own employees as long as said retail meat markets shall be continued to be operated for that purpose.

Seventh. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from owning, directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, any capital stock or other interest whatsoever in public cold-storage warehouses in the United States: *Provided, however*, That nothing herein contained shall be construed to prevent the defendants or any of them from owning capital stock or other interests in any corporation, firm, or association owning or operating, or from themselves owning or operating, the public cold-storage warehouses now maintained by the defendants or any of them at stockyards where said defendants or any of them now maintain packing plants, nor to prevent any of said defendants, directly or indirectly, from establishing, owning, maintaining, or leasing necessary cold-storage facilities or space required in good faith for the storage of commodities in which they or any of them may be interested, nor from renting space in any cold-storage warehouse directly or indirectly owned or leased by any of them to the public whenever such space is not in good faith required or needed by the defendants for their own use, nor from storing products for the public whenever the space used for that purpose is not in good faith required by the defendants for their own use.

Elighth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from engaging in the United States, either directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, in the business of buying, collecting, selling, transporting, except as common carriers, distributing or otherwise dealing in fresh milk and cream, and further perpetually enjoining and restraining said defendants and each of them by themselves or through their directors, officers, agents, and servants, from either directly or indirectly owning any capital stock or other interest in any corporation, firm, or association engaged in the business of buying, collecting, selling, transporting (except as common carriers), distributing, or otherwise dealing in fresh milk or cream: *Provided, however*, That nothing herein contained shall be construed as preventing the corporation defendants or their subsidiaries from buying, collecting, and transporting fresh milk and cream to be used by them or any of them in manufacturing condensed or evaporated or powdered milk or oleo-margarine or other butter substitutes, or butter, ice cream, cheese, or butter-milk, or to be used as feed or in combination with any commodity not specifically mentioned and described in paragraph fourth hereof: *And further provided*, That nothing herein contained shall be construed as preventing said

defendants from selling or otherwise disposing of milk and cream bought or collected for manufacture, when such sale or disposition is necessary to avoid waste.

Ninth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, jointly or severally, by themselves or through their officers, directors, agents, or servants, engaging in, carrying on, or using any illegal trade practices of any nature whatsoever in relation to the conduct of any business in which they or any of them may be engaged.

Tenth. That within 90 days after the entry of this decree such of the defendants as have interests in public stockyard market companies, stockyard terminal railroads, or market newspapers, shall file in this court, for the court's approval, a plan or plans for divesting themselves of all ownership or interest in: (1) public stockyard market companies; (2) stockyard terminal railroads; (3) market newspapers: *Provided, however,* That the court may, in the event that it deems such provision necessary in order to enable the defendants to divest themselves of their interests in public stockyard market companies, and stockyard terminal railroads, upon reasonable terms, permit the individual defendants, or some of them, to retain an interest by way of stock ownership, or otherwise, in any public stockyard market company or stockyard terminal railroad, or in any corporation organized to take over such public stockyard market companies or stockyard terminal railroads or the stock thereof; but no defendant or defendants shall at any time, either individually or jointly, own a controlling interest in any such stockyards or stockyard terminal railroads. Within such period of time after the entry of this decree and the approval of said plan or plans as the court may determine, the defendants shall, in good faith, completely divest themselves of all such ownership or interest in public stockyard market companies, stockyard terminal railroads, and market newspapers. If, within the time so fixed the defendants shall not have disposed of said interests ordered by the court to be disposed of, and the court upon application shall determine that the defendants have been unable, despite due diligence, to dispose of the same upon reasonable terms, the court may extend the time during which such ownership, control, or interest may continue until the same can be disposed of.

Eleventh. That immediately upon the entry of this decree the defendants shall, in good faith and with due diligence, proceed to dispose of their interests in, and shall completely divest themselves (to the extent required by this decree) of all ownership of or interest in all public cold-storage warehouses and retail meat markets, but in no event shall the defendants, or any of them, make final disposition of any of their interests in such public cold-storage warehouses and retail meat markets without first obtaining the court's approval to such final disposition. If, within nine months after the entry of this decree, the defendants shall not have finally disposed of their interests in public cold-storage warehouses and retail meat markets, the Attorney General may apply to the court for an order specifying the time within which the defendants shall finally dispose of all said interests.

Twelfth. That immediately upon the entry of this decree the defendants and each of them shall commence to dispose of such commodities owned or handled by them as are described in paragraphs 4 and 5 of this decree and which are to be disposed of by them under this decree, and shall likewise immediately upon the entry of this decree commence to divest themselves of all interests which are to be disposed of by them as and to the extent required by this decree in firms, corporations, and associations, including departments of the business of any of the corporation defendants when any of such departments is sold as a going concern, manufacturing, selling, or otherwise dealing in any of the commodities so mentioned and described in paragraphs 4 and 5 of this decree, and shall continue in good faith to dispose of said commodities required to be disposed of hereunder, and to divest themselves of such interests required to be disposed of hereunder as rapidly as may be consistent with the nature of the business and the seasonal nature of the merchandise involved, and that in any event the defendants and each of them shall completely dispose of said commodities and shall cease to manufacture, job, sell, transport, except as common carriers, distribute, or otherwise deal in the same, and shall completely divest themselves of said interests within two years from the date of the entry of this decree: *Provided, however,* To the end that the provisions of this decree may be complied with, the approval of the court shall be obtained prior to the final disposition of said interests in firms, corporations, or associations

manufacturing, selling, or otherwise dealing in any of the commodities mentioned and described in paragraphs 4 and 5 of this decree. At any time within said two years the Attorney General may apply to the court for an order or orders to compel the defendants, and each of them, to make report to the court as to the progress being made by them in disposing of said commodities and in divesting themselves of said interests.

Thirteenth. That the purchaser or purchasers of the defendants' interests in any stockyard shall, as a part of said purchase, agree with such of the defendants as now maintain packing plants in said stockyards that for a period of at least 10 years after the date when such purchase shall be consummated said purchasers, their successors or assigns, will continue to maintain and efficiently operate such stockyards and each of them, and such of said defendants as now maintain packing plants at any of said stockyards shall agree with said purchasers that during the same period of 10 years said defendants, their successors or assigns, will continue to maintain and operate said packing plants at the points where the same are now located, unless strikes, shortage of supplies, or other causes beyond the control of either the purchasers, the stockyard companies, or said defendants shall prevent the carrying out of said agreement. Performance by either party shall be a condition concurrent to performance by the other.

Fourteenth. That nothing in this decree contained shall be construed to prohibit anything that may be otherwise lawfully done by the defendants or any of them in the United States in connection with or for the purpose of export trade or foreign commerce or business of the defendants: *Provided, however*, That nothing in this paragraph contained shall limit the effect of the injunction contained in paragraphs fourth and fifth of this decree.

Fifteenth. That nothing contained in this decree shall be held to preclude the petitioner from proceeding against any or all of the defendants, either civilly or criminally, for any violation of any law in connection with the carrying on by them of the business of buying and selling poultry, butter, eggs, and cheese, or any other business or activity not specifically mentioned in this decree; nor shall anything contained herein prejudice the Government in any such proceeding; nor shall this decree interfere with or prejudice any legal rights, business, or activity of the defendants, or any of them, not prohibited or covered by this decree.

Sixteenth. That for the purpose of (1) enabling the petitioner to ascertain whether the defendants are in good faith carrying out the terms of this decree; and (2) for the purpose of enabling the Attorney General to determine and advise the court whether in any transaction consummated or begun at any time prior to the entry of this decree the defendants, or any of them, have retained and now retain such an interest in or control over any public stockyard market company, stockyard terminal railroad, stockyard market newspaper, stockyard market journal, cold-storage warehouse, retail meat market, or corporation, firm, or association manufacturing, jobbing, selling, distributing, transporting (except as common carriers), or otherwise dealing in any of the commodities mentioned and described in paragraphs 4 and 5 of this decree, which would constitute a violation of this decree if the retention of such interest or control had been the result of a transaction consummated or begun subsequent to the date of the entry of this decree; and (3) for the further purpose of enabling the Attorney General to determine and advise the court whether any leases, contracts, or arrangements concerning their, or any of their, distributing systems made or entered into by the defendants, or any of them, prior to the entry of this decree, and in force on the day when it shall be entered, are in violation of the terms thereof, then, in the event that the Attorney General in writing notifies the defendant or defendants concerned with respect to such alleged violation, reciting in reasonably specific terms the nature thereof, the corporation defendants are hereby directed to make full and complete discovery to the petitioner with respect thereto, and the corporation defendants are further directed to submit to the Attorney General or to any Assistant Attorney General by him duly authorized all of their books, records, correspondence, or other documents in so far as the same refer to the alleged violation, and to furnish all information concerning the same.

Seventeenth. That all sales, transfers, or other disposition made by any of the defendants since the 1st day of October, 1919, of any of their interests in public stockyard market companies, stockyard terminal railroads, stockyard newspapers or journals, public cold-storage warehouses and retail meat markets, or incorporations, firms, or associations manufacturing, jobbing, selling, trans-

porting, except as common carriers, distributing or otherwise dealing in any of the commodities mentioned and described in paragraphs 4 and 5 of this decree, and all leases, contracts, or arrangements or other disposals made by any of the defendants since the 1st of October, 1919, affecting their delivery systems, shall be submitted by the defendants to the court for its investigation and determination as to whether the same were made in accordance with the spirit and purpose of this decree, in the same manner and with the same force and effect as though the said sales, dispositions, leases, contracts, or arrangements had been made subsequent to the entry of this decree.

Eighteenth. That jurisdiction of this cause be, and is hereby, retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree.

WALTER I. MCCOY,
Chief Justice.

FEBRUARY 27, 1920.

PARAGRAPH X.

Your petitioner further avers that the legal effect of the aforesaid reservations in the said stipulation and decree was to prevent this court from exercising any power or jurisdiction in the premises, and particularly to deprive this court of any power or jurisdiction to enter the said decree, or any similar decree, in this suit. Moreover, as hereinbefore set forth, the immediate and direct effect of the aforesaid decree, if it be apparently valid, was to create and continue monopoly in the so-called unrelated commodities in favor of the members of the aforesaid wholesale grocers' associations, for which reason it is void. In addition, the injunction is so general in its terms that it is a nullity. Furthermore, the injunction is void because it attempts to enjoin the defendants from lawfully conducting lawful businesses, particularly in the unrelated commodities, and also attempts to prevent them from engaging in export trade which the Webb Export Combination Act of April 10, 1918 (40 St. L. 517), expressly permits them to do. Also, the said decree was and is a highly disastrous economic mistake, and was wholly unfounded in law or in fact.

PARAGRAPH XI.

Your petitioner further avers that under the aforesaid contract of May 9, 1919, between your petitioner California Cooperative Canneries and the defendant Armour & Co. the latter agreed to purchase from the former all of the California canned fruits required by the said Armour & Co., in so far as your petitioner was able to furnish the desired quantity and grades, for the period of nearly 10 years, and under the said contract the said Armour & Co. handled about 52 per cent of your petitioner's total annual output. The said contract was of great value to your petitioner, as it gave your petitioner a ready market for the larger portion of its output, and a great deal of time and money were thereby saved in sales effort and expense. The said contract was also very valuable to your petitioner in obtaining loans from banks, as they were willing to make loans to your petitioner, because they were satisfied that a considerable portion of your petitioner's pack was sold in advance to a very reliable buyer, and that your petitioner would be able to pay back to them the money which your petitioner borrowed from them to cover the expense of canning. Having such a considerable part of its pack sold for a substantial term of years your petitioner's members, who are growers of fruits and vegetables as aforesaid, felt secure, as they knew that their products were already marketed, and they were therefore able to plan the care of their orchards and the conduct of their business with a sense of security as to the future. The said contract also gave your petitioner an assurance of the widest distribution of its products, so that your petitioner was able to operate its plants at full capacity, and thus reduce the cost of operation to the minimum.

PARAGRAPH XII.

Your petitioner further avers that after the entry of the said decree of February 27, 1920, the defendant Armour & Co. notified your petitioner that the said defendant was compelled to discontinue the handling of products such as

your petitioner's, and that the said contract must be considered as canceled. It is impossible to determine the full extent of the damages already sustained by your petitioner from the said decree. The said decree instantly destroyed markets which had been slowly and painstakingly built up during a long period of years and took away your petitioner's principal outlets, both foreign and domestic, for its products, and the effect of the said decree was to destroy your petitioner's said contract and to take its property without compensation or due process of law. The actual and potential damages which your petitioner has suffered and will suffer by reason of the said decree and the indirect damage to your petitioner's grower members in destroying their principal markets is impossible of calculation. Destroying such channels of distribution directly and adversely affects every fruit producer in California, and in many instances elsewhere.

Many groups of producers and a large number of canneries have more or less depended upon your petitioner to assist them in attacking the said decree. Your petitioner, by its duly authorized representative, in May, 1920, protested to the Department of Justice against the operation of the said decree and pointed out the great damage which it had done and would do to your petitioner's said business. Since that date your petitioner continued to present its case to the Department of Justice, and asked the said department to move the court to vacate the said decree or, at least, to modify it so as to allow the packers to handle food commodities other than meat products. The Department of Justice was inclined to be fair and reasonable, and carefully listened to arguments in behalf of your petitioner and others, but before the said department reached any final conclusion in the matter the Southern Wholesale Grocers' Association and the National Wholesale Grocers' Association of the United States, by their attorneys and by J. H. McLaurin, president of the Southern Wholesale Grocers' Association, appeared before the said department and protested against any modification of the said decree. Both organizations also petitioned this court for leave to intervene herein in opposition to any modification of the said decree, particularly in the event the Department of Justice should request such modification, and such leave to intervene was granted by this court. The said associations have great power and influence, and exercise plenary authority over their members, and seriously affect the producers, retailers, and consumers of food commodities.

The said wholesale grocers' associations, through the public press and otherwise, have attacked your petitioner and the farmers' organizations. They have issued many letters and bulletins and sent them broadcast throughout the country to canneries, brokers, wholesale and retail grocers, and others. Some years ago one of the enemies of your petitioner's organization even went so far as to file a complaint with the Federal Trade Commission charging that your petitioner was affiliated with the said Armour & Co.; but after a thorough and complete investigation of such charge by the said commission your petitioner was advised by the said commission that there was absolutely no truth in the said complaint.

The said Southern and National Wholesale Grocers' Associations are the concerns most actively opposed to the vacation or modification of the said decree, particularly for the reason, as hereinbefore alleged, that the direct and immediate effect of the said decree was to create and continue an absolute monopoly in the unrelated commodities in their members' favor. The said two associations are powerful trade organizations whose members, as buyers of canned fruits and vegetables, have by various methods brought about the passive, and in some instances the active, opposition of certain groups of canneries and brokers. The said associations do not represent the public interest, but their object is to prevent competition against their members and to preserve and expand the said monopoly which the said decree created for them. September 22, 1920, the said Southern Wholesale Grocers' Association issued a certain bulletin containing the following language:

"The meat packers of the country are, of course, fine actors, but this is one time in their history when they are going to have an opportunity, even against their will, to deal with the wholesale grocers of the country in the settling of an important issue."

The wholesale grocers have fought ruthlessly against chain stores, mail-order houses, cooperative buying by retailers, and business houses of sufficient size to conduct both a wholesale and a retail business, as well as against the meat packers. The underlying purpose which holds the wholesale grocers together is that of waging organized warfare against the competition of all dis-

tributing agencies other than their own. The Federal Trade Commission, in its report on canned foods, issued May 15, 1918, stated as follows (p. 70) :

"The wholesale grocers acknowledge that the competition which they fear most comes from the mail-order houses, the chain stores, and the great meat packers, which, as distributing agencies, do not always follow what the wholesale grocers consider the regular channels of trade. The mail-order houses and chain stores buy directly from the packers and sell directly to the consumers. Armour & Co. buys from the packer and sells to the retail grocer through its branch houses."

Any method of distribution which comes into the competition with the wholesale grocers is vigorously attacked by them, and in many instances such attacks have been successful. The purpose and activities of the wholesale grocers, as represented by the said associations, constitute one of the cardinal reasons for the high cost of living, in that they expand and do not contract the spread in price of the necessities of life between the initial producer and the ultimate consumer.

In the case of *United States v. Southern Wholesale Grocers Association et al.* (207 Fed. Rep. 434), decided August 4, 1913, by the District Court of the United States for the Northern District of Alabama, the said Southern Grocers Association and its president, J. H. McLaurin, together with two other individuals, were adjudged guilty of contempt and fined for violating a prior decree of the Circuit Court of the United States for the Northern District of Alabama, entered October 17, 1911, by Circuit Judges Pardee and Shelby and District Judge Jones, whereby the said Southern Wholesale Grocers Association and others were enjoined from committing certain acts in violation of the Sherman Antitrust Act. The decision of the court, as reported, exposes the pernicious purposes and activities of said association, and will shed light upon its real purpose in opposing the vacation or modification of the said decree of February 27, 1920.

In *Western Sugar Refinery Co. v. Federal Trade Commission* (275 Fed. Rep. 725), decided October 10, 1921, the United States Circuit Court of Appeals for the Ninth Circuit upheld certain orders of the Federal Trade Commission against certain wholesale grocers, which orders required such wholesale grocers to cease and desist from certain unfair methods of competition in interstate commerce in dealings with certain other concerns. The court upheld an order of the commission against the conspiracy of wholesale grocers to coerce a certain grocer conducting both the wholesale and retail grocery business in Los Angeles, Calif., and elsewhere.

Cases of a similar nature are pending before the Federal Trade Commission wherein certain wholesale grocers' associations, or their individual members, have adopted various methods to prevent the distribution of food products through channels other than those of the wholesale grocers. Their opposition to the vacation or modification of the said decree in this suit is simply a continuation of their fight against competition, and is based wholly upon their desire to secure an advantage in what should be an open field for competition, and particularly their desire to retain and enlarge the monopoly which the said decree created in their favor.

- PARAGRAPH XIII.

The wholesale grocers, through their State and National affiliations and members, have conducted and are continuing a campaign of coercion and intimidation in order to suppress or misrepresent the real views of canners and others on the matters involved in the said decree. They have written and forwarded coercive and threatening letters to canners and others throughout the country. Through fear of boycott and other measures of reprisal many persons and concerns have been frightened into silence, and in some instances have been compelled to go on record against any modification of the said decree, contrary to their true views concerning it. The Prune and Apricot Growers' Association, through its manager, had gone on record as favoring a modification of the said decree, and subsequently a committee representing the wholesale grocers called on the directors of the said association and insisted that they go on record against any modification of the said decree. October 3, 1920, the Western Canners' Association held a meeting of its executive committee in Chicago, Ill., and passed a resolution strongly favoring the modification of the said decree.

The annual meeting of the said association was held November 11 and 12, 1920, in Chicago. At that meeting the wholesale grocers appeared in force

and attended the sessions. They had quarters adjoining the Cannery Convention Hall. The wholesale grocers had prepared a 100 per cent delivery contract, and said that the cannery would be forced to sign it in selling their pack the next season. The wholesale grocers declared that they would not withdraw the proposed contract unless the Western Cannery Association would withdraw its resolution favoring the modification of the said decree, and adopt and forward to the Attorney General of the United States a resolution against any modification thereof. As a consideration for such resolution against modification, the wholesale grocers offered to modify their joint policy of not buying futures, and promised to buy futures the next spring—something which they had refused to do the last spring, and had thereby greatly embarrassed the cannery in their financing, and had consequently reduced their output. The president of the National Wholesale Grocers' Association delivered an address at the said meeting, which was chiefly an argument against any modification of the said decree, and no one was allowed to make any reply to such argument. No additional facts were brought out at the said meeting to cause a reversal of the former resolution favoring modification of the said decree. At the last minute a resolution against modification was adopted without debate. In one instance a certain canner wrote as follows:

"We are flooded with letters from jobbers requesting that we do what we can to have the decree stand as it is, but we feel that it is to our interest that the packers should be allowed again to handle can goods."

In another instance a certain dealer in the South wrote as follows:

"While we believe 100 per cent are in sympathy with your stand on setting aside the packers' decree, they are adverse to taking sides in the matter. As you are aware, they are all small cannery, outside of two or three, and believe they would be victims of the wholesalers' anger. Consequently they will do nothing as an association."

Some of your petitioner's brokers have had difficulties with the wholesale grocers, on account of your petitioner's stand in favor of the vacat on or modification of the said decree. In addition, your petitioner has received a letter from a certain wholesale grocer, which conveys a thinly veiled threat to boycott your petitioner unless it reverses its position. Your petitioner refrains from giving the names and addresses of the writers of the foregoing letters for fear of subjecting them to serious business losses at the hands of the wholesale grocers. Your petitioner received a letter in circular form, dated October 22, 1920, signed by seven wholesale grocers, which letter, among other things, stated as follows:

"You will have to be on one side or the other of the fence and stay put. It is for you to choose now as to whether you are with us or against us. You can not be both. All of us make mistakes. It is our belief that you will be big enough to realize that you have made one. We await with interest—even anxiety—information as to what conclusion you have reached with regard to the subject matter of this letter."

The subject matter of the letter just quoted was modification of the said decree. In another instance, a certain wholesale grocer wrote a letter to a certain canner doing business in the State of New York. The letter was in the form of a circular, and was probably sent broadcast. Among other things the said letter stated as follows:

"Therefore we believe it time for us to choose the men with whom we will have business, and it will be only common sense for us to choose the people who cooperate with us and do not cooperate by resolution or any other way with forces that are trying to create a monopoly in food."

The above-quoted letters of the wholesale grocers are threats of boycott and reprisal. With the said decree standing on the minutes of this court, the wholesale grocery organizations feel free to terrorize and coerce both those of whom they buy and those to whom they sell, and to dictate the course of conduct of each, and to enforce the same by their own methods. Those opposed to the vacation or modification of the said decree will doubtless repeat the charge that the defendant packers have attempted to monopolize, or will monopolize, the distribution of wholesale-grocery items, but your petitioner avers that no evidence to support such charge has been or can be produced, and particularly that no such evidence has been produced in this cause; but, on the contrary, the plaintiff, by the provisions of the aforesaid stipulation and decree has in effect admitted that the defendants have committed no act or acts creating or tending to create such a monopoly, or effecting or tending to effect any restraint of trade or commerce, in violation of the Sherman or Clayton Acts, thus elimi-

nating the only basis upon which the power of this court to pass the said decree could rest. Your petitioner avers that the defendants have not acted and do not act jointly in the conduct of their businesses, and their operations can not be considered as a unit, and the total of their sales can not be considered as a unit. Before the entry of the said decree the packers were in competition both among themselves and others in the purchase and distribution of wholesale grocery items, and they were severally in sharp competition with wholesale grocers. It is as misleading and incorrect to lump the sales of the five packers for the purpose of drawing therefrom the conclusion that they had created or attempted to create a monopoly in the sale and distribution of wholesale-grocery items as it would be to lump the sales of the five largest wholesale grocers, and conclude therefrom that they had created or attempted to create a monopoly in the sale and distribution of groceries.

The bill of complaint in this suit does not charge the defendants with creating or attempting to create any monopoly in wholesale grocery lines through any agreement, understanding, or joint action on their part, nor does the report of the Federal Trade Commission show any joint or concerted action by the packers in such lines. Mere size of business or financial strength is not evidence of restraint of trade or commerce, or of monopoly, yet the Federal Trade Commission, in its report on the meat-packing industry, stated that "Armour's drive into the rice market in a single year is perhaps the most striking of the potentialities in this direction." The report further states that Armour sold 16,000,000 pounds of rice in 1917, is the largest rice merchant in the world, and that the wholesale price of rice increased 65 per cent. In 1917 the total production of rice in the United States was 34,739,000 bushels, averaging 45 pounds per bushel for rough rice (the average being larger for clean rice, which equals 1,560,000,000 pounds. The rice imports of that year amounted to 266,000,000 pounds. The total of rice was therefore 1,826,000,000 pounds. Consequently the 16,000,000 pounds of rice sold by Armour in 1917 was only nine-tenths of 1 per cent of the total. The decree in this suit prohibits Armour & Co. from handling any rice at all. The average farm price of rice in 1916 was 99.9 cent, and in 1917 it was 189.6 cents, or an increase of 113 per cent. The rice grower, not the rice buyer, profited by the increased price. The insinuation that Armour & Co. forced up the price of rice in 1917 and thereby increased its profit is based exclusively upon the premise that one who handles nine-tenths of 1 per cent of the total quantity of a certain commodity can and will force up its price 113 per cent in one year.

PARAGRAPH XIV.

According to the Federal Trade Commission's report, Armour & Co.'s sales of canned fish and vegetables and sundries, canned and dried fruits, fruit preserves, soda-fountain supplies, and grape juice constituted 4.6 per cent of their total sales, exclusive of their sales of dressed poultry, eggs, butter, and cheese, which items are not covered by the said decree. Wilson & Co. reported to the Federal Trade Commission that its specialty, namely, the canned food, preserve, and condiment business, was less than 4 per cent of its total business in 1918. Morris & Co., in its answer to the bill of complaint in this suit, states that "It is an admitted fact that the number of wholesale grocers and the volume of business done by them since Morris & Co. entered this field in the latter part of 1917 have increased more than 10 per cent. This conclusively demonstrates that instead of eliminating competition, or even injuring the business, the competition of the packers has stimulated and been beneficial to the business.

"The entire business done by Morris & Co. in the so-called unrelated lines, which consisted almost entirely of canned fruits and vegetables, amounted to less than 2 per cent of the total annual sales of the company. The total business done by all of the packers in lines unrelated to meats amounts to less than 3 per cent of the entire volume transacted by the wholesale grocers and packers."

No figures for Cudahy & Co. are available, but your petitioner avers that Cudahy & Co. was never interested to any great extent in the sale of wholesale grocery lines through its own branch houses. The Federal Trade Commission's report does not give any exact figures as to the amount of Swift & Co.'s sales of these items, although it shows sales of canned goods by Libby. In the case of the National Wholesale Grocers' Association v. Hines, before the Interstate Commerce Commission, the testimony showed (transcript of testimony p. 2967) that 80 per cent of Libby's output was marketed through

the wholesale grocers, and only about 20 per cent through the selling organization of Swift & Co. In the hearing of the case of the National Wholesale Grocers' Association and the Southern Wholesale Grocers' Association *v.* Walker D. Hines, a certain witness, testifying for the Southern Wholesale Grocers' Association, stated that in his opinion the total annual wholesale grocery business of the country amounted approximately to two and one-half billions of dollars, while another witness, testifying for one of the packers, estimated such annual business at two and one-half billions of dollars to three billions of dollars. Others have estimated such annual business at three and one-half billions of dollars. Accepting the lowest figure and considering the annual business of the five great defendant packers in wholesale grocery lines, their entire grocery business did not amount to more than 4 per cent or 5 per cent of the total wholesale grocery business of the country. As each defendant packer was in competition with the other defendant packers and all other packers, and also in competition with some 5,950 wholesale grocers of the country, no charge against the packers of creating or attempting to create a monopoly could possibly be maintained in fact. There was no real danger of the elimination of the wholesale grocers, but as the packers did a certain amount of grocery business that the wholesale grocers might otherwise have done, they were and are, of course, bitterly opposed to competition with the packers, especially as the natural and lawful result of that competition, owing to the superior skill and facilities of the latter, increases the profit to the farmer and decreases the cost to the consumer. In the year 1920, according to available figures, 5,950 wholesale grocers were engaged in business in this country. That number was the result of increases in each successive prior year, and has increased since 1920. The wholesale grocers are widely scattered, and are found in every State and in practically every city and town of considerable size. In 1919 there were 5,304 wholesale grocers located in about 1,899 different cities and towns. About 1,322 were located in the eastern territory, about 708 in the central territory, about 1,730 in the southern territory, and about 1,544 in the western territory. Their distributing areas vary, but the average radius of distribution for the large houses is between 100 and 200 miles, although some of them may considerably exceed these distances, particularly those with specialties and standard brands; but for all wholesale grocers the average radius of distribution does not exceed 100 miles.

From statements secured from 322 wholesale grocers, located in 45 States, and in Canada, it appears that their aggregate sales for the year 1920 were \$643,949,000. The net sales of the individual firms ranged from \$176,000 to \$28,400,000, and about one-half of the firms had sales between \$500,000 and \$1,500,000. From reports secured from 45 wholesale grocers, covering the years 1916 to 1920, inclusive, the average net sales of each firm in the group were as follows: 1916, \$1,360,000; 1917, \$1,690,000; 1918, \$1,907,000; 1919, \$2,340,000; and 1920, \$2,606,000.

Your petitioner avers that the extent to which the packers entered into the wholesale grocery business did not result in driving any wholesale grocers out of business, but, on the contrary, the average net sales of all wholesale grocers from whom reports were received showed an increase of about 100 per cent in their business. In one instance, that of the Western Grocery Co., of Iowa, capitalized at \$6,000,000, and having no funded debt on January 1, 1921, its gross sales increased from \$8,496,552, in the year 1914, to \$26,668,215 in the year 1920, so that the volume of business of the said Western Grocery Co. more than trebled in six years, and it was during those six years that the packer defendants were most actively engaged in distributing wholesale grocery items. Such an increase from approximately \$8,500,000 of gross sales in the year 1914 to more than \$26,500,000 of gross sales in the year 1920 shows a solid and steady growth of business, despite the fact that the said Western Grocery Co. was located and carried on its business in close proximity to the principal packing-house centers of distribution. While the growth of the packers increased, yet the growth of the wholesale grocers likewise increased. The law puts no limit on the extent to which a business may grow. Mere increase in the amount or volume of the wholesale grocery business, which was handled by any or all of the defendants, was not unlawful, and did not, in any legal sense, evidence the creation of, or an attempt to create a monopoly in violation of the Sherman or Clayton Acts; that is to say, mere size is not an offense against the antitrust acts.

The wholesale grocers have also charged that the packer defendants were accorded unfair advantages over them in expedited transportation service, and in

more favorable freight rates, but the Interstate Commerce Commission decided June 22, 1921, that such charge was unfounded, as will more fully appear by reference to 62 I. C. C. Decisions 375. The Interstate Commerce Commission further declared that the practice of the defendants in permitting the meat packers to load certain articles of groceries in peddler and branch-house cars, was not shown to result in undue prejudice to the wholesale grocer complainants, or unduly to prefer the packers, and that the various peddler-car rates and rules were not shown to be unreasonable or unduly prejudicial, with certain minor exceptions.

The wholesale grocers have made vigorous and thorough efforts to stifle or cripple competition against them, and never abandoned such efforts as a result of the consent decree in this suit, or otherwise. The Interstate Commerce Commission, in its decision above mentioned, disregarded any possible effect of the consent decree in this case, and decided that case on its merits. The chief counsel for the National Wholesale Grocers Association made a report to his client in Colorado Springs, in July, 1920, and among other things stated as follows:

"The trial has been somewhat imposing in the array of parties. Twenty lawyers have actively participated. The case involved practically all the railroads, and all the packers, and all the principal wholesale grocers in the Nation. The trial was presided over by the chairman of the Interstate Commerce Commission. More than 250 exhibits and several thousand pages of testimony make up the record. The trial lasted 30 days. Hearings were conducted in Chicago, Memphis, and Washington. In the midst of the fight—at its very climax, after we had put in practically our entire case—the packers voluntarily offered to give up the handling of about one-fourth of their groceries. But we have not accepted this compromise, tendered through the good offices of the splendid, well-meaning, but ill-advised Attorney General. We want a clear-cut victory. We want equality on all our products. The fight is on. There, I have told you my story."

The National Wholesale Grocers Association strenuously denied to the Interstate Commerce Commission that the organization sought at any time to have legislation enacted that would force the packers out of the business of handling certain commodities that were handled by grocers, and in this connection counsel for the Wholesale Grocers Association stated as follows:

"The Southern Wholesale Grocers Association did appear in favor of such legislation. The National Wholesale Grocers Association, the complainant in this proceeding, purposely refrained from so appearing. The executive committee of the latter organization, and also the legislative committee, considered the subject carefully and determined, definitely and unanimously, that it would not urge any such legislation. The National Wholesale Grocers Association did not favor any one of the numerous so-called packers' bills, pending either in the present Congress or the previous Congress, or in any other Congress. We have the complete record, and know positively that the national association has taken no such action since the date of its organization in 1906.

"The only legislation the national association would have favored, as was decided by its executive committee and its legislative committee and approved by the members, would have been a bill designed merely to place the packers and the grocers on an even plane, without any special privileges for either. It was said again and again, in these meetings of the association, that the entire field should be free and open both for the packer and for the wholesale grocer, as well as for any other competitor or prospective competitor."

If the wholesale grocers were sincere in their aforesaid statement that "the entire field should be free and open both for the packer and for the wholesale grocer, as well as for any other competitor or prospective competitor," their strenuous opposition to any modification of the consent decree in this suit must be insincere, since the result of vacating the decree, or so modifying it as to allow the packers to reengage in handling the unrelated commodities, will accomplish the very result which they declared again and again that they favored, namely, that "the entire field should be free and open both for the packer and for the wholesale grocer, as well as for any other competitor or prospective competitor."

The wholesale grocers have not always been of the opinion that the competition of any of the packers in the wholesale grocery business was such as to cause any fear. In one of their trade journals, called *The Wholesale Grocer*, issued in November, 1920, nine months after the consent decree was in effect,

an article was published under the heading, "Grocers not made with money," which stated, in part, as follows:

"Armour has very clearly demonstrated some old truths in his attempts to use his good name as a meat packer to promote other business activities. His grocery business has been a failure. The Armour Grain Co., the coffee branch of his general grocery venture, and other activities closely allied with the general wholesale grocery business, all have failed of success in spite of good national advertising and almost limitless bank account set aside for the promotion of the grocery venture.

"Armour, the trained meat packer and experienced financier, has been able to create a wonderful machine for the buying, selling, packing, and distribution of all manner of meat products. Economy and efficiency operate everywhere, and work smoothly, too, in every branch of the Armour meat industry. Experts for the various departments of the business are under the supreme direction of an expert head of the business. The public know Armour the packer. Armour is identified with good meats and good service. The people know his meats and his service. The people can not think of him seriously in other lines of business activity.

"The Armour people somehow did not understand that the wholesale grocery business requires peculiar business machinery, just as the meat-packing business does, and that the tried and successful policy of the packing industry can not be applied with success to the grocery business.

"The wholesale grocers cover the entire country thoroughly, and when they undertake to distribute the manufacturers' specialty products they are able to back up the manufacturers' national advertising campaign. Armour with his distributing houses could not near cover the retail trade of the country, and give force to his national advertising."

PARAGRAPH XV.

Your petitioner further avers that the wholesale grocers were and are charging the canners far too much to distribute canned goods, and California producers of dried and canned fruits particularly know that this was and is true. One of the chief objections urged by the wholesale grocers against the reentry of the packers in distribution is that the packers would follow the practice of handling only those groceries in which there are good profits, and that if the profits on these certain lines were reduced by competition, the wholesale grocers would be put out of business. They insist that the producers of canned and dried fruits, canned vegetables, and other items, on which they make large profits, must continue to be at their mercy, and that the public must continue to pay extortionate prices for canned goods, in order that they may make these profits. Your petitioner avers that 37 cents of the consumer's dollar represents the cost of producing the article and the cost of the material that goes into it, that 14 cents thereof represents all the profits, and that the remaining 49 cents thereof represents the cost of distribution service. The producers and consumers are insistent that this cost of distribution service shall be reduced, but as the wholesalers are the hub around which the whole system of distribution is built, they are resisting to the utmost any method or means by which the people will be able to save at least a part of the 49 cents which they are compelled to pay for distribution service, out of every dollar which they are forced to spend for necessities. In September, 1921, both the retail and wholesale prices of food in this country were approximately 50 per cent higher than in September, 1913, although farm prices were in most instances lower in 1921 than in 1913. If the decree in this cause be not promptly vacated or modified, the very extensive and economic facilities of the packer defendants for food distribution will entirely disappear, and the producers and consumers will be left at the mercy of the wholesale grocers, as no system of distribution other than theirs will be available.

The destruction of the packers' highly efficient, expeditious, and economical system of food distribution will not tend to bring the cost of food back to normalcy, nor will the denial in the future of the rights to use such facilities keep down the high cost of food. The decree in this cause prohibits certain corporations and individuals from engaging in businesses which are open to all others, and efficiency has been almost destroyed. A continuance of the decree is not in the best interests of the public, but is seriously injurious to the producer, the packer, and the public, and serves only the selfish purposes of the

wholesale grocers. There are some 300 concerns engaged in this country as meat packers and in the scientific handling of meats in interstate distribution, and they have developed the most modern and economic method of distribution ever established. It is entirely against the interest of the public and the producers to withdraw the facilities of the meat packers from public use in the unrelated commodities. The public can not be benefited by destroying the competition thus created and leaving the entire system of distribution service exclusively in the control of the wholesale grocers.

PARAGRAPH XVI.

Your petitioner further avers that the most simple solution of the intolerable effect produced by the said consent decree is to vacate it in its entirety, or at least so to modify it as to restore to the producers the use of the packers' facilities for distribution. Your petitioner, on information and belief, avers that at least two of the packer defendants, namely, Armour & Co. and Wilson & Co., are willing to distribute food products on a commission basis if permitted so to do. By this method the speculative feature in the handling of foods would be absolutely eliminated and the producer would be in direct competition with all food speculators. This plan, which your petitioner believes would meet the approval of the Department of Agriculture, would enable the producers, canners, and food manufacturers to reach the small dealers at the lowest possible cost, while the consumption of the products would be increased because of the lower prices, and thus both the producing and consuming classes would be benefited. The cost of handling by the packers decreases as their volume of business increases, and the producers profit by the saving in the cost of distribution.

Your petitioner avers that producers, canners, and food manufacturers, and especially those that are not large enough to support complete sales and distributing organizations, should be allowed to avail themselves of the sale and distributing facilities which the packers have to assist them in disposing of their products. The use of the packers' facilities would enable the small producing units to compete with large organizations on a much more equal basis than now prevails.

The restriction of the volume of business of the meat-packing concerns, by compelling them to handle meat and related products only, increases the cost of meats to the consumer, and tends to reduce the price paid to the producer for live stock. In the field of production, manufacture, and distribution, the volume of business decreases the cost of operation, and the public interest therefore demands that the meat packers should handle the largest possible volume of business, in connection with their distribution of meats, in order to reduce the cost of operation.

PARAGRAPH XVII.

Your petitioner further avers that one of the most important economical problems is that of foreign export business. Through their distribution of meat products in foreign countries, the packers have been compelled to establish, and have established, their own sales agencies throughout the world. Producers, canners, and food manufacturers, before the entry of the said decree, were enabled to take advantage of these most efficient means of foreign distribution. The decree absolutely prohibits the packers from exporting any foods other than meat and related products, and thus deprives the producers and manufacturers of food products of the best and most complete agency ever established in this country for the distribution of foods in foreign countries. The said decree, your petitioner again avers, was a grave economic mistake, and its effect has been disastrous to the best interests of the people at large, and has operated to the serious injury not only of the producers but also every individual in the United States, by destroying a large amount of export business. Moreover, your petitioner avers that the said decree is inconsistent with the provisions of the Webb exporter combination act of April 10, 1918 (40 Stat. L. 517), for which reason also the said decree should be entirely vacated or radically modified.

PARAGRAPH XVIII.

Your petitioner further avers that all of the meat packers in the country are now under Federal supervision and control, in virtue of the packers and stockyards' act of August 15, 1921 (42 St. L., 159, 163), and there is no reason why

the defendants should remain under the supervision or control of this court in the conduct of their business. The meat packers have about 2,000 distributing houses, which they call branch houses, and about 500 of these houses are owned by the five principal packers who are enjoined by the said consent decree. In addition to these branch houses the packers have refrigerator and route cars, which are sometimes designated as peddler cars. The Federal Trade Commission, in reporting on this system of distribution, stated that by these peddler cars the packers are able to distribute products direct to some 37,000 points in the United States. As there are less than 3,000 cities and towns in this country having populations of 2,500 or more, and approximately only 28,000 incorporated towns, including many towns having a population of no more than 100, the meat packers, through this system of car distribution, are able to reach practically every point where foods are sold. In addition, many of the packers have supplemented these cars with trucks, running from their branch houses and packing plants to nearby points, and thus furnish retail dealers, hotels, and other supply houses a most perfect and well-organized service.

A Member of Congress, from the Middle West, recently expressed his views about the said consent decree in the following words:

"Since the packers have been put under the supervision of the Secretary of Agriculture the alleged necessity for this decree disappears. The entry of the decree, to my way of thinking, was not justified under any circumstances. When the packer legislation was before the House, I stated my position in regard to the decree at some length. It is my opinion as a lawyer that the decree is void, because it was beyond the jurisdiction of the court to enter it. The court doubtless had the right to forbid restraints of trade, etc., but there is no law of the United States which authorized a court to enter judgment forbidding any one from engaging in a certain line of business. If there is no law pursuant to which a court can make such a judgment, then the consent of the parties can not confer the jurisdiction. If it should be deemed necessary for the common good that persons in one line of business should be prohibited from engaging in other lines of business—a very delicate question—it should be so declared by the legislative branch of the Government.

"I can not be accused of being friendly to the packers, but I take the liberty of urging that for the reasons stated the decree should be set aside, or at least that part of it which prohibits them from carrying certain commodities in their refrigerator or other cars."

Your petitioner further avers that the said decree is not based upon any law, is not justified by any facts, and operates against the economic advantage of the producer and the consumer and the people at large; and should therefore be entirely vacated or radically modified.

PARAGRAPH XIX.

Prior to November 17, 1921, your petitioner made an application to the Attorney General that he move the modification of the consent decree in this cause, under which application an interdepartmental committee of three persons was selected to conduct a hearing, one of whom was selected by the Attorney General, one by the Secretary of Agriculture, and one by the Secretary of Commerce. The wholesale grocers were fully and ably represented in the said hearing, but were wholly unable to present any evidence as to the existence of any monopoly or combination in restraint of trade by the defendant packers, and the Federal Trade Commission was likewise unable to present any such evidence, although the said committee repeatedly requested the production of such evidence, if the charge of monopoly or a combination in restraint of trade was based upon any facts supporting it.

As hereinbefore alleged, the defendant Armour & Co. has about 400 wholesale or branch houses throughout the United States, which, together with its route car service, is about 8 per cent of the country's grocery distributing facilities. These facilities have been built up over a long period of years through the patronage of the people, and the people should have the right to enjoy to the fullest extent the economies and the expedited service which Armour & Co. is capable of providing. Instead of handling less than 1 per cent of the total volume of rice consumed in the United States in 1917, as hereinbefore set forth, the best interests of the producers and consumers would have been served if Armour & Co. had handled at least 8 per cent of the volume of rice, as

such percentage would have equaled only its proportion of the Nation's grocery distributing facilities.

Before the said committee, the wholesale grocers contended that if the said decree be set aside, the packers will control the food supply and drive the wholesale grocers out of business, but no proof was presented in support of such contention. They further contended that the five principal defendant packers control the trade in meat and related products, but presented no proof to support such contention. As hereinbefore averred, the effect of the said decree was to bring about a monopoly in the food supply by turning over the grocery business of the meat packers to the wholesale grocers. Throughout all of the various proceedings in this matter the wholesale grocers have shown remarkable combination and unanimity of purpose to prevent the vacation or modification of the said decree, and your petitioner avers that their object is merely to retain and enlarge the monopoly in the grocery lines which the said decree created for them. The wholesale grocers have both the canners and manufacturers of foodstuffs and the retail dealers at their mercy, through their advances of money or credit, since the elimination of the packers from competition with them. In one instance, before the said committee, a wholesale grocer appeared in opposition to the modification of the said decree, and it developed that the reason for his opposition was that the defendant Armour & Co. had entered his field of operation, and by competition compelled him to pay the growers in his district a fair price for their products. The wholesale grocers have no care for the welfare or interest of the general public, but seek to promote their own selfish interests only. In another instance, before the said committee, the wholesale grocers charged that the defendant Cudahy Packing Co. was building enormous canning factories in the Hawaiian Islands, and proposed to control the canned pineapple industry, whereas, as a matter of fact, the said Cudahy Packing Co. had no interest whatever in pineapple canneries, never had any such interest, and never contemplated going into the pineapple business. No farm organizations appeared before the said committee in opposition to the modification of the said decree, but many such organizations, representing millions of producers, asked the Department of Justice to move for such modification.

The wholesale grocers further contended that the only way the said decree could be vacated or modified was by an act of Congress declaring that the packers should have the right to handle all lines of foodstuffs, but as Congress can not vacate or reverse the decisions of the courts, and as no legislation is required to permit the packers to engage in the lawful conduct of lawful business, such contention is unfounded. The said decree has never met with the approval of any of the agricultural committees in Congress, but has been strongly disapproved. Moreover, the wholesale grocers claim that they were the prime movers in having the said decree passed, and before the said committee one of their attorneys stated as follows:

"The original decree resulted from complaints made primarily by wholesale grocers. After these complaints were made, the President directed the Federal Trade Commission to institute an investigation, which, having been had, was referred to the Department of Justice, and that department continued the investigation and determined its course. It had determined, and was proceeding with that determination, that criminal indictments ought to be obtained. Proceedings were begun in Chicago and in New York. Pending those proceedings, the proposition for this consent decree was made."

As hereinbefore set forth, the Attorney General expressly stated that the object of the grand jury investigations in Chicago and New York was to elicit further evidence in behalf of the Government, and not for the purpose or with the expectation of securing indictments by the said grand juries. However, following the complaint made by the wholesale grocers, the Federal Trade Commission began a most unusual and sensational publicity campaign in conjunction with the investigation which they undertook. The said commission employed a highly sensational investigator, and conducted its investigation entirely as an ex parte proceeding. Books, records, other papers, and even private correspondence were seized and examined by the agents of the Federal Trade Commission, and highly colored and misleading reports of the investigation appeared daily under glaring headlines in the newspapers throughout the United States, the purpose of which was to prejudice the people of this country and foreign countries against the meat packers in the United States and generate the suspicion that there was something radically wrong in the management of the meat-packing industry. Such publicity campaign had in fact the intended effect, and eventually foreign

countries instituted investigations for the purpose of inquiring into the truth of the allegations and charges made by the Federal Trade Commission and its agent. One of such investigations, as hereinbefore stated, was made by Great Britain, and the charges promulgated by the Federal Trade Commission and its agents were found untrue. These public attacks on the packers and their methods of doing business resulted in great damage to their business in this and foreign countries, brought about a rapid depreciation of their securities, and in some instances the destruction of their trade in foreign countries, and if such attacks had continued much longer they might have resulted in the bankruptcy of these concerns. The real reason, and the only reason, why the defendant packers consented to the said decree, with the reservations therein contained, was to put an end to such unfair and destructive attacks, and yet, even under most compelling circumstances, they refused to consent to the said decree, except upon the basis of an agreement between them and the Attorney General that they had committed no violation of law.

The farmer and the producer are well acquainted with the so-called "law of diminishing returns," their profits having diminished nearly to the vanishing point, and their returns being evidenced by ever increasing losses—this in face of the fact that the cost of the distribution of their products, and the spread in price between the producer and consumer, continually increased, due to the uncoordinated, unintelligent, and wasteful system of distribution conducted by the wholesale grocers, under whose domination the people of this country have been and still are suffering, by reason of the said decree. The wholesale grocers' system of distribution is one of monstrous profiteering, at the cost of the producer and consumer. They refuse to better their own antiquated methods of distribution, if they can do so, and they also refuse to allow anyone else to operate a better system. At one time, they declare that the packers' business is not economic in its operation, and at another time they declare that the packers' methods of distribution are so efficient and economical that the wholesale grocers will be unable to compete in price, and therefore will be driven out of business, and at another time they declare that the packers have passed the point of economic operation on account of their size, and are therefore subject to the so-called "law of diminishing returns." Despite these theories, the fact is that the packers are able to market food products at a less cost than can the wholesale grocers, or other middlemen, or speculators. The wholesale grocers charge that the large packers are unable to operate as cheaply as some of the smaller concerns, but this is accounted for by the fact that the business of the large packers is chiefly interstate. They buy, assemble, and slaughter the surplus product of the Middle West, and, after preparation of these products, deliver them to far distant points where the local product is inadequate to supply the needs. The smaller concerns are at no such expense, as their live stock is bought locally, and sold locally, and there is no heavy expense of icing, freight, and distribution to distant points. The large packers must perform this service of handling, transporting, and delivering these products long distances and compete with the local slaughterer, who is under no such additional cost or expense. Assembling, slaughtering, and preparing meat food products, produced in the stock-raising districts of the West, and delivering those products to the consuming centers of the East, where little live stock is produced, represent a vast undertaking, and can be accomplished only by large organizations, which of necessity must operate with great efficiency, if they are to serve the public satisfactorily with wholesome and healthful food. The enormous additional expense involved in rendering this very essential public service necessarily reduces the percentage of profits below that secured by local slaughterers, notwithstanding the fact that the operation of the large unit is much more efficient and economical.

Your petitioner further avers that during the hearing before the said committee the wholesale grocers contended that by reason of the allowance of their intervention in this suit they are now parties to the cause, upon the theory that the Government had represented them before, and they were parties with special interest in the decree, and had the right to resist a modification of it; that while not nominally parties they were actual parties at interest. One of their attorneys further stated to the said committee as follows:

"So far as the Southern Wholesale Grocers' Association were concerned, we insisted that we participate in the conference with the Attorney General, and we participated in the decree, although not nominally or actually parties,

and we were admitted as parties on the ground that our special interests were involved, and we had a right to preserve that decree, the Government having acted for us as a beneficiary; so that I would insist that there is no modification of the agreement at all, but that certain beneficiaries for whom the trustee had acted had been allowed to maintain the benefits of the decree for themselves."

Thus the wholesale grocers charged in effect that the United States, through the Attorney General, instituted and prosecuted this suit for their benefit, and their benefit alone, and acted merely as a trustee for them, and their charge carries with it the insinuation that the farmers, fruit growers, canners, manufacturers of foodstuffs, packers, producers, and consumers were sacrificed for the selfish interests of the wholesale grocers. The interests of the people at large are diametrically opposed to those of the wholesale grocers, who dominate and direct the heads of the great middleman organizations of this country, and who make their profits by the exaction of extortionate tribute from both the producer and consumer. The said charge of the wholesale grocers also carries with it the insinuation that they used the Government of the United States and its Attorney General, and this court, to destroy their most efficient competitors. In any event, your petitioner avers that all other parties in interest that would be substantially affected by the said decree should have been afforded an opportunity to be heard before its entry. Both the Federal Trade Commission and the Department of Justice, by reference to the packers' files and records, to which they had free access, could have easily secured, and probably did secure, the names and addresses of many persons, firms, associations, organizations, and corporations, whose interests would be adversely affected by the said decree, but none of them was notified of the proposed decree nor given any opportunity to be heard against it, while the Southren Wholesale Grocers' Association, and that association alone, was called into conference, according to its declarations, as above set forth. If the said charge of the wholesale grocers means anything at all it means that the said consent decree was not based upon any consideration or adjudication of the law or the facts, but was in reality the result of an agreement forced upon the packers, which they were compelled to sign to save their business from destruction. Indeed, one of the attorneys for the wholesale grocers stated to the committee as follows: "I, under this record, would have dissolved the corporations and put them entirely out of business everywhere." The wholesale grocers in effect declare that the said agreement was in reality made between them and the packers, with the Attorney General acting in effect as the agent and trustee of the wholesale grocers, yet they admit that a contract or agreement between the grocers and the packers, embodying the provisions of this decree, would be invalid, because in restraint of interstate trade and commerce and as creating a monopoly.

Your petitioner further avers that the handling of the unrelated commodities by the packers is not in itself unlawful, and their manner of handling it was not unlawful, and the Government so admitted by the aforesaid stipulation and the provision of the said decree. Your petitioner further submits that no court has power or jurisdiction to prohibit any person, firm, corporation, or other organization from conducting any lawful business in a lawful manner, but such is the direct effect of the said decree prohibiting the packers from handling the unrelated lines. The large defendant meat packers are each separate corporations, having no relation one with the other or others, and no facts are alleged showing any combination in restraint of trade or commerce, or any monopoly. They are not organizations built up by the combination of many smaller organizations, but each corporation is complete in itself. While this court can enjoin combinations in restraint of trade or commerce, or producing a monopoly, it is without power to prohibit any of the defendants from conducting a lawful business in a lawful manner. In addition, as hereinbefore alleged, the Webb Exporter Combination Act of April 10, 1918 (42 Stat. L. 517), permits associations and combinations of individuals and corporations, for the purpose of exporting, and it allows such combinations, whether the parties thereto were or were not previously engaged in the export business, and the statute is not confined to enabling only previously existing export corporations to combine.

Your petitioner further avers that it seeks the restoration of its rights, and the protection of its property, and that it be allowed to distribute its goods through the defendant, Armour & Co., as formerly, in accordance with the terms and provisions of the aforesaid contract.

PARAGRAPH XX.

Your petitioner further avers that the said committee, after hearing the various parties in interest, made a report to the Attorney General in the words and figures following:

[Report of the interdepartmental committee on the question of a modification of the consent decree in the case of United States of America v. Swift & Co. and others, with reference to unrelated commodities.]

To the honorable the ATTORNEY GENERAL:

Your committee, consisting of Bayard T. Halner, selected by the Secretary of Agriculture at your request; Frank C. Hall, selected by the Secretary of Commerce at your request; and Herman J. Galloway, selected by you to conduct a hearing upon the question of a proposal to modify the consent decree entered by the Supreme Court of the District of Columbia on February 27, 1920, in the suit of the United States of America v. Swift & Co. and others, in equity, by removing the restrictions and prohibitions upon the defendants with reference to the manufacture, handling, and distribution of the unrelated commodities referred to in said decree, submits the following report:

The committee before entering upon the hearing gave full notice to the parties interested and to the public generally of the time, place, and the purpose of such hearing, and extended an invitation to all of those interested, including the Federal Trade Commission, to present their views if they so desired.

Pursuant to the plan for such hearing, written communications expressing the views of interested parties were received by the committee up to and including November 18, 1921. Several thousand of such communications were received. Also, pursuant to the plan for such hearing, and in accordance with the notices given, oral hearings were held by the committee beginning November 28, 1921, and concluded with a hearing on December 15, 1921, 15 days being consumed in the actual taking of testimony. At the conclusion of the testimony January 12, 1922, was fixed as the time for hearing oral arguments and for the filing of briefs. At the oral hearings 56 witnesses appeared and were heard and the stenographic transcript of this hearing covers 4,076 pages, and is submitted herewith.

Your committee has carefully examined and considered all testimony and communications received in this matter, together with the arguments and briefs, and is of the opinion that the following questions are raised for consideration:

1. Did the court have jurisdiction to render a valid decree in this matter, in view of the allegations in the answers and of the statements in the stipulations and decree that:

"* * * while the defendants, and each of them, maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered *without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree or the decree itself shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States.* [Italics ours.]

2. Did the court have jurisdiction to grant the relief awarded in this decree, as to unrelated commodities, in view of the contentions that—

(a) The bill does not allege any violation of law with reference to unrelated commodities.

(b) The relief granted is an absolute prohibition of the corporate defendants in engaging in the manufacture and distribution of unrelated lines and is not confined to a restraint of the defendants from committing unlawful acts in carrying on this business, which is not of itself an unlawful business.

(c) The relief granted is broader than either the allegations of the bill or the relief prayed for therein.

(d) The decree imposes penalties in excess of those authorized by the anti-trust laws. The remarks of Chief Justice White, at pages 77 and 78 in the decision in the case of Standard Oil Co. v. United States of America (221 U. S. 1) are urged upon the committee in support of this contention. Such remarks are as follows:

"As penalties which are not authorized by law may not be inflicted by judicial authority it follows that to meet the situation with which we are confronted the application of remedies twofold in character becomes essential: (1) To forbid the doing in the future of acts like those which we have found to have been done in the past which would be violative of the statute; (2) the exertion of such measure of relief as will effectually dissolve the combination found to exist in violation of the statute, and thus neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about.

"In applying remedies for this purpose, however, the fact must not be overlooked that injury to the public by the prevention of an undue restraint on, or the monopolization of, trade or commerce is the foundation upon which the prohibitions of the statute rest, and, moreover, that one of the fundamental purposes of the statute is to protect, not to destroy, rights of property."

3. Is the decree as to the unrelated commodities proper in view of the fact that the Federal Trade Commission, in the testimony given at the hearing, stated that they have no evidence of a monopoly by the defendants or of a combination or conspiracy among the defendants with reference to unrelated commodities, but that they justify such decree upon the ground of the menace of the potential power of the defendants to acquire such a monopoly (see pp. 2143, 2148, 2149, 2150, 2170, 2171, and 2304 of hearing before Interdepartmental committee), and in view of the further fact that the Supreme Court of the United States, in the case of *United States of America v. United States Steel Corporation and others* (251 U. S. 417), decided on the 1st day of March, 1920, after the entry of the decree in this case, at pages 450 and 451 of such decision, says:

"The Government, therefore, is reduced to the assertion that the size of the corporation, the power it may have, not the exertion of the power, is an abhorrence to the law, or as the Government says, 'the combination embodied in the corporation unduly restrains competition by its *necessary effect* [the italics is the emphasis of the Government] and therefore is unlawful, regardless of purpose.' 'A wrongful purpose,' the Government adds, is 'matter of aggravation.' The illegality is statical, purpose, or movement of any kind only its emphasis. To assent to that, to what extremes would we be led? Competition consists of business activities and ability—they make its life; but there may be fatalities in it. Are the activities to be encouraged when militant and suppressed or regulated when triumphant because of the dominance attained? To such paternalism the Government's contention, which regards power rather than its use, the determining consideration seems to conduct. Certainly conducts we may say, for it is the inevitable logic of the Government's contention that competition must not only be free, but that it must not be pressed to the ascendancy of a competitor, for in ascendancy there is the menace of monopoly.

"We have pointed out that there are several of the Government's contentions which are difficult to represent or measure, and the one we are now considering—that is, the power is 'unlawful regardless of purpose'—is another of them. It seems to us that it has for its ultimate principle and justification that strength in any producer or seller is a menace to the public interest and illegal because there is potency in it for mischief. The regression is extreme, but short of it the Government can not stop. The fallacy it conveys is manifest."

4. It is also urged that the operation of the decree with respect to unrelated commodities is a restraint of trade and commerce in such lines, and is therefore in conflict with the purpose and intent of the antitrust laws.

5. The further contention is made that the enforcement of the decree works an injury to the public generally, and especially to producers, growers, and canners of fruits and vegetables in that it deprives them of one method of distribution of their products, which method was formerly open to them and entirely eliminates the defendants as one class of competitors, leaving only one other class, namely, the wholesale grocers, to dominate the entire field of distribution.

6. It is also contended that the decree, with respect to unrelated lines, is contrary to public policy in that it prohibits and restrains the defendants from engaging in export trade of the farm products of the United States and would also hinder and prevent the defendants from participating in the organization or operation of such an export company, as is authorized by the Webb Export Trade Act.

7. Is the retention of the provisions of this decree, with reference to unrelated commodities, contrary to public policy or do such provisions longer serve any useful purpose in view of the fact that it is contended that the "packers and stockyards act, 1921," enacted by Congress since the entry of this decree, confers upon the Secretary of Agriculture full power and jurisdiction to supervise and regulate the activities of the meat packers, with reference to the unrelated commodities mentioned in the decree, as well as other matters, and thus fully protects the public interest therein.

There are several other questions of more or less importance raised and presented in the consideration of this request for a modification, which it is unnecessary to here state.

All of the questions presented by this request for a modification and at the hearing conducted thereon were strenuously opposed and ably argued by counsel for the wholesale grocers.

Your committee has come to the conclusion that such grave and far-reaching questions which affect not only the provisions of the decree with respect to unrelated commodities, but which also strike at the very foundation of the entire decree and are of such vital interest to the public generally are matters which, regardless of what position the Attorney General might assume, must be ultimately decided by the court which entered the decree before any modification could be made, and as those who most strongly oppose any modification (namely, the wholesale grocers) are now parties to this cause, by intervention, which intervention has been sustained by the court since the request for this hearing before the Attorney General was granted, it seems that the way is now open for those who urged a modification and who so earnestly contended that they have been seriously injured by this decree and have never had their day in court, to present such questions and contention in the first instance to the court for decision, without the same being in any way prejudged by the Attorney General.

Therefore your committee feels that this request by the California Cooperative Canneries Co. and others for a modification of this decree should be presented in the first instance to the court which entered this decree and not to the Attorney General.

Respectfully submitted.

BAYARD T. HAYNER,
FRANK C. HALL,
HERMAN J. GALLOWAY, *Chairman*,
Interdepartmental Committee.

JANUARY 20, 1922.

PARAGRAPH XXI.

In answer to Senate resolution 211, of February 3, 1922, the Attorney General transmitted to the Senate the following reply:

To the Senate of the United States:

In answer to the resolution of the Senate of the United States, being Senate Resolution 211, dated February 3, 1922, I beg to transmit the following:

Such resolution provides "That the Attorney General of the United States be requested to report to the Senate what steps, if any, have been taken to enforce and carry out the terms of said decree," being the decree entered by the Supreme Court of the District of Columbia on February 27, 1920, in the suit of the United States of America v. Swift & Co. and others, in Equity No. 37623, a copy of which decree is attached hereto and marked "Exhibit A." This decree, among other things, prohibits the defendants from owning capital stock or other interest in public stockyard market companies, stockyard terminal railroads, or stockyard market newspapers, and provides that within 90 days from the entry of such decree such defendants as have any such interests shall file in court a plan or plans for divestment of their interests. It is also provided that if the defendants shall not have disposed of their interests within the time so fixed by the court, and the court upon application shall determine that such defendants have been unable, despite due diligence, to dispose of the same upon reasonable terms, the court may extend the time during which such ownership may continue until the defendants dispose of those interests.

In accordance with the provisions of this decree the defendants filed in court plans for the sale of these interests, and one set of such plans consisted of an offer for the purchase of the same, but upon objection by the Government these plans were rejected by the court. The defendants have since filed other

plans, among which were plans for offering such holdings for sale to the public through designated sales agents with a fixed minimum price at which such sales might be made, but these plans, upon the objection of the Government, were likewise rejected by the court. Some small blocks of stock and some stock in small stockyard companies have been disposed of under said decree and such dispositions have been approved by the court. The Government then filed a petition urging the court to take over these holdings and appoint a trustee or receiver to dispose of them, and after argument the court in a memorandum of decision indicated that it felt the defendants should have reasonable opportunity to dispose of their own holdings, and that whether the defendants had been given such a reasonable opportunity depended upon the adequacy of the offers for such stock which had been made to such defendants; that in order to determine this the court must know the value of such holdings, and therefore the court ordered the taking of testimony to ascertain the value thereof.

The Morris group of defendants then filed a plan substantially like that adopted by the court in the case of the *United States v. The Union Pacific Railroad Co.* This plan requested two and one-half years' time for disposing of the holdings, and after objection to the same by the Government the court approved it with modifications. The plan as modified provided for one year within which the defendants were to dispose of their holdings; in the meantime the stock to be deposited with a depository and not to be voted except upon order of court, the dividends to accumulate in the hands of such depository during the life of such plan.

The Wilson group of defendants filed a plan similar to the plan of the Morris group of defendants, which was also approved by the court with some modifications.

The stockyard holdings of Cudaly group of defendants were not large, and they have disposed of considerable of their holdings, which dispositions have been reported to and approved by the court, and they are now engaged in an effort to sell the remainder of their stockyard holdings.

The Armour and Swift group of defendants filed new plans which are substantially alike and which were approved by the court. These plans granted one year within which such defendants were to dispose of their holdings. During the life of the plan the stock held by such defendants was to be deposited with a depository appointed by the court. The court also, under this plan, appointed Hon. George Sutherland, of Salt Lake City, Utah, and Hon. Henry W. Anderson, of Richmond, Va., as trustees to vote the stock coming under such plans, and gave to such trustees certain visitatorial and inquisitorial powers over the stockyards coming under these plans. The trustees, shortly after accepting their appointment, accompanied by a representative of the Department of Justice, made a trip of inspection of the yards in which they were interested and conducted public hearings at the places which they visited. The trustees then made a report to the court as to the results of such investigation, in which they reported the yards were well managed and operated and that there was no reason for a change in management. The approval by the court of these plans abrogated the prior order of the court for a valuation of such holdings.

None of the plans approved by the court have as yet expired and the extensions of time contained in such plans were allowed by the court upon a showing by the defendants that they had used due diligence in their effort to sell such interests, but they have been unable to sell the same at any reasonable price, principally because of the difficulty, if not impossibility, of disposing of such large holdings during the unsettled business conditions which have existed practically continuously since the entry of this decree.

The decree also enjoins the corporation defendants from using their distributive facilities in any manner for the purchase, sale, handling, transporting, distributing, or otherwise dealing in certain commodities commonly referred to as "unrelated" to the meat-packing industry, which commodities are enumerated in such decree and are principally wholesale grocery lines. The decree also enjoins the corporation defendants from engaging in or carrying on, either for domestic or export trade, the manufacturing, jobbing, selling, distributing, or otherwise dealing in such unrelated commodities, and their owning any capital stock in corporations engaged in manufacturing, selling, distributing, or otherwise dealing in such unrelated commodities.

The individual defendants are enjoined from owning, severally or collectively, voting stock aggregating 50 per cent or more in any corporation, or a half

interest or more in any firm or association, which corporation, firm, or association is engaged in manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in certain unrelated commodities enumerated in such decree, which enumeration omits some of the articles prohibited to the corporation defendants. The decree also provides that the defendants should at once begin to dispose of their stocks of unrelated commodities on hand and the capital stocks of corporations, or interests in firms and associations, handling, etc., such unrelated commodities which defendants are prohibited by the decree from owning, and the defendants shall continue to dispose of these goods and interests as rapidly as may be consistent with the nature of the business, but at all events should have completely disposed of the interests connected with unrelated lines within two years from the entry of the decree. The time for the complete divestment of the defendants of the prohibitive holdings with reference to unrelated lines has not yet expired. However, some holdings of defendants in some corporations dealing, etc., in such unrelated lines have been disposed of by defendants, and such dispositions have been reported to and approved by the court. The defendants, upon the entry of the decree, began a process of elimination of the stocks of merchandise of the prohibited unrelated lines, and the Department of Justice is now informally informed that some of such interests have been completely eliminated and others about so, and that when the time for complete divestment of these interests expires the Department of Justice believes it will then be its duty to require a formal showing in court as to such matters. The Armour group of defendants on February 2, 1922, made a showing by a petition to the court that due to the present financial conditions of the country they had been unable as yet to dispose of their interests in certain factories manufacturing such unrelated commodities and asked an extension of time of one year for complete divestment of their unrelated lines. The court granted to such Armour group of defendants an extension of time of six months on these matters, the Government consenting to such six months, but not a year's extension.

The Department of Justice has also been asked to request the court to modify this decree with reference to unrelated lines, all of which will be more fully discussed hereafter in this report.

The decree also prohibits the defendants from owning, operating, or conducting retail meat markets, except those conducted by defendants at their several plants for the accommodation of their employees. The decree provides that the defendants shall within nine months completely divest themselves of such prohibited interests in retail meat markets. After an investigation the Department of Justice has secured no information showing that defendants now own, operate, or conduct any retail meat markets except those which they are permitted to maintain under this decree, and the department is advised that the defendants do not now own, operate, or conduct any such retail meat markets. Therefore no activity upon the part of the Department of Justice has as yet been necessary in carrying out this portion of the decree. The department expects to continue its effort to learn of any such holdings.

The decree also enjoins the defendants from owning any interest whatsoever in public cold-storage warehouses now maintained by these defendants at stockyards where they maintain packing plants and may own, maintain, or lease cold-storage facilities required for storage of commodities in which they may be interested. The decree also requires defendants within nine months to dispose of the prohibited interests in public cold-storage warehouses. The information now in the hands of the Department of Justice resulting from careful investigation shows that only very small interests of defendants in public cold-storage warehouses are affected by this decree. Some of these interests consisted of such warehouses operated by defendants upon leased properties the leases of which have been terminated since the entry of this decree and the operation of such warehouses abandoned by the defendants.

The decree also enjoins the corporation defendants from engaging in the business of buying, collecting, selling, distributing, or otherwise dealing in fresh milk and cream and enjoins the defendants from owning any interest in any corporation, firm, or association engaged in such business. It is provided, however, that these injunctions shall not prevent such activities upon the part of the defendants in connection with their manufacture of condensed, evaporated, or powdered milk, oleomargarine, butter substitute, butter, ice cream, cheese, or buttermilk. The Department of Justice at this time, after investigation, has no information causing it to believe that these provisions of the decree are being violated, and is advised that the corporation defendants

are not so dealing in fresh milk and cream, and therefore no action by the department has as yet been necessary in the enforcement of such provisions.

The provisions of the decree with reference to public stockyards, stockyard terminal railroads, and stockyard market newspapers, were by the terms of the decree itself the first provisions requiring action and for this reason the efforts of the Department of Justice in the enforcement of this decree were at first centered largely upon these matters. Because of the difficulties encountered in disposing of these holdings and the importance to the public generally of the questions involved very careful consideration and study has been given to such matters.

The Senate resolution also requests the Attorney General to report to the Senate "what modification, if any, has been proposed to him or is being considered by him with a view to his applying to the court for the adoption thereof."

Sometime ago, the California Cooperative Canneries Co., a cooperative company, owning fruit canneries the stockholders of which are fruit farmers and growers, represented to the Department of Justice that they had been selling their products (canned fruits), under a contract to, and thus using the distributing system of one of the defendant companies, namely, Armour & Co. They also contended that this decree deprived them of this outlet for their goods, decreased competition in the distribution of them and they raised many other questions as to such decree. They requested the Attorney General to petition the court for a modification of this decree so as to remove the injunctions, prohibitions, and orders in such decree relating to unrelated lines. Should the court modify this decree as requested by these applicants it would mean the elimination of the injunctions, prohibitions, and orders contained in paragraphs third, fourth, fifth, and twelfth of said decree, and those contained in the following part of paragraph eight of said decree, to wit, "not specifically mentioned and described in paragraph fourth hereof"; those contained in the following part of paragraph fourteenth of said decree, to wit, "*Provided, however,* That nothing in this paragraph contained shall limit the effect of the injunction contained in paragraphs fourth and fifth of this decree"; those contained in the following part of paragraph sixteenth of said decree, to wit, "or corporation, firm, or association manufacturing, jobbing, selling, distributing, transporting (except as common carriers), or otherwise dealing in any of the commodities mentioned and described in paragraph fourth and fifth of this decree"; and those contained in the following part of paragraph seventeenth of said decree, to wit, "or incorporations, firms, or associations manufacturing, jobbing, selling, transporting, except as common carriers, distributing or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree."

Following such request by the California Cooperative Canneries Co., several other interests, including canners, manufacturers, some agricultural organizations and individual farmers, requested that the decree be so modified. At no time have the defendants or any of them, or anyone claiming to represent the defendants or any of them, either moved in court or requested the Attorney General to move in court for a modification of such decree with reference to unrelated commodities. The Attorney General was considering the request for a modification of this decree when the representatives of the Southern Wholesale Grocers' Association and of the National Wholesale Grocers' Association requested to be heard by the Department of Justice upon this matter. Such hearing was granted before assistants of the Attorney General, at which time counsel for each association appeared and stated their contentions and requested a further hearing at which such associations might produce witnesses to substantiate their contentions. They were informed by those conducting the hearing that the Attorney General was then out of the city and upon his return in a few days their request would be presented to him for his action. The next day following such hearing, without the knowledge of or notice to the Department of Justice or any of its representatives, the Southern Wholesale Grocers' Association filed in court a petition for intervention and procured the entry of an order allowing such intervention. Upon learning of this action the Government moved to set aside and vacate such order and to strike out the intervention. After argument, the court rendered its opinion upon this question in a memorandum of decision, which is as follows:

* * * * *

Without deciding that petitioners have an undeniable legal right to intervene, it is considered that upon the facts alleged in their petition it is fair and just

that they should be allowed to intervene, not to take control of the plaintiff's side of the proceedings, but for the limited purpose stated in their petition, namely, to be heard in opposition to any modification of the decree that would deprive them of the protection now secured by it, for the following reasons, when taken together:

1. The decree was, in part, at least, the fruit of their own efforts.
2. They abandoned the pursuit of other remedies in reliance upon this decree.
3. The protection afforded them by this decree might have been secured in a proceeding in their own name and behalf.
4. The change suggested would leave them in an embarrassed position in now seeking to secure the same protection.
5. The decree ought not to be modified unless the court is convinced that the public interest requires it; and the petitioners fairly represent a large and well-defined portion of the public, whose position will enable them, and whose interest will prompt them, to present to the court facts or reasons which, among others, the court ought to hear and consider before allowing the decree to be changed.

This decision must not be understood as opening the door to all would-be intervenors who may consider themselves interested in the decree or any change therein, but as strictly limited to the facts alleged in this petition, which are in law admitted by the motion to strike out. * * *

Following this decision, the court allowed a similar intervention by the National Wholesale Grocers' Association.

Prior to this decision by the court the Attorney General determined to allow the hearings so requested by such wholesale grocers; and as the Department of Agriculture and the Department of Commerce are both vitally interested and greatly concerned with the economic questions which this request presented, the Attorney General sought the cooperation and assistance of the Secretary of Agriculture and the Secretary of Commerce in determining this matter, and upon his request the Secretaries of Agriculture and Commerce, respectively, each appointed a representative to participate with the representative appointed by the Attorney General in this hearing. In pursuance of the plan for such hearing, the Attorney General caused to be sent to each person, firm, or corporation which had communicated with him, or whose communications to others had been referred to him, a letter of which the following is a copy:

DEPARTMENT OF JUSTICE,
Washington, October 12, 1921.

DEAR SIR: I am directed by the Attorney General to acknowledge for him the receipt of your communication of recent date expressing your views concerning any modification of the consent decree in the case of *United States v. Swift & Co.* and others, being the so-called "packers case."

Of course, any modification of this decree would have to be made by the court which entered the same, and could not be made by the Attorney General or the Department of Justice.

A request has been made to the Attorney General by interests other than the packers, the more important of such interests being growers and canners of fruits and vegetables, that he favor and urge a modification of this decree so as to permit the packers to handle unrelated lines, especially wholesale grocery lines. The Attorney General is considering this request, and in order to enable him to come to a proper conclusion upon the same he has arranged for a committee, consisting of Hon. B. T. Hainer, selected by the Secretary of Agriculture; F. C. Hall, selected by the Secretary of Commerce; and the writer, selected by the Attorney General, to hear the contentions of both those opposing such a modification. After the hearing this committee will render a report, accompanied by the record of such hearing, to the Attorney General, who will then decide what his position will be upon this request.

The committee will receive written statements from anyone—including firms, associations, corporations, etc.—who may wish to present the same, setting out their views as to such a modification, together with the reasons therefor. These statements should be mailed to the Attorney General, Washington, D. C., on or before November 18, 1921.

Beginning November 28, 1921, and continuing so long thereafter as the committee may think necessary, the committee will hear, at the office of the Department of Justice at Washington, D. C., anyone who wishes to present orally their views upon this matter. Those desiring to appear personally and present orally their views should advise the Attorney General of such desire before November

18, 1921, as an effort will be made by the committee to notify them of a definite time when they may be heard.

All matters presented, whether orally or in writing, will be given the most careful consideration.

Very truly yours,

HERMAN J. GALLOWAY,
Special Assistant to the Attorney General.

The progress of such hearing and the conclusions of the committee are shown by the report which was rendered by the committee on January 20, 1922, a copy of which is attached hereto and marked "Exhibit B." This report was on such date presented to the Attorney General and copies thereof immediately furnished to the Secretary of Agriculture and the Secretary of Commerce; and after careful consideration of the same by the Secretary and the Attorney General and after several conferences with them upon this matter, on February 7, 1922, in agreement and in accord with the views of the Secretaries, the Attorney General approved such report and issued the following official statement thereon:

"On the question of a modification of the consent decree in the case of *United States of America v. Swift & Co. and others*, with reference to unrelated commodities, I have come to the conclusion that such grave and far-reaching questions which affect not only the provisions of the decree with respect to unrelated commodities but which also strike at the very foundation of the entire decree and are of such vital interest to the public generally as matters which, regardless of what position the Department of Justice might assume, must be ultimately decided by the court which entered the decree before any modification could be made; and as those who most strongly oppose any modification (namely, the wholesale grocers) are now parties to this cause by intervention, which intervention has been sustained by the court since the request for this hearing before the Attorney General was granted, it seems that the way is now open for those who urged a modification and who so earnestly contended that they had been seriously injured by this decree and have never had their day in court, to present such questions and contentions in the first instance to the court for decision without the same being in any way prejudged by the Attorney General.

"Therefore I feel that this request by the California Cooperative Canneries Co. and others for a modification of this decree should be presented in the first instance to the court which entered this decree and not to the Attorney General."

* * * * *

PARAGRAPH XXII.

Your petitioner further avers that for the reasons specifically set forth in the aforesaid report of the said interdepartmental committee and for the other reasons in this petition set forth, the said consent decree of February 27, 1920, should be entirely vacated, or it should be radically modified so as to permit the use of the packers' distributing facilities in the marketing of the unrelated commodities, either by allowing the packers to engage in dealing in such commodities as before the said decree was entered or by allowing them to handle such commodities upon a commission basis or in some other efficient way.

PARAGRAPH XXIII.

Your petitioner is advised that the wholesale grocers will deny its right to be heard by this court on the question of vacating or modifying the said decree, although they vigorously insist on their right to be heard in this suit for the protection of their alleged special interest, which is in reality the protection of the monopoly effected for them by the said decree; but your petitioner avers that it has a much more special and legitimate interest in this litigation than the wholesale grocers and has much more right to intervention than they have; and as they have been allowed to intervene for the purpose of being heard in opposition to the vacation or modification of the said decree, your petitioner is entitled to intervene for the purpose of being heard in favor of the vacation or modification of the said decree, and particularly so because neither the plaintiff nor the defendants are willing to take any affirmative action in disturbing the said decree.

PARAGRAPH XXIV.

When the court was considering the question whether the Southern Wholesale Grocers' Association, the National Wholesale Grocers' Association, and others, should be allowed to intervene in this suit, at the close of the oral arguments of counsel, the court stated as follows:

"I should like to have counsel on both sides consider carefully whether the intervention, if granted, would have any effect upon the consent decree. The suggestion has been made that it would.

"Counsel will remember that the defendants never admitted any fact alleged in the bill, but, on the contrary, denied the existence of any facts that would entitle the Government to a decree. They consented to a decree, and the court proceeded upon the theory that the jurisdiction of the court was determinable by the strength of the allegations in the bill.

"Counsel must not forget, however, that this decree may be somewhat technical, in the fact that the court never found any fact upon evidence and rendered a decree merely by consent of defendants, upon the strength of unproved allegations. If this intervening petition, or the petitions of other interveners, or adopting the allegations in the original bill, undertake to prove those matters of fact as facts, it may be that the defendants would then have a right to withdraw their consent and go into the trial of the questions of fact."

Your petitioner avers that the foregoing ruling of this court is in effect a judicial suggestion that it may not have been within the power of this court, in the state of the mandatory record presented, to pass the said decree, and that it may not withstand an attack on its validity or the correctness of its provisions.

PRAYERS.

The premises considered, your petitioner respectfully prays as follows:

1. That after due notice to all of the parties and interveners herein, and after an opportunity afforded them to be heard in the premises, an order may be made permitting your petitioner to intervene herein for the purposes set forth in this petition.

2. That your petitioner may also be heard herein as *amicus curiae*.

3. That the said consent decree of February 27, 1920, may be vacated in its entirety, or that it may be so modified as to allow the defendants to resume their dealing in the so-called unrelated commodities, as before the entry of the said decree, or to allow them to use their distribution facilities for the purpose of moving the same, either upon a commission basis or upon some other efficient basis.

4. That your petitioner may have such other and further relief in the premises as the court may deem just and proper.

And, as in duty bound, your petitioner will ever pray, etc.

CALIFORNIA COOPERATIVE CANNERIES.
By FRANK J. HOGAN, Attorney.

Frank J. Hogan, being first duly sworn, deposes and says that he is the attorney of the California Cooperative Canneries, the petitioner named in the foregoing petition by it by him subscribed, and that he is duly authorized to sign the said petition and to make this affidavit; that on information and belief derived from one of the principal officers of the said petitioner and from other persons and other sources affiant says that the matters and things set forth in the said petition are true, as he verily believes.

FRANK J. HOGAN.

Subscribed and sworn to before me this 17th day of April, 1922.

[SEAL.]

MARIE McDONALD, Notary Public, D. C.

**HEARING BEFORE INTERDEPARTMENTAL COMMITTEE ON THE
QUESTION OF MODIFICATION OF CONSENT DECREE IN THE CASE
OF THE UNITED STATES v. SWIFT & CO. ET AL., WITH REFER-
ENCE TO UNRELATED COMMODITIES.**

MEMBERS OF INTERDEPARTMENTAL COMMITTEE.

Hon. Herman J. Galloway, representing Department of Justice.
Judge Bayard T. Hainer, representing Department of Agriculture.
Hon. Frank C. Hall, representing Department of Commerce.

MONDAY, NOVEMBER 28, 1921.

The committee met in Room 704, Department of Commerce, at 10 o'clock a. m.
Hon. Herman J. Galloway (chairman) presiding.

The CHAIRMAN. The committee will come to order. Gentlemen, this hearing has been brought about largely, and in fact I think wholly, by the circumstance and facts which are set forth in a letter which has been sent to all who have communicated with the Department of Justice on the subject. I feel that you should read the letter in order that the subject may be clearly before you, and the letter will be made a part of the stenographic transcript:

**DEPARTMENT OF JUSTICE,
Washington, D. C., October 12, 1921.**

DEAR SIR: I am directed by the Attorney General to acknowledge for him the receipt of your communication of recent date, expressing your views concerning any modification of the consent decree in the case of United States v. Swift & Co. and others, being the so-called "packers case."

Of course, any modification of this decree would have to be made by the court which entered the same, and could not be made by the Attorney General or the Department of Justice.

A request has been made to the Attorney General by interests other than the packers, the more important of such interests being growers and canners of fruits and vegetables, that he favor and urge a modification of this decree so as to permit the packers to handle unrelated lines, especially wholesale grocery lines. The Attorney General is considering this request, and in order to enable him to come to a proper conclusion upon the same he has arranged for a committee, consisting of Hon. B. T. Hainer, selected by the Secretary of Agriculture; F. C. Hall, selected by the Secretary of Commerce; and the writer, selected by the Attorney General, to hear the contentions of those in favor of and those opposing such a modification. After the hearing this committee will render a report, accompanied by the record of such hearing, to the Attorney General, who will then decide what his position will be upon this request.

The committee will receive written statements from anyone (including firms, associations, corporations, etc.) who may wish to present the same, setting out their views as to such a modification, together with the reasons therefor. These statements should be mailed to the Attorney General, Washington, D. C., on or before November 18, 1921.

Beginning November 28, 1921, and continuing so long thereafter as the committee may think necessary, the committee will hear, at the office of the Department of Justice at Washington, D. C., anyone who wishes to present orally their views upon this matter. Those desiring to appear personally and present orally their views should advise the Attorney General of such desire before November 18, 1921, as an effort will be made by the committee to notify them of a definite time when they may be heard.

All matters presented, whether orally or in writing, will be given the most careful consideration.

Very truly yours,

**HERMAN J. GALLOWAY,
Special Assistant to the Attorney General.**

The arrangement that those desiring to appear orally should make such request before November 18, 1921, was purely for the purpose of trying to accommodate the convenience of persons so desiring to appear. If there are any persons present now who have not given such notice and who desire to appear and be heard orally, I mean any persons who have not communicated with the Attorney General and for whom no time has as yet been fixed, if they will please rise and give their names we will make every effort to fix a time as soon as possible at which they may be heard. Or if there are any representatives of any organizations who wish to be heard they will do the same thing.

Mr. RICHARDSON. Mr. Chairman and gentlemen of the committee. It has been suggested that the story would be presented in the proper order if your record would begin with the petition upon which you are acting and that petition be followed by the consent decree.

The CHAIRMAN. Mr. Richardson, I will in a few moments submit for the record a copy of the printed decree, and will ask that the official reporter not copy same, of course, as we have an abundance of them printed and they are available for distribution to anyone who may make request.

I submit now the printed pamphlet containing the petition, answers, stipulations, and decree in this case.

Mr. S. FORD, of the National Wholesale Grocers' Association. Will that be made a part of the stenographic record of the proceedings?

The CHAIRMAN. It will not be copied into the record, as we have an abundance of them which may be obtained by any who will inquire.

Mr. FORD. I thought it would perhaps be better if it were contained in the stenographic record.

Mr. BREED, of Breed, Abbott & Morgan, representing National Wholesale Grocers' Association. May I ask that the decree be copied into the stenographic record so that anyone who wishes the information may have it available in the record?

The CHAIRMAN. The official reporter may copy the decree into the record which he furnishes to those who may so desire. However, the interdepartmental committee does not care to have it copied into the record to be furnished the Government, as we have an abundance of the pamphlet.

Mr. BREED. If that is your ruling with reference to the decree, I would like to suggest that the petition ought to precede it in the stenographic record.

The CHAIRMAN. Anyone wishing a copy of the petition may secure same likewise from the official reporter.

Hon. HOKE SMITH, representing the Southern Wholesale Grocers' Association. It occurs to me that it would be very helpful to those who feel that the decree should not be modified to have read into the record the petition which caused the first movement in this matter.

The CHAIRMAN. Senator Smith, if you will pardon me, I was going to make a little statement which I think will cover that point.

Mr. SMITH. Let me add one word more and I will not take up your time further. While we have quite a large number of witnesses who are ready to show cause why the consent decree should not be modified, yet if it were practicable to first let those who desire modification to present their reasons it would probably eliminate a great deal that might otherwise be presented in opposition to modification. If we heard the case of those who seek modification, we would then have an opportunity to avoid perhaps presenting much that we would otherwise present against modification. As proponents usually carry the burden to make out their case we would be very glad, if it is practicable, to let them finish their case, at least that is the thought of those with whom I have been associated are concerned, before we undertake to present a reply. I just wanted to make that suggestion to the committee.

The CHAIRMAN. I wish to state that it is not practicable at this time for all those favoring modification to appear prior to those who are opposed to modification. We have endeavored in fixing time to meet the convenience of those requesting permission to appear. However, we have arranged for Mr. Vernon Campbell to appear here first, and he will no doubt set out in full the contentions of those favoring modification. We have also arranged immediately following Mr. Campbell to hear Mr. Preston McKinney and Mr. Elmer Chase, representing the Cannerymen's League of California, who have expressed a desire

to appear on this day in order that they may get away as soon as possible. So you see our time is arranged.

Mr. Smith. Could not you indicate to us who in favor of modification have asked to be heard at a later time?

The CHAIRMAN. That would not be possible at this time, Senator.

I will state, gentlemen, that the request for a modification of this decree originated about May, 1920. No one claiming or pretending to represent any of the defendant packing companies made any such request for modification. The request was first made by Mr. Vernon Campbell, of the California Cooperative Canneries. However, since that time many producers and growers from all over the United States have made similar requests, and we have in our files at this time letters from them indicating their desire in that respect.

The extreme limits of the request for modification are the entire elimination of all prohibitions and injunctions and orders with respect to the commodities unrelated to the meat-packing business, which are mentioned in paragraphs 4 and 5 of the decree.

This would leave the provisions with reference to the packing industry, stockyards, stockyard terminal railways, stockyard market newspapers, etc., intact and undisturbed.

The question which we are considering at this time is such modification with reference to unrelated commodities to permit the packers to handle same, right or wrong. Is it for or is it against the public interest? And we earnestly desire all persons who have any facts or information concerning this matter and that will be helpful in coming to a proper conclusion to present the same before the committee.

As stated in the letter, when this hearing is completed we will render a report to the Attorney General, accompanied by the record in the case, and then he will endeavor to arrive at a conclusion as to whether he should ask for any modification, or in event that any such modification is asked for by anyone else, whether he should favor or oppose it.

No one during this proceeding but the committee will be permitted to interrogate any witness appearing here. If anyone else desires to suggest any questions to be asked, such suggestion may be made to the committee, and if the committee feels that the information sought by the question or questions will be helpful in arriving at a proper conclusion, we will ask such question or questions of the witness.

No legal arguments will be heard during the hearing of witnesses. However, if interests or persons represented by counsel here desire to argue questions of law or a summary of the facts as they are presented here, and they will so indicate their desire, a time will be fixed, after the close of this hearing, for such argument, and such time will be limited. In addition, it is requested that those who may see fit to make an argument, will present to the committee for the record a brief stating their views and contentions with respect to the same.

In response to the request made by Mr. Breed, there may be copied into the record at this point the petition and consent decree.

(The petition and consent decree in the case of *United States v. Swift & Co., et al.*, is here copied in full in the record, as follows:)

PETITION.

In the Supreme Court of the District of Columbia. United States of America, petitioner, *v. Swift & Co., Armour & Co., Morris & Co., Wilson & Co. (Inc.), and the Cudahy Packing Co., et al.*, defendants. In equity, No. 37623.

To the honorable judges of the Supreme Court of the District of Columbia, sitting in equity:

The United States of America, by John E. Laskey, its attorney for said district, and by Isidor J. Kresel, John H. Atwood, and Joseph Sapinsky, special assistants to the Attorney General, they being severally authorized to act in said capacities by proper lawful authority, acting under the direction of the Attorney General of the United States, brings this proceeding in equity against *Swift & Co.*, a corporation organized under the laws of the State of Illinois; *Armour & Co.*, a corporation organized under the laws of the State of Illinois; *Morris & Co.*, a corporation organized under the laws of the State of Maine; *Wilson & Co. (Inc.)*, a corporation organized under the laws of the State of

New York; the Cudahy Packing Co., a corporation organized under the laws of the State of Maine (these corporations are hereinafter referred to as the parent companies), and the following-named corporations and individuals, to wit:

ARMOUR DEFENDANTS.

Corporations.—Armour & Co., a corporation organized and existing under the laws of the State of New Jersey; Armour & Co., a corporation organized and existing under the laws of the State of Kentucky; Armour & Co., a corporation organized and existing under the laws of the State of Texas; Armour & Co. (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; The Anglo American Provision Co., a corporation organized and existing under the laws of the State of Illinois; The Colorado Packing and Provision Co., a corporation organized and existing under the laws of the State of Colorado; Fowler Packing Co., a corporation organized and existing under the laws of the State of Maine; Hammond Packing Co., a corporation organized and existing under the laws of the State of Illinois; The New York Butchers Dressed Meat Co., a corporation organized and existing under the laws of the State of New York; Atlantic Hotel Supply Co. (Inc.), a corporation organized and existing under the laws of the State of New York.

SWIFT DEFENDANTS.

Corporations.—Swift & Co., a corporation organized and existing under the laws of the State of West Virginia; Swift & Co. (Inc.), a corporation organized and existing under the laws of the State of Kentucky; Swift & Co. (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; Swift & Co., a corporation organized and existing under the laws of the State of Maine; Swift Beef Co., a corporation organized and existing under the laws of the State of Maine; United Dressed Beef Co., of New York, a corporation organized and existing under the laws of the State of New York; J. J. Harrington & Co. (Inc.), a corporation organized and existing under the laws of the State of New York; Bimble Co., a corporation organized and existing under the laws of the State of New Jersey; The G. H. Hammond Co., a corporation organized and existing under the laws of the State of Michigan; Omaha Packing Co., a corporation organized and existing under the laws of the State of Kentucky; Plankinton Packing Co., a corporation organized and existing under the laws of the State of Wisconsin; Sturtevant & Haley Beef & Supply Co., a corporation organized and existing under the laws of the State of Massachusetts; E. K. Pond Packing Co., a corporation organized and existing under the laws of the State of Illinois; Van Wagenen & Shickhaus Co., a corporation organized and existing under the laws of the State of New Jersey; Western Packing Co., a corporation organized and existing under the laws of the State of Colorado; Hammond Beef Co., a corporation organized and existing under the laws of the State of Michigan; Omaha Meat Co., a corporation organized and existing under the laws of the State of California; A. Canfield Commission Co., a corporation organized and existing under the laws of the State of New Jersey.

H. C. Derby Co., a corporation organized and existing under the laws of the State of New York; Metropolitan Hotel Supply Co., a corporation organized and existing under the laws of the State of Maine; Vermont Supply Co., a corporation organized and existing under the laws of the State of Massachusetts; The Hotchkiss Beef Co., a corporation organized and existing under the laws of the State of New York; F. & C. Crittenden Co., a corporation organized and existing under the laws of the State of New York; George Nye Co., a corporation organized and existing under the laws of the State of Massachusetts; H. L. Handy Co., a corporation organized and existing under the laws of the State of Massachusetts; Swift Coates Co., a corporation organized and existing under the laws of the State of Massachusetts; New England Dressed Meat & Wool Co., a corporation organized and existing under the laws of the State of Maine; North Packing & Provision Co., a corporation organized and existing under the laws of the State of Maine; The Sperry & Barnes Co., a corporation organized and existing under the laws of the State of Connecticut; John P. Squire & Co., a corporation organized and existing under the laws of the State of Maine; John P. Squire & Co. (Inc.), a corporation organized and existing under the laws

of the State of Massachusetts; John P. Squire & Co. (Inc.), a corporation organized and existing under the laws of the State of Rhode Island; Springfield Provision Co., a corporation organized and existing under the laws of the State of New Hampshire; White, Pevey & Dexter Co., a corporation organized and existing under the laws of the State of Maine.

MORRIS DEFENDANTS.

Corporations.—Morris Packing Co., a corporation organized and existing under the laws of the State of Maine; Morris & Co., a corporation organized and existing under the laws of the State of New Jersey; Morris & Co., a corporation organized and existing under the laws of the State of Louisiana; Morris & Co., of Pennsylvania, a corporation organized and existing under the laws of the State of Pennsylvania; Joseph Stern & Sons (Inc.), a corporation organized and existing under the laws of the State of New York; Brooklyn Beef & Provision Co., a corporation organized and existing under the laws of the State of New York; Condit Beef & Provision Co., a corporation organized and existing under the laws of the State of New Jersey; Corwin, Wilde Co., a corporation organized and existing under the laws of the State of Massachusetts; Donnelly & Co. (Inc.), a corporation organized and existing under the laws of the State of Massachusetts; National Hotel Supply Co., a corporation organized and existing under the laws of the State of Illinois; Chamberlain & Co. (Inc.), a corporation organized and existing under the laws of the State of Massachusetts; J. M. Wilson Co., a corporation organized and existing under the laws of the State of Massachusetts; Middletown Beef & Provision Co., a corporation organized and existing under the laws of the State of Massachusetts; Glenn & Anderson Co., a corporation organized and existing under the laws of the State of Illinois.

WILSON DEFENDANTS.

Corporations.—Wilson & Co., a corporation organized and existing under the laws of the State of New Jersey; Wilson & Co. (Inc.), a corporation organized and existing under the laws of the State of Nevada; Wilson & Co. (Inc.) of Louisiana, a corporation organized and existing under the laws of the State of Louisiana; Wilson & Co. (Inc.) of Oklahoma, a corporation organized and existing under the laws of the State of Oklahoma; South Dakota Provision Co., a corporation organized and existing under the laws of the State of South Dakota; Gotham Hotel Supply Co. (Inc.), a corporation organized and existing under the laws of the State of New York; Standard Beef Co., a corporation organized and existing under the laws of the State of New York; Stiefel-O'Mara Co. (Inc.), a corporation organized and existing under the laws of the State of New York; Drexel Packing Co., a corporation organized and existing under the laws of the State of Illinois; Albert Lea Packing Co. (Inc.), a corporation organized and existing under the laws of the State of Virginia; Mississippi Packing Co. (Inc.), a corporation organized and existing under the laws of the State of Virginia; Morton-Gregson Co., a corporation organized and existing under the laws of the State of Delaware; Paul O. Reymann Co., a corporation organized and existing under the laws of the State of West Virginia; Standard Provision Co., a corporation organized and existing under the laws of the State of New Jersey; Central Products Corporation, a corporation organized and existing under the laws of the State of Virginia.

CUDAHY DEFENDANTS.

Corporations.—Cudahy Packing Co. of Nebraska, a corporation organized and existing under the laws of the State of Nebraska; Cudahy Packing Co. of Alabama, a corporation organized and existing under the laws of the State of Alabama; Cudahy Packing Co. of Louisiana (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; Nagle Packing Co., a corporation organized and existing under the laws of the State of New Jersey.

OTHER DEFENDANTS.

Corporations.—Western Meat Co., a corporation organized and existing under the laws of the State of California; Oakland Meat & Packing Co., a corporation organized and existing under the laws of the State of California; Nevada Pack-

ing Co., a corporation organized and existing under the laws of the State of Nevada.

These corporations are hereinafter referred to as the subsidiaries' defendants.

ARMOUR DEFENDANTS.

Individuals.—J. Ogden Armour, Charles W. Armour, A. Watson Armour, Laurence H. Armour, Arthur Meeker, Robert J. Dunham, F. Edson White, George M. Willetts, Frederick W. Croll, George B. Robbins.

SWIFT DEFENDANTS.

Individuals.—Louis F. Swift, Edward F. Swift, Charles H. Swift, Gustavus F. Swift, jr., Harold H. Swift, Alden B. Swift, George H. Swift, Laurence A. Carton, Frank S. Hayward, Charles A. Peacock, Wilfred W. Sherman, Wellington Leavitt, John M. Chaplin, William B. Traynor.

MORRIS DEFENDANTS.

Individuals.—Edward Morris, Nelson Morris, Louis H. Heymann, Charles M. Macfarlane, Harry A. Timmins.

WILSON DEFENDANTS.

Individuals.—Thomas E. Wilson, Arthur Lowenstein, Jacob Moog, Vonce De Leon Skipworth, Arthur L. Smith, James A. Hamilton, George D. Hopkins, Adolph E. Peterson, George H. Cowan, William C. Buethe, Carl F. Burrell, James C. Good.

CUDAHY DEFENDANTS.

Individuals.—Edward A. Cudahy, sr., Edward A. Cudahy, jr., Guy C. Shephard, John E. Wagner, Andrew A. Anderson, Emil A. Strauss, Frank E. Wilhelm, George Marples.

OTHER DEFENDANTS.

Individuals.—Fred L. Washburn. These defendants are hereinafter referred to as the individual defendants.

COURT'S JURISDICTION.

The parent companies, either directly or through subsidiaries, are engaged in interstate and foreign commerce in (a) the purchase and slaughter of live stock, (b) the preparation and manufacture of dressed meats and edible by-products of the slaughter, (c) the curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animal, (d) the production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used, (e) the manufacture, canning, or otherwise preparing for the market, sale, and distribution of food supplies other than meats (these are hereafter referred to as substitutes for meat foods), (f) the manufacture and sale of various other articles commonly purchased and used either by the producer of live stock, the companies transporting the live stock or dressed meats, or the competitors of the parent companies (these are hereinafter referred to as unrelated commodities).

By the unlawful means and methods hereinafter set out and complained of, the parent companies and the subsidiaries, defendants, acting by and through their principal officers, who have been made defendants herein, have attempted to dominate, control, and monopolize a very great production of the food supply of the Nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities herein referred to, and which are necessary to the life, health, and welfare of the people of the United States. And by the same or similar methods the said parent companies and the subsidiaries defendants are attempting to increase and extend said monopoly, and are enabled thereby and do artificially control the supply and the price of the food supplies of the Nation.

The Government in instituting this proceeding invokes the general equity powers of this court in addition to the authority conferred upon it and contained in the act of Congress dated July 2, 1890, and entitled "An act to protect trade and commerce against unlawful restraints and monopolies, said act being commonly known as the Sherman antitrust law, and further conferred and contained in acts amendatory thereof and supplemental or additional thereto, and particularly the act known as the Clayton Antitrust Act, dated October 15, 1914, being entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which said acts by special provisions give to this court jurisdiction in all such matters as are set out in the following petition.

OBJECT TO BE ATTAINED.

This petition is filed, and these proceedings are instituted to put an end to any and all monopolies which the defendants may have created or obtained in the interstate trade or commerce of live stock, meat products, and substitute foods, and to prevent the continuance of unlawful monopolies by the defendants in the aforesaid trade or commerce in the products and commodities so described, and to deprive said defendants of certain instrumentalities, facilities, and advantages by which they have been enabled heretofore to more effectively perfect their attempts to monopolize; to compel the defendants to desist from dealing in certain of the substitute foods, and certain of the unrelated commodities; to limit in the manner hereinafter set forth the interests which the individual defendants may have in corporations handling certain substitute foods and unrelated commodities; and to dissolve any and all contracts, combinations, and conspiracies in restraint of trade or commerce between the several States, which contracts, combinations, or conspiracies are more fully hereinafter described, and to prevent said defendants from maintaining said contracts, combinations, or conspiracies with each other, or from entering into further contracts, combinations, or conspiracies with each other or with other persons.

THE NATURE OF THE BUSINESS AND METHOD BY WHICH IT IS CONDUCTED.

The principal business of each of the parent companies, conducted by each company directly or through its subsidiaries, is the slaughter of live stock, consisting of cattle, hogs, sheep, and calves, the dressing of the carcasses, and the distribution of the dressed meat in interstate commerce through various means by which the dressed meat reaches the retail butchers and is by the retail butchers sold to the consumers.

Each of these concerns is the successor or natural outgrowth of concerns of many years' standing. In their inception these concerns devoted themselves exclusively to the slaughter of live stock, the dressing of the carcass, and the sale of the dressed meat to retail butchers or consumers. The invention of what are known as route cars and refrigerator cars, by means of which the dressed meats might be hauled long distances and preserved for a considerable length of time, free from decay, enabled the parent companies to widely extend their market so as to make it nation wide, and further enabled them to slaughter the live stock near the source of supply.

As the demand for live stock grew in volume the institution known as the stockyard was evolved.

THE STOCKYARDS.

The stockyard was and is in theory a public market place to which all who wish to either buy or sell may have free access and right to trade. The stockyards afford to the cattle raiser the opportunity to dispose of his live stock for an immediate cash price. Contiguous to such stockyards commission men, dealing exclusively in the sale of live stock, locate themselves. These commission men attend to the care of the live stock upon its arrival, effect the sale of the stock so consigned, attend to its weighing, collect the proceeds of the sale, and remit to the consignor after deducting customary commission.

Stockyards render certain services to the shipper, for which they make charges, to wit, yardage (furnishing the facilities and performing the services of placing and keeping the animals in pens and watering them), feeding, and selling food, weighing, dipping, bedding cars, and often loading and reloading.

The yardage charges are ordinarily based upon an arbitrary price per head for each kind of stock, but in some instances they are based upon the hundred-weight. The charge for feed is fixed by the stockyards and includes the services rendered in feeding. The amount of the charges made or to be made for the other items of services or materials furnished is also fixed by the stockyards or those who are in control of the yards.

In connection with each stockyard there is need for certain facilities and conveniences for the benefit of either the shipper or the buyer of the live stock. The stockyards by reason of its dominating position control these conveniences and facilities.

CONVENIENCES AND FACILITIES CONTROLLED BY STOCKYARDS.

Packing-house sites.—In furtherance of the tendency to centralize the market it became of advantage to establish the slaughterhouses and packing plants either in or immediately adjacent to the stockyards. The stockyard companies generally own or control all the available land within the yards, and at most of the important yards the land surrounding the yards is owned by companies controlled by the stockyard company or its principal stockholders. New packing companies, as a rule, can secure desirable packing sites only from the stockyard companies or from these land-development companies. The owners of stockyard companies are therefore in a position to determine what packing companies and how many plants shall be established at the yards.

SITES FOR STOCKYARD BANKS AND CATTLE LOAN COMPANIES.

The cattle raiser is in many instances dependent upon banks or loan companies to finance him in the rearing of his live stock, and until such times as the stock shall have been sold. From the nature of the business it is a great advantage to these banks to locate in or near stockyards. It therefore lies within the power of the owner of the stockyard companies to designate how many and which banks or loan companies may establish themselves at the yards.

RENDERING PLANTS.

While in transit or after reaching the yards live stock often die either from disease or accident. The stockyard companies, by virtue of their agreement with the commission men, are permitted to determine who shall buy the dead animals and the price which shall be paid therefor. This monopoly power has generally resulted in the establishment of only one dead rendering plant at each of the important yards.

COMMISSION MEN'S OFFICE SPACE.

The commission men and traders at the stockyards must have offices in or near the yards. They can get such accommodations only from renting or leasing from the stockyard companies. For the purpose of furnishing such office space each yard has a large building or series of buildings in which offices are leased to the commission men. The commission men are allotted pens, and inasmuch as it is of great advantage to commission men to be able to dispose of their customers' live stock at the earliest possible hour, location of pens most favorable to the prospective buyer is of great advantage.

TERMINAL RAILWAYS.

The centralization of the market at one site and the resultant growth of the packing houses in or about the market, of necessity require terminal railways to facilitate the switching of cars from the railroads to the stockyards, from the yards to the packing plants, and from the packing plants to the railroads. These terminal or stockyard railways are usually owned by the stockyard companies or by those in control of the stockyard companies. Control of these railways carries with it the power to grant or withhold sidings, spurs, or other accommodations which may be required by the packing house, and those in control of said terminal railways are thereby in a position to discriminate against other packers or independent buyers by practicing delay in loading the animals bought by said packers or independent buyers and in switching the loaded cars to the connecting lines.

MARKET PAPERS AND JOURNALS.

In addition to having a free market in which to dispose of his live stock, the cattle raiser requires full, accurate, and unbiased reports of the demand for live stock, the prices prevailing, and the character and kind of stock required, together with such other information as to market or trade conditions. The cattle raiser of necessity is located at places remote from the market, he rarely accompanies his shipment to the market, and by reason of the cost of shipment and of feeding in transit and while being held for sale it is imperative that he dispose of his stock when once he has shipped. For his guidance the cattle raiser relies largely upon the trade papers and journals. Control of these papers and journals furnishes a means whereby the flow of stock to the market may be increased or decreased to the benefit of the slaughterer.

It is, therefore, evident that control of the stockyards and of the other facilities appertaining to the stockyards carries with it:

(a) A profit derived from the meat industry levied upon it and collected before the animal is slaughtered, all of which profit, however, evidences itself in the ultimate cost which the consuming public must pay for the dressed meat.

(b) A potential means of favoritism in dealing with commission men and of influence over them, a power to grant monopolies—carrying with it consequent profit—to banks, cattle-loan institutions, rendering plants, to concerns supplying food for live stock, and to others.

(c) A means to prevent the establishment of new packing plants and to hamper the growth of those in existence.

(d) A means to prevent the development and limit the number of new markets and to centralize and restrict business to the stockyards so controlled.

(e) Peculiar and exclusive access to information concerning the receipts and sale of live stock, its disposition, and the dissemination of information to the producer.

BRANCH HOUSES, ROUTE CARS, AUTO TRUCKS, AND COLD-STORAGE WAREHOUSES.

Branch houses.—The primary means adopted by the parent companies in the distribution of their dressed meats are the branch houses. These houses are storage stations located in the cities and larger towns. They are equipped with facilities for cooling and preserving the meats, and each is under the charge of a branch-house manager, under whose direction the branch-house sales organization sells to retail and wholesale butchers, to purveyors, hotels, restaurants, and other similar large consumers. The parent companies maintain 1,120 branch houses in various large towns and cities throughout the United States, as against which all other interstate slaughterers, independent of the parent companies, maintain only 139.

Route cars.—The route cars supplement the branch houses. They serve the purpose of reaching these small communities where the trade is not sufficiently large to justify investment in a branch house. These route cars travel over what are known as car routes. Orders are taken in advance, and the route cars reaching specified towns on specified dates serve the requirements of the smaller communities. The starting point for the route cars is usually the packing plant, though in some instances the route car starts from a branch house. The parent companies operated as of June, 1918, 1,297 route cars, which constituted 90 per cent of the total number operated in the packing industry. Said route cars reach and serve dealers in 37,176 towns, and operate in 37 of the States of the United States.

Autotrucks.—This is a further development of the route-car plan. It had its origin in the development of the motor truck, and because of its freedom from railway limitations and schedules it is enabled to reach a wider radius and smaller towns than is the route car.

The autotrucks have been adopted primarily by Armour & Co. as a supplement to the car routes. These autotrucks reach and serve a total of 20,836 towns throughout the United States.

Cold-storage warehouses.—The cold-storage warehouses were in the beginning adopted as an instrumentality for enabling the parent companies to extend the volume of their slaughter of live stock and sale of dressed meat. In the first instance they were used for chilling meat in connection with the packing business. Then they were constructed in connection with the branch houses, so that they might be used for storing and holding the finished meats until they were sold. Later they were either built or acquired in the large eastern

seaboard cities for long-time storage and for storing for export. As will be more fully set forth hereafter in discussing the control of substitute foods, these storage warehouses were later employed to store nonmeat-food products. Later, control was acquired over public-storage warehouses, where surplus space was leased or let to others. Later it will be pointed out how control of this public-storage warehouse was employed to aid in control of the price of meats and substitute foods.

THE PARENT COMPANIES' ACQUISITION OF ABOVE-DESCRIBED FACILITIES AND THEIR PURPOSE IN DOING SO.

The parent companies and their controlling heads, appreciating the advantages which were to be gained by controlling the stockyards and the facilities pertaining thereto, the terminal railways, and market papers and trade journals, and realizing that the requisition of such instrumentalities might thus enable them to obtain a primary profit not only out of the sale of live stock purchased and slaughtered by them but also on that purchased and slaughtered by their competitors, and realizing the opportunities thereby to repress and discourage development of independent packers and slaughter houses and to control the shipments of meat to the various markets, set about the acquisition of the various stockyards and the appurtenances and privileges incidental thereto. This in many instances was done by a concert of action and pursuant to a common understanding. In most instances the acquisition of control of the aforesaid stockyards by any one or more of the parent companies was acquiesced in by the others and in all instances the ownership or control of stockyards by other packers or by any one, in fact, other than the parent companies or one of their members or their controlling heads was discouraged and opposed.

In pursuance of a common purpose, plan, and design outside investors and independent packers have gradually been forced out as dominating factors both in the ownership and management of most of the important stockyards and have been replaced by the parent companies or their representatives. This acquisition has been accomplished by various methods. In the earlier years by exacting stock donations under threats of moving away their packing plants, later by cash subscriptions for stock, generally below par, and in other instances by voluntary reorganization of stockyard companies, in order that the parent companies and their controlling heads might gain a controlling or dominating power in the yards, and thus be induced to continue to maintain their packing plants thereat. By these various means the parent companies directly, or indirectly through their controlling heads, have been enabled to obtain control of substantially all of the large stockyards of the country. They now have, either jointly or separately, a controlling interest in 22 of the 30 market stockyards in the United States.

The parent companies have availed themselves of the control so acquired by them in the stockyards aforesaid to elect the officers and directors of said stockyards and to dominate and control the policies thereof. They have granted exclusive privileges, such as the right to purchase dead animals, the right to furnish supplies and facilities and the location of cattle banks and cattle loan companies to concerns and corporations in which they or some of them or individuals who are stockholders in said parent companies hold the controlling stock, and they have otherwise, acting in concert, employed the powers and privileges more specifically set forth and discussed under the heading "Nature of the business and method by which it is conducted," all of which has been done with the intent and purpose of and has had the effect of discouraging and suppressing the establishment of independent packing establishments and dwarfing the growth of such independent packing companies as might then be in existence and to enable said parent companies, their subsidiaries, or the individuals who own and control the parent companies and their subsidiaries to obtain vast profits from the management of the stockyard and the granting of the privileges appurtenant thereto, which profits are realized not only upon the live stock purchased by the packers but upon that purchased by their competitors. These methods have thus enabled them to enjoy and realize such profits, without the same appearing or being disclosed in the profits of the parent companies; they have also furthered the attempt of said parent companies to monopolize the meat industry of the country and to artificially control the ultimate price which the consumer pays for meat and meat products.

CONTRACTS IN RESTRAINT OF TRADE.

The parent companies have entered into certain unlawful contracts and combinations to restrain trade and commerce and to artificially prevent between themselves competition in the prices for which meat and meat products are sold.

The most important of said contracts and agreements is what is known as the percentage purchase arrangement. This arrangement, though applied primarily in the purchase of live stock, had as its ultimate object the elimination of competition, not only in the purchase of live stock but also in the sale of dressed meats. It is a well-established commercial principle that a limitation upon the source of supply and the consequent limitation upon volume of business are the easiest means of removing all incentive to reduce prices.

The simplest way to limit the volume of dressed meat is to limit the purchase of live stock. Recognizing these principles, the parent companies thereupon agreed upon and thereafter recognized between themselves certain percentages or proportions to which they deemed that each company was entitled, and they thereafter so gauged their purchases that annually their respective purchases approximated actually or substantially the percentages so agreed upon.

As a means of perfecting this arrangement divers percentages, varying at different stockyards, were agreed upon, and understandings were had that certain of the parent companies should buy in certain yards or should refrain from buying in certain stockyards. In order to prevent such plans from being disarranged by outsiders, agreements were made with such outsiders by which purchases between the parent companies and the independents were effected upon a percentage basis similar to the above.

Means were adopted, and, by virtue of the parent companies' control over many of the stockyards, were easily executed by which sales to outsiders or to independents were controlled by the parent companies.

Control over the stockyards, the stockyards' loan institutions, the terminal railways, and other privileges and perquisites has discouraged any opposition by either commission men or by independent packers.

CONTROL OF SUBSTITUTE FOODS.

Having eliminated competition in the meat products the defendants next took cognizance of the competition which might be expected from what we here refer to as substitute foods. Their experience had taught them that if meat prices advanced out of proportion to that of other substitute foods, the consuming public manifested a tendency to turn to such substitutes. To prevent this the defendants set about controlling the Nation's supplies of fish, vegetables, either fresh or canned; fruits, cereals, milk, poultry, butter, eggs, cheese, and other substitute foods ordinarily handled by wholesale grocers or produce dealers. To accomplish this purpose the defendants availed themselves of the advantages afforded by the refrigerator cars, route cars, autotrucks, branch houses, and storage warehouses owned or controlled by them. These facilities, intended primarily for the sale of meats, were employed with comparatively no increase of overhead in the distribution of the substitute foods and unrelated commodities. The defendants were enabled thereby to reach remote spots. This advantage was also employed temporarily to fix prices so low as to gradually eliminate competition.

These attempts to monopolize have resulted in complete control in many of the substitute food lines. They have made substantial headway in others. The control is extensively and rapidly increasing. New fields are gradually being invaded, and, unless prevented by a decree of this court, the defendants will within the compass of a few years control the quantity and price of each article of food found on the American table.

EXTENT TO WHICH THE MONOPOLISTIC ATTEMPTS HAVE BEEN SUCCESSFUL.

Financial growth, present net worth, and volume of business.—In the 15 years from 1904 to 1919 Swift & Co., Armour & Co., Wilson & Co. (Inc.), and the Cudahy Packing Co., according to their financial reports, grew from a net worth of approximately \$92,000,000 to a net worth of approximately \$479,000,000, and in this same period they paid in cash dividends \$105,000,000. Only \$89,000,000 of their increased worth represented new capital. Though always asserting a very low rate of profit on sales, the five parent companies have grown so rapidly that their combined net profits for 1917 have equaled nearly

the amount of their total net worth in 1904. Sales in 15 years have increased until for the fiscal year 1918 they reached the vast sum of \$3,200,000,000. This was realized from meats, substitute foods, and unrelated lines, as hereinabove set forth. In stating these figures account has been taken only of the profits and sales of the parent companies and subsidiaries included by them upon their books. No account has been taken of the many corporations which are owned or controlled by the same family or financial interests as own or control the parent companies.

In addition to these profits there have been other vast profits, difficult of ascertainment, realized by the individuals by virtue of either their personal control of other packing houses and slaughtering companies or their interest in stockyards, terminal railways, rendering companies, cattle-loan institutions and banks, and other corporations, all of which corporations have their inception and depend for their prosperity upon advantages or privileges growing out of the interlocking control of the stockyard and stockyard appurtenances.

The parent companies or the individual defendants and their families maintain and control 574 corporations or concerns, including 131 trade names. They have a significant minority stock interest in 95 others and an interest of unknown extent in an additional 93. Thus the total number of concerns in which they have control or interest is some 762. In the years that are past the parent companies have acquired or organized many other concerns and have maintained them so long as they were useful for their purposes. When no longer useful those concerns, so acquired or organized, have been dissolved and their businesses have been merged into that of the parent companies or that of other subsidiaries. Such dissolved corporations and concerns are omitted in the above compilation except in those instances where their names have been continued as trade names. The total of 762 above stated, therefore, falls far short of representing the number of concerns that corporate and individual defendants have acquired or have organized in furtherance of the general scheme and plan of action already explained.

EXTENT OF INDUSTRIAL CONTROL IN THE SUBSTITUTE FOODS AND UNRELATED COMMODITIES.

It would be an enormous undertaking to determine the degree of control exercised by the defendants in all of these various industries. Enough has been ascertained to indicate that the growth has been rapid and that if permitted to continue unchecked in a matter of a few years the control will be complete.

In 1916 the business of Armour & Co. in canned fish, vegetables and sundries, canned and dried fruits, fruit preserves (soda fountain supplies), and grape juice amounted to \$6,396,036.73; in 1918, two years later, the same company's volume of business in these same items was \$39,820,000, over a sixfold increase. While part of this increase of business may be attributed to the increase of population and the consequent increase of consumption, the greater part thereof was acquired at the expense of competitors. Of the corporations which have been acquired by the parent companies in recent years a large number are concerns manufacturing or selling these substitute foods or unrelated commodities. This fact, together with the increased activities of the parent organizations themselves in those lines, indicates a well-defined purpose on their part to secure control of the market for meat-substitute foods. In addition to the companies whose control has been acquired by outright purchase the parent companies have, in a large number of instances, contracted for the exclusive output of many other companies engaged in the production of the substitute foods and the unrelated commodities. The outputs of these plants are marketed by the parent companies or by their subsidiaries through the distribution facilities of the parent companies. In this fashion the parent companies control the output of these concerns and the market price of their products as completely as though they themselves owned the producing companies.

INDIVIDUAL DEFENDANTS.

The individual defendants are either officers, directors, agents, or employees of the parent companies or their subsidiaries or large stockholders of parent companies and subsidiaries who are otherwise affiliated in commercial opera-

tions with the active heads of the parent companies. These individual defendants are in their individual capacity financially interested to a great extent in the stockyards, terminal railways, cattle-loan banks, rendering companies, and other institutions interrelated with the stockyards. They, or some of them, control the corporations dealing in the substitute foods and the unrelated commodities. In many instances, in addition to their individual holdings, they hold stock in these corporations for the benefit of the parent companies. The control by these individuals of the facilities or instrumentalities of the meat business and their interest in concerns dealing in the substitute foods and the unrelated commodities enable the parent companies to carry out the purpose of the combinations hereinabove described and are now and will continue to be a sinister and ever-present means of furthering the attempt to monopolize and perfect it to such a degree that the parent companies or their subsidiaries will have complete control not only of meat products but of all substitute foods consumed in the United States.

SUBSIDIARIES DEFENDANTS.

These comprise many, but not all, of the subsidiaries owned or controlled by the parent companies. Only these subsidiaries, which are substantially 100 per cent parent-company owned and which are engaged either in the slaughtering, packing, or selling of meats, have been made parties defendants. It is the plan and scheme of this petition and the prayer for relief that the corporations which in themselves own the facilities more specifically described above or deal in the substitute foods and unrelated commodities shall not be made parties defendants in the first instance or until it appears that they are necessary parties defendants, but that the parent companies, the subsidiaries defendants, and the individuals should be compelled to divest themselves of all interest in or connection with the subsidiaries owning the facilities or dealing in the substitute foods or commodities referred to.

PRAYER.

Wherefore petitioner prays:

I. That the defendants, and each of them, be forever enjoined from continuing any contract, combination, or conspiracy in restraint of trade or commerce in the purchase of live stock, or the purchase, sale, or distribution of dressed meats or other products or commodities now handled by them, or any of them, among the several States or foreign nations, which contract, combination, or conspiracy may now exist between them, or any two or more of them, or from doing any act pursuant to or in furtherance of any such contract, combination, or conspiracy, and that they be enjoined from entering into any other or further contract, combination, or conspiracy, either among themselves or among any two or more of them, or with any other person or persons whatsoever, in restraint of trade or commerce between the several States and foreign nations.

II. That they, and each of them, be enjoined and forever restrained from monopolizing, or attempting to monopolize, or conspiring to monopolize the trade or commerce between the several States or with foreign States in the purchase, sale, or distribution of live stock or the commodities aforesaid.

III. That the defendants, and each of them, be required to divest themselves to such extent and upon such terms and conditions as the court may deem proper from such interest in or control over public cold-storage warehouses, retail meat markets, stockyards, terminal railways, market or trade journals, or such other facilities as are connected with or are appurtenances to the stockyards, in such instances as the court may deem that such instrumentalities constitute a means of facilitating the formation or continuance of monopolies in the purchase of live stock or the sale of the commodities aforesaid.

IV. That the corporation defendants, and each of them, be perpetually enjoined from permitting their refrigerator cars, route cars, auto trucks, or branch houses or other distributive facilities to be used for the distribution or sale of commodities of the character and kind hereinbefore generally described as substitute foods and unrelated commodities in such instances and to such extent as the court may deem necessary for the purpose of preventing the aforesaid defendants from acquiring a monopolistic control over the trade or commerce in such commodities, or a control which may enable them to restrain the trade or commerce or artificially affect the price of any commodities in which the aforesaid defendants now deal.

V. That the defendants, and each of them, be required to divest themselves of all stock holdings or other interests in any corporation, partnership, or association now dealing in any of the food substitutes or unrelated commodities hereinbefore more specifically described, and that wherever said defendants own, operate, or control a department buying, selling, or otherwise distributing substitute foods, unrelated commodities, or any of them, that they be required to discontinue the aforesaid department, and that the defendants, and each of them, be restrained and perpetually enjoined from hereafter acquiring any stock holdings or interests of the character hereinbefore described in any corporation dealing exclusively or partially in the said substitute foods or commodities hereinbefore referred to, or from themselves engaging in such business, either directly or through a department.

VI. That the defendants, and each and every one of them, be perpetually enjoined from indulging in any unlawful practice or committing any act of unfair competition or any other act with the purpose of or which may have the effect of unduly restraining trade and commerce, or which may be indulged in or done with the purpose or effect of monopolizing said trade or commerce in the commodities now manufactured, bought, sold, or otherwise dealt in by the defendants or any one of them.

VII. That your petitioner be granted such other and further relief as the nature of the case may require and the court may deem just and proper in the premises.

To the end, therefore, that the United States may obtain the relief to which it is justly entitled in the premises, may it please your honors to grant writs of subpoena directed to each and every one of said defendants, commanding them, and each of them, to appear herein and answer, but not under oath (answers under oath being hereby expressly waived), the allegations contained in the foregoing petition, and to abide by and perform such order or decree as the court may make in the premises, and upon final hearing hereof to permanently enjoin each of the defendants as hereinbefore prayed.

Respectfully submitted.

JOHN E. LASKEY,
United States Attorney.

A. MITCHELL PALMER,
Attorney General.

ISIDOR J. KRESEL,
JOHN H. ATWOOD,
JOSEPH SAPINSKY,

Special Assistants to the Attorney General.

DECREE AND CONSENTS.

In the Supreme Court of the District of Columbia. The United States of America, petitioner, v. Swift & Co. and others, defendants. No. 37623, equity.

This cause having come on to be heard on this 27th day of February, in the year 1920, before the Hon. Walter I. McCoy, chief justice, and the petitioner having appeared by the Hon. A. Mitchell Palmer, Attorney General of the United States, by its district attorney, John E. Laskey, and by Isidor J. Kresol, John H. Atwood, and Joseph Sapinsky, special assistants to the Attorney General, thereto duly authorized, and having moved the court for an injunction in accordance with the prayer of its petition; and it appearing to the court that the allegations of the petitioner state a cause of action against the defendants under the provisions of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplemental or additional thereto, and that the court has jurisdiction of the persons and the subject matter; and the several defendants having accepted service of process and having appeared and filed answers to the petition, which answers are on file in the office of the clerk of this court; and the parties having this day entered into a stipulation in this action, which stipulation is on file in the office of the clerk of this court, and from which it appears, among other things, that while the defendants, and each of them, maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they nevertheless, desiring to avoid

every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered without any findings of fact upon condition that their consents to the entry of said decree shall not constitute or be considered an admission and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants, or any of them, have in fact violated any law of the United States.

Now, upon the petition, the answers of the defendants, and the aforementioned stipulation and consents of the parties, all on file in the office of the clerk of this court, and on motion of the petitioner, it is ordered, adjudged, and decreed as follows:

First. That the corporation defendants, and each of them, be, and they are hereby, jointly and severally perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, in any manner maintaining or entering into any contract, combination, or conspiracy with each other, or with any other person or persons, in restraint of trade or commerce among the several States, or from either directly or indirectly, by themselves or through their officers, directors, agents, or servants, either jointly or severally, monopolizing or combining or conspiring with each other, or with any other person or persons, to monopolize any part of such trade or commerce.

Second. That the defendants, and each of them, be, and they are hereby, jointly and severally perpetually enjoined and restrained from owning, either directly or indirectly, individually or by themselves, or through their officers, directors, agents, or servants, any capital stock or other interest whatsoever in any public stockyard market company in the United States, or in any stockyard terminal railroad in the United States, or in any stockyard market newspaper or stockyard market journal published in the United States, except in so far as the court may permit any of the individual defendants to retain any such interests upon the conditions and in such circumstances as are provided for in paragraph tenth of this decree; and said defendants, and each of them, are hereby further enjoined and restrained from accepting or permitting to be given, directly or indirectly, on any pretext whatever, to any of them, or to any of their officers, directors, servants, or employees, for the use and benefit of the corporation defendants, or any of them, any capital stock or other interest in any public stockyard market company, stockyard terminal railroad, or stockyard market newspaper or stockyard market journal.

Third. That the corporation defendants and each of them and their successors and assigns be, and they are hereby, perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, through any device or arrangement whatsoever, using or permitting any other person, firm, or corporation to use their distributive system and facilities, including their branch houses, route cars, and auto trucks, or any of them, in any manner for the purchase, sale, handling, transporting, distributing, or otherwise dealing in any of the articles or commodities named and described in paragraph 4 of this decree, except in so far as permitted in said paragraph 4, and except refrigerator cars when in good faith leased to common carriers, or furnished to them for their use as common carriers.

The corporation defendants or any of them may from time to time lease, sell, or otherwise dispose of any of the items of their distributive system free from any of the restrictions of this decree when they have a surplusage thereof or when such items have become obsolete or are otherwise not required for the business of the defendants or any of them. But no sale, lease, or other disposition of a substantial part of defendants' respective distributive systems or such distributive system as an entirety shall be made without submitting the same to the court for the court's investigation and determination as to whether said proposed sale, lease, or other disposition is in accordance with the spirit and purpose of this decree, and without notice of the application for such approval first given to the Attorney General. Nothing herein contained shall be construed to prohibit the defendants or any of them from mortgaging or otherwise creating liens on said distributive system or parts thereof.

Fourth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise, either for domestic trade or for export trade, the manufacturing, jobbing,

selling, transporting (except as common carriers), distributing, or otherwise dealing in any of the following products or commodities, except when such products or commodities are purchased, transported, or used (1) as supplies in operating their packing houses, branch houses, or other facilities used by them, or as an incident in the processes of manufacturing soap or packing-house products; (2) in the construction and physical maintenance of their packing houses, branch houses, or other facilities used by them; (3) in the operation of their restaurants, laundries, or other conveniences, primarily for the benefit of their employees; or (4) in combination with meat, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following, to wit: Canned oysters, canned mackerel, bulk canned and cured herring, canned sardines, canned shrimp, bulk mackerel, canned salmon, canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit, asparagus, navy beans, lima beans, peas, beets, corn, okra, potatoes, tomatoes, celery, garlic, horse-radish, pumpkins.

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mincemeat, to wit, ginger, cherries, apple butter, apricots, blackberries, peaches, pineapple, raspberries, currants, figs, gooseberries, oranges, strawberries, apples, prunes, raisins, dates.

4. Confectionery, sirups, soda-fountain supplies, and sirups and soft drinks (grape juice is not included in this par. 4; see par. 14), including therein, but in nowise limiting the foregoing general description, the following, to wit, apple cider, cherry juice, coca cola, crème de menthe, crushed nut frappé, ginger ale, green pineapple sirup, lemon extract, marshmallow topping, orange extract, root beer, vanilla extract, vin fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein but in nowise limiting the foregoing general description, the following, to wit, catsup, chili sauce, cinnamon, cloves, mustard, mustard seed, olives, oyster cocktail sauce, pepper, pickles, spinach chili, tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following, to wit, almonds, pecans, walnuts, but not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

11. Cereals, including therein, but in no wise limiting the foregoing general description, the following, to wit, grits, oats, hominy, hominy feed, horse feed, brewers' flakes, brewers' grit, brewers' meal, buckwheat, canned hominy, clipped oats, corn grits, ground meal, ground oats, ground corn, cracked corn, crushed white oats, feed barley, feed meal, feed wheat, rolled oats, standard middlings, standard spring brand, spaghetti, vermicelli, macaroni, corn flakes, wheat foods.

12. Grain.

13. Miscellaneous articles, to wit, cigars, china, furniture, bluing (starch), fence posts and wire fences, alfalfa meal, babbitt, bar iron, binding and twine, brass castings for heavy ordnance, brick, builders' hardware, bumping posts for railroads, cement, lime, plaster, doors and windows, dried brewers' grains, lath, pitting and fruit-handling machinery, roofing, sand and gravel shingles, soda fountains or parts thereof, structural steel, tile, waste.

14. Grape juice.

And the corporation defendants and each of them be, and they are hereby, further perpetually enjoined and restrained from owning, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants any capital stock or other interest whatsoever in any corporation, firm, or association except common carriers which is in the business, in the United States, of manufacturing, jobbing, selling, transporting except as common carriers, distributing, or otherwise dealing in any of the above-described products or commodities.

Fifth. That the individual defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their agents, servants, or employees, owning voting stock which in the aggregate amounts to 50 per cent or more of the voting stock of any corporation, except common carriers, or any interest in such corporation resulting in a voting power amounting to 50 per cent or more

of the total voting power of such corporation, or which interest by any device gives to any such defendant or defendants a voting power of 50 per cent or more in any such corporation or a half interest or more in any firm or association which corporation, firm, or association may be, in the United States, in the business of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of the following products or commodities, to wit:

1. Fresh, canned, dried, or salted fish, including therein but in nowise limiting the foregoing general description, the following, to wit: Canned oysters, canned mackerel, bulk mackerel, bulk and canned and cured herring, canned sardines, canned shrimp, canned tuna fish, canned salmon.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein but in nowise limiting the foregoing general description, the following, to wit: Asparagus, navy beans, Lima beans, peas, beets, corn, okra, potatoes, tomatoes, celery, garlic, horse-radish, pumpkins.

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mincemeat, to wit: Ginger, cherries, apple butter, apricots, blackberries, peaches, pineapples, raspberries, currants, figs, gooseberries, oranges, strawberries, apples, prunes, raisins, dates.

4. Confectionery, sirups, soda-fountain supplies and sirups and soft drinks, not including grape juice, including therein but in nowise limiting the foregoing general description, the following, to wit: Apple cider, cherry juice, Coca-cola, creme de menthe, crushed nut frappé, green pineapple sirup, ginger ale, lemon extract, marshmallow topping, orange extract, vanilla extract, vin fiz, root beer.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein but in nowise limiting the foregoing general description, the following, to wit: Catsup, Chili sauce, cinnamon, cloves, mustard, mustard seed, olives, oyster-cocktail sauce, pepper, pickles, spinace chili, tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following, to wit: Almonds, pecans, walnuts, but not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

And further perpetually enjoining and restraining said individual defendants and each of them from individually or jointly, either directly or indirectly, by themselves or through their agents, servants, or employees, adopting any device or arrangement which by reason of the relation of said individual defendants or any of them to the corporation defendants or any of them would have the purpose or effect of giving to such business of dealing in the articles hereinabove in this paragraph mentioned and described, in which business such individuals or any of them may be substantially interested, an advantage over their competitors similar in purpose or effect to any advantage now enjoyed by any of the corporation defendants through their distributing system.

Sixth. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, owning and operating or conducting, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants, any retail meat markets in the United States; provided, however, that nothing contained in this decree shall prohibit said defendants or any of them from continuing to conduct the retail meat markets located at their several plants and maintained by said defendants primarily for the accommodation of their own employees as long as said retail meat markets shall be continued to be operated for that purpose.

Seventh. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from owning, directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, any capital stock or other interest whatsoever in public cold-storage warehouses in the United States; provided, however, that nothing herein contained shall be construed to prevent the defendants or any of them from owning capital stock or other interests in any corporation, firm, or association owning or operating, or from themselves owning or operating, the public cold-storage warehouses now maintained by the defendants or any of them at stock-yards where said defendants or any of them now maintain packing plants, nor to prevent any of said defendants, directly or indirectly, from establishing, owning, maintaining, or leasing necessary cold-storage facilities or space required in good faith for the storage of commodities in which they or any of

them may be interested, nor from renting space in any cold-storage warehouse directly or indirectly owned or leased by any of them to the public whenever such space is not in good faith required or needed by the defendants for their own use, nor from storing products for the public whenever the space used for that purpose is not in good faith required by the defendants for their own use.

Eighth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from engaging in the United States, either directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, in the business of buying, collecting, selling, transporting, except as common carriers, distributing or otherwise dealing in fresh milk and cream, and further perpetually enjoining and restraining said defendants and each of them by themselves or through their directors, officers, agents, and servants, from either directly or indirectly owning any capital stock or other interest in any corporation, firm, or association engaged in the business of buying, collecting, selling, transporting (except as common carriers), distributing, or otherwise dealing in fresh milk or cream; provided, however, that nothing herein contained shall be construed as preventing the corporation defendants or their subsidiaries from buying, collecting, and transporting fresh milk and cream to be used by them or any of them in manufacturing condensed or evaporated or powdered milk or oleomargarine or other butter substitutes, or butter, ice cream, cheese, or buttermilk, or to be used as food or in combination with any commodity not specifically mentioned and described in paragraph 4 hereof; and further provided that nothing herein contained shall be construed as preventing said defendants from selling or otherwise disposing of milk and cream bought or collected for manufacture, when such sale or disposition is necessary to avoid waste.

Ninth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, jointly or severally, by themselves or through their officers, directors, agents, or servants, engaging in, carrying on, or using any illegal trade practices of any nature whatsoever in relation to the conduct of any business in which they or any of them may be engaged.

Tenth. That within 90 days after the entry of this decree such of the defendants as have interests in public stockyard-market companies, stockyard-terminal railroads, or market newspapers shall file in this court, for the court's approval, a plan or plans for divesting themselves of all ownership or interest in (1) public stockyard market companies; (2) stockyard-terminal railroads; (3) market newspapers: *Provided, however,* That the court may, in the event that it deems such provision necessary in order to enable the defendants to divest themselves of their interests in public stockyard-market companies and stockyard-terminal railroads, upon reasonable terms, permit the individual defendants, or some of them, to retain an interest by way of stock ownership, or otherwise, in any public stockyard-market company or stockyard-terminal railroad, or in any corporation organized to take over such public stockyard-market companies or stockyard-terminal railroads or the stock thereof; but no defendant or defendants shall at any time, either individually or jointly, own a controlling interest in any such stockyards or stockyard terminal railroads. Within such period of time after the entry of this decree and the approval of said plan or plans as the court may determine, the defendants shall, in good faith, completely divest themselves of all such ownership or interests in public stockyard-market companies, stockyard-terminal railroads, and market newspapers. If, within the time so fixed, the defendants shall not have disposed of said interests ordered by the court to be disposed of, and the court upon application shall determine that the defendants have been unable, despite due diligence, to dispose of the same upon reasonable terms, the court may extend the time during which such ownership, control, or interest may continue until the same can be disposed of.

Eleventh. That immediately upon the entry of this decree the defendants shall in good faith and with due diligence proceed to dispose of their interests in, and shall completely divest themselves (to the extent required by this decree) of all ownership of or interest in all public cold-storage warehouses and retail meat markets; but in no event shall the defendants, or any of them, make final disposition of any of their interests in such public cold-storage warehouses and retail meat markets without first obtaining the court's approval to such final disposition. If, within nine months after the entry of this decree, the defendants shall not have finally disposed of their interests in public cold-

storage warehouses and retail meat markets, the Attorney General may apply to the court for an order specifying the time within which the defendants shall finally dispose of all said interests.

Twelfth. That immediately upon the entry of this decree the defendants and each of them shall commence to dispose of such commodities owned or handled by them as are described in paragraphs fourth and fifth of this decree, and which are to be disposed of by them under this decree, and shall likewise immediately upon the entry of this decree commence to divest themselves of all interests which are to be disposed of by them as and to the extent required by this decree in firms, corporations, and associations, including departments of the business of any of the corporation defendants when any of such departments is sold as a going concern, manufacturing, selling, or otherwise dealing in any of the commodities so mentioned and described in paragraphs fourth and fifth of this decree, and shall continue in good faith to dispose of said commodities required to be disposed of hereunder, and to divest themselves of such interests required to be disposed of hereunder as rapidly as may be consistent with the nature of the business and the seasonal nature of the merchandise involved, and that in any event the defendants and each of them shall completely dispose of said commodities and shall cease to manufacture, job, sell, transport, except as common carriers, distribute, or otherwise deal in the same, and shall completely divest themselves of said interests within two years from the date of the entry of this decree: *Provided, however*, To the end that the provisions of this decree may be complied with, the approval of the court shall be obtained prior to the final disposition of said interests in firms, corporations, or associations manufacturing, selling, or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree. At any time within said two years the Attorney General may apply to the court for an order or orders to compel the defendants, and each of them, to make report to the court as to the progress being made by them in disposing of said commodities and in divesting themselves of said interests.

Thirteenth. That the purchaser or purchasers of the defendants' interests in any stockyard shall, as a part of said purchase, agree with such of the defendants as now maintain packing plants in said stockyards that for a period of at least 10 years after the date when such purchase shall be consummated said purchasers, their successors, or assigns will continue to maintain and efficiently operate such stockyards, and each of them, and such of said defendants as now maintain packing plants at any of said stockyards shall agree with said purchasers that during the same period of 10 years said defendants, their successors or assigns, will continue to maintain and operate said packing plants at the points where the same are now located, unless strikes, shortage of supplies, or other causes beyond the control of either the purchasers, the stockyard companies, or said defendants shall prevent the carrying out of said agreement. Performance by either party shall be a condition concurrent to performance by the other.

Fourteenth. That nothing in this decree contained shall be construed to prohibit anything that may be otherwise lawfully done by the defendants, or any of them, in the United States in connection with or for the purpose of export trade or foreign commerce or business of the defendants: *Provided, however*, That nothing in this paragraph contained shall limit the effect of the injunction contained in paragraphs fourth and fifth of this decree.

Fifteenth. That nothing contained in this decree shall be held to preclude the petitioner from proceeding against any or all of the defendants, either civilly or criminally, for any violation of any law in connection with the carrying on by them of the business of buying and selling poultry, butter, eggs, and cheese, or any other business or activity not specifically mentioned in this decree; nor shall anything contained herein prejudice the Government in any such proceeding; nor shall this decree interfere with or prejudice any legal rights, business, or activity of the defendants, or any of them, not prohibited or covered by this decree.

Sixteenth. That for the purpose of (1) enabling the petitioner to ascertain whether the defendants are in good faith carrying out the terms of this decree; and (2) for the purpose of enabling the Attorney General to determine and advise the court whether in any transaction consummated or begun at any time prior to the entry of this decree the defendants, or any of them, have retained and now retain such an interest in or control over any public stockyard market company, stockyard terminal railroad, stockyard market news-

paper, stockyard market journal, cold-storage warehouse, retail meat market, or corporation, firm, or association manufacturing, jobbing, selling, distributing, transporting (except as common carriers), or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, which would constitute a violation of this decree if the retention of such interest or control had been the result of a transaction consummated or begun subsequent to the date of the entry of this decree; and (3) for the further purpose of enabling the Attorney General to determine and advise the court whether any leases, contracts, or arrangements concerning their, or any of their, distributing systems made or entered into by the defendants, or any of them, prior to the entry of this decree, and in force on the day when it shall be entered, are in violation of the terms thereof, then, in the event that the Attorney General, in writing, notifies the defendant or defendants concerned with respect to such alleged violation, reciting in reasonably specific terms the nature thereof, the corporation defendants are hereby directed to make full and complete discovery to the petitioner with respect thereto, and the corporation defendants are further directed to submit to the Attorney General, or to any Assistant Attorney General by him duly authorized, all of their books, records, correspondence, or other documents, in so far as the same refer to the alleged violation, and to furnish all information concerning the same.

Seventeenth. That all sales, transfers, or other disposition made by any of the defendants since the 1st day of October, 1919, of any of their interests in public stockyard market companies, stockyard terminal railroads, stockyard newspapers or journals, public cold-storage warehouses, and retail meat markets, or incorporations, firms, or associations manufacturing, jobbing, selling, transporting, except as common carriers, distributing or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, and all leases, contracts, or arrangements or other disposals made by any of the defendants since the 1st of October, 1919, affecting their delivery systems, shall be submitted by the defendants to the court for its investigation and determination as to whether the same were made in accordance with the spirit and purpose of this decree, in the same manner and with the same force and effect as though the said sales, dispositions, leases, contracts, or arrangements had been made subsequent to the entry of this decree.

Eighteenth. That jurisdiction of this cause be, and is hereby, retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree.

WALTER I. MCCOY;
Chief Justice.

FEBRUARY 27, 1920.

FEBRUARY 27, 1920.

The defendants, Western Meat Co., Oakland Meat & Packing Co., Nevada Packing Co., and Fred L. Washburn, appear herein generally by Henry Veeder, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

HENRY VEEDER,
Attorney for Above-Named Defendants.

WASHINGTON, February 27, 1920.

The defendants, Wilson & Co. (Inc.), New York; Wilson & Co., New Jersey; Wilson & Co. (Inc.), of California, Nevada; Wilson & Co. (Inc.), of Louisiana; Wilson & Co. (Inc.), of Oklahoma; South Dakota Provision Co.; Gotham Hotel Supply Co. (Inc.); Standard Beef Co.; Stiefel-O'Mara Co. (Inc.); Drexel Packing Co.; Albert Lea Packing Co. (Inc.); Mississippi Packing Co. (Inc.); Morton-Gregson Co.; Paul O. Reymann Co.; Standard Provision Co.; Central Products Corporation; Thomas E. Wilson; Arthur Lowenstein; Jacob Moog; Vonce De Leon Skipworth; Arthur L. Smith; James A. Hamilton; George D. Hopkins; Adolph E. Peterson; George H. Cowan; William C. Buethe; Carl F. Burrell; and James C. Good, appear herein generally by Jewel P. Lightfoot, their attorney, and do hereby consent that the foregoing decree may be entered

herein upon the stipulation of the parties filed in this cause without further notice.

JEWEL P. LIGHTFOOT,
Attorney for Above-Named Defendants.

WASHINGTON, February 27, 1920.

The defendants, the Cudahy Packing Co., Missouri; Cudahy Packing Co. of Nebraska; Cudahy Packing Co. of Alabama; Cudahy Packing Co. of Louisiana (Ltd.); Nagle Packing Co.; Edward A. Cudahy, sr.; Edward A. Cudahy, jr.; Guy C. Shepard; John E. Wagner; Andrew W. Anderson; Emil A. Strauss; Frank E. Wilhelm; and George Marples, appear herein generally by Thomas Creigh, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in the cause without further notice.

THOMAS CREIGH,
Attorney for Above-Named Defendants.

WASHINGTON, February 27, 1920.

The defendants, Armour & Co., Illinois; Armour & Co., New Jersey; Armour & Co., Kentucky; Armour & Co., Texas; Armour & Co. (Ltd.), Louisiana; the Anglo-American Provision Co.; the Colorado Packing & Provision Co.; Fowler Packing Co.; Hammond Packing Co.; the New York Butchers' Dressed Meat Co.; Atlantic Hotel Supply Co. (Inc.); J. Ogden Armour; Charles W. Armour; A. Watson Armour; Laurence H. Armour; Arthur Meeker; Robert J. Dunham; F. Edson White; George M. Willets; Frederick W. Croll; and George B. Robbins, appear herein generally by Charles J. Faulkner, jr., their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

CHARLES J. FAULKNER, JR.,
Attorney for Above-Named Defendants.

WASHINGTON, February 27, 1920.

The defendants, Morris & Co., Maine; Morris Packing Co., Maine; Morris & Co., New Jersey; Morris & Co., Louisiana; Morris & Co. of Pennsylvania, Pennsylvania; Joseph Stern & Sons (Inc.); Brooklyn Beef & Provision Co.; Condit Beef & Provision Co.; Corwin-Wilde Co.; Donnelly & Co. (Inc.); National Hotel Supply Co.; Camberlain & Co. (Inc.); J. M. Wilson Co.; Middletown Beef & Provision Co.; Glenn & Anderson Co.; Edward Morris; Nelson Morris; Louis H. Heymann; Charles M. Macfarlane; and H. A. Timmins, appear herein generally by M. W. Borders, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

M. W. BORDERS,
Attorney for Above-Named Defendants.

WASHINGTON, February 27, 1920.

The defendants, Swift & Co., Illinois; Swift & Co., West Virginia; Swift & Co., (Inc.), Kentucky; Swift & Co. (Ltd.), Louisiana; Swift & Co., Maine; Swift Beef Co., Maine; United Dressed Beef Co. of New York; J. J. Harrington & Co. (Inc.); Bimble Co.; the G. H. Hammond Co.; Omaha Packing Co.; Plankinton Packing Co.; Sturtevant & Haley Beef & Supply Co.; E. K. Pond Packing Co.; Van Wagenen & Schickhaus Co.; Western Packing Co.; Hammond Beef Co.; Omaha Meat Co.; A. Canfield Commission Co.; H. C. Derby Co.; Metropolitan Hotel Supply Co.; Vermont Supply Co.; the Hotchkiss Beef Co.; New England Dressed Meat & Wool Co.; North Packing & Provision Co.; the Sperry & Barnes Co.; John P. Squire & Co., Maine; John P. Squire & Co. (Inc.), Massachusetts; John P. Squire & Co. (Inc.), Rhode Island; Springfield Provision Co.; White, Pevey & Dexter Co.; Louis F. Swift; Edward F. Swift; Charles H. Swift; Gustavus F. Swift, jr.; Harold H. Swift; Alden B. Swift; George H. Swift; Laurence A. Carton; Frank S. Hayward; Charles A. Peacock; Wilfred W. Sherman; Welling-

ton Leavitt; John M. Chaplin; and William B. Traynor, appear herein generally by Henry Veeder, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

HENRY VEEDER,
Attorney for the Above-Named Defendants.

The CHAIRMAN. The first gentleman, as I have said before, to appear here will be Mr. Campbell. Mr. Campbell, you will take the chair so that you will be close to the official reporter.

Mr. Campbell, you may proceed in your own way, uninterrupted, to make your statement, except that if you enter into any discussions which the committee feels it is not interested in, or which the committee feels will not help it in arriving at a proper conclusion, you will be so informed and asked to proceed to discuss other phases of the question which you wish to talk about.

Questions will be propounded after the witness has completed his statement. Mr. Campbell, you may now proceed. State your name, business, and place of residence as a preliminary.

STATEMENT OF MR. VERNON CAMPBELL, REPRESENTING THE CALIFORNIA COOPERATIVE CANNERIES.

Mr. CAMPBELL. Mr. Chairman and gentlemen of the committee, on yesterday I typed out my statement in a form so that you might have it for your record, and if you so desire it may be handed to the reporter after I read same.

The CHAIRMAN. You may proceed with your statement.

Mr. CAMPBELL. I have divided this statement into four general parts: (1) I have stated the nature of our business and set out our interest in this decree matter. Next I have taken up the question—

The CHAIRMAN. May I interrupt you for just a moment?

Mr. CAMPBELL. Certainly.

The CHAIRMAN. Gentlemen, the committee has selected official reporters to make a stenographic transcript of the record for the committee, and I understand that if any of you desire a copy of the record they will furnish same to you. I am not informed as to the cost to you or anything of that sort, but you may make your own arrangement with the reporters if you desire a copy of this record; and that is the only way we know of that a copy may be procured.

Mr. CAMPBELL. Mr. Chairman, that is the reason I spoke of having this copy prepared. I felt that the matters I will bring up here are of sufficient importance to both proponents and opponents on this subject that they should be a matter of record.

I have next proceeded to analyze the position, as near as I could, of those opposing modification. I have concluded my statement with a short discussion, or rather quotation, in reference to the legality of the decree, keeping away from all legal points involved except a general opinion. I have also included in this statement a careful analysis of the economic problems involved.

I represent the California Cooperative Canneries, a fruit growers' cooperative canning organization. The canneries are located in Tulare, Stanislaus, and Santa Clara Counties, Calif., and are owned and operated by the members. I am the vice president and general manager of the organization.

NATURE OF BUSINESS.

The products of the members are handled on a cooperative basis. After the expenses of canning are paid, all the money received from the sales of the finished product is paid to the growers. A small percentage of the receipts is held as a reserve fund, the grower being issued stock to cover the amount retained. The volume of our business during 1920 was approximately \$4,000,000.

WHY WE ARE INTERESTED IN THE DECREE.

In May, 1919, the California Cooperative Canneries entered into a contract with Armour & Co., of Chicago, whereby they agreed to purchase from us all the California canned fruits required by them, in so far as we were able to furnish the desired quantity and grades. The term of this contract was for 10 years, and under it Armour & Co. handled about 50 per cent of our output during 1920.

VALUE OF SALES CONTRACT.

It is apparent that this contract was of great value to the cooperative canneries, as it gave us a ready market for a large portion of our output. A great deal of time and money was saved in sales effort and expense. The contract was also very valuable to us in obtaining loans from banks. Banks were willing to loan to us because they were satisfied that a considerable portion of our pack was sold to a very reliable buyer, and that we would be able to pay back to them the money which we borrowed to cover the expenses of canning. Having such a considerable portion of our pack sold for a term of years, our members, who are growers of fruit and vegetables, felt secure. They knew that their products were already marketed. They were able to plan the care of their orchards and conduct their business with a feeling of security as to the future.

This contract gave us an assurance of the widest distribution of our products, so that we were able to operate our plants at full capacity, thus reducing the cost of operation to the minimum.

PROPERTY CONFISCATED BY DECREE.

After the entry of the packers' decree, Armour & Co. notified us that they were compelled to discontinue the handling of products such as ours, and that the contract must be canceled. No investigation was made by the Department of Justice as to our rights under the proposed decree. We were not notified or heard in the matter. It is difficult to determine the full extent of the damages sustained already by our organization. If the Government had set fire to our canneries and burned them to the ground, the damage would not have been as great. Insurance would have partly covered fire losses. New factories could have been built. To destroy instantly markets which had been slowly and painstakingly built over a long term of years, to take away our principal outlet, both foreign and domestic, without according us a hearing, was an act of gravest injustice. We declare and insist that our rights and our property have been invaded and destroyed without due process of law. We call to your attention the fact that we have been continuously and vigorously protesting since May, 1920, against the operation of this decree.

MEASURE OF DAMAGES.

Our actual and potential damages will aggregate several million dollars. The indirect damage to our grower members in destroying their principal markets is hard to calculate. In fact, destroying such channels of distribution, indirectly and adversely, affects every fruit producer in California.

WHOM WE REPRESENT.

Wholesale grocers have stated in various trade papers and in their bulletins and circular letters that I claim to represent and speak for all the fruit growers of California. The Department of Justice knows that I speak only for the California Cooperative Canneries and have never claimed at any time to speak for any other concern. It is true that many groups of producers and a large number of canners have more or less depended on me to assist them in opposing this decree, but the statement which has been widely circulated that I claim to represent the California fruit interests generally is entirely false.

Acting for the cooperative canneries, I protested to the Department of Justice in May, 1920, against the operation of this packers' decree, pointing out the great damage the operation of this decree would do to our business. I have continued since that date to present our case to the Department of Justice and have asked that this decree be set aside or at least amended so as to allow the packers to handle food other than meat products.

WHOLESALE GROCERS APPEAR.

This department was inclined to be fair and listened to arguments of myself and others. Before any final conclusion of the matter was reached by the department, the Southern and the National Wholesale Grocers' Associations, by their attorneys and J. H. McLaurin, president of the Southern Wholesale Grocers' Association, appeared before this department and protested against

modification of the decree. Both organizations also petitioned the court in intervention in the event the Department of Justice should request modification. I am not concerned with this action of these organizations. They have the right, of course, to take any action they see fit regarding the decree. Nor have I any desire to antagonize the wholesale grocers. We know their power too well. We honestly feel that the packers' consent decree is an economic mistake and without legal foundation. Certainly the expression of our views before this department seems insufficient reason for the vicious attacks which these grocers have made upon me and my people. In presenting my facts and arguments before the department in May, 1920, and in my subsequent appearance here I simply asked for relief from the conditions which the decree imposed upon our association. I at no time attacked these wholesale grocers. I had no quarrel with them. I regret that the wholesale grocers have seen fit to indulge in unwarranted and unfounded attacks upon me and the growers I represent.

I feel they should have been content to simply present their facts and arguments to the department and not through the public press and elsewhere attack me and the farmers' organization and seek to confuse the issue.

They have attempted by inuendo, misstatements, and falsehoods to discredit us before this department. They have issued thousands of letters and bulletins, sending them broadcast throughout the country to canners, brokers, wholesale and retail grocers, and others. Among other things they endeavor to weaken my statements and evidence by claiming that I am an agent of Armour & Co. and Wilson & Co., and that the California Cooperative Canneries is under packer control. I presume they are following the fundamental rule of a lawyer, that when the evidence is against you abuse the other side.

I brand as falsehoods all statements to the effect that I am an agent of or employed by any of the packers or that the California Cooperative Canneries or the orchards of the members are under the control of the packers or any packer.

They have endeavored to make much of the fact that the California Cooperative Canneries have a mortgage on one of their plants for \$200,000, which is held by Armour & Co. The total value of the canneries is considerably in excess of \$1,000,000. This loan was placed at a time when it was difficult to negotiate money. It is a long-time and very favorable loan. It could now be placed elsewhere if we so desired. We see no reason why we should place this loan elsewhere. The wholesale grocers and certain California canners would try to have you believe that we are influenced in our views by this mortgage. Such statements are unfair and unworthy of consideration by your committee. For a complete answer and refutation of all such statements I refer the committee to the files of the Federal Trade Commission. Two years ago one of the enemies of our organization filed a complaint with the Federal Trade Commission charging the California Cooperative Canneries with being affiliated with Armour & Co. A thorough and complete investigation was made by the commission. We were subsequently advised by the commission there was absolutely no truth in the allegation. We were given a clean bill of health in so far as any such charges are concerned.

OPPOSITION TO MODIFICATION OF DECREE.

Those actively opposed to modification of the decree are the National and Southern Wholesale Grocers' Associations—two powerful trade organizations, whose members, as buyers of canned fruits and vegetables, have by various methods enlisted the passive, and in some cases, the active opposition of certain groups of canners and brokers. No mistake should be made as to the motives actuating these associations. Do they represent the public interest in this inquiry, or do they appear in their own behalf as opposed, naturally, to competition. But slight consideration of their action herein, and previous methods show that this is merely one more bold effort to stifle legal and proper competition and enable them to build up a monopoly for themselves.

These wholesale grocers assume the entire responsibility for opposition to modification of the decree. I quote from a bulletin issued by the Southern Wholesale Grocers' Association, September 22 last, as follows:

"The meat packers of the country are, of course, fine actors, but this is one time in their history when they are going to have an opportunity, even against their will, to deal with the wholesale grocers of the country in the settling of an important issue."

It is common knowledge that wholesale grocers have fought ruthlessly against chain stores, mail-order houses, cooperative buying by retailers, business houses of sufficient size to conduct both a wholesale and retail business, as well as against the meat packers. Any person familiar with the operation of these associations knows that the underlying purpose which holds them together is that of waging an organized warfare against the competition of all distributing agencies other than those of wholesale grocers.

In the report of the Federal Trade Commission on canned foods (May 15, 1918), page 70, it is stated:

"The wholesale grocers acknowledge that the competition which they fear most comes from the mail-order houses, the chain stores, and the great meat packers, which, as distributing agencies, do not always follow what the wholesale grocer considers the regular channels of trade. The mail-order houses and chain stores buy directly from the packers and sell directly to the consumers. Armour & Co. buys from the packer and sells to the retail grocer through its branch houses."

Any method of distribution which leaves out of consideration the wholesale grocer is vigorously, and has been in many instances, successfully attacked by them.

There is now pending, in the Circuit Court of the United States for the Northern District of Alabama, a decree of injunction in the case of the United States of America *v.* Southern Wholesale Grocers' Association et al. (207 Fed. Repts. 434), enjoining the members of that association from threatening to boycott, or using means or methods to encourage boycott, or intimidating or coercing manufacturers or producers who are selling to persons, firms, or corporations not acceptable to the Southern Wholesale Grocers' Association. Each association was fined for subsequent violations of this decree, and other persons, members of this association, including Joseph H. McLaurin, was fined for violation of such decree and ordered committed to the jail of Jefferson County, Ala., until such fine was paid.

The United States Circuit Court of Appeals for the Ninth Circuit in the case of Federal Trade Commission against certain Los Angeles wholesale grocers (decided October 10, 1921), upheld an order of the commission against a conspiracy of the wholesale grocers of that city against an individual who was conducting both a wholesale and retail grocery.

Cases of a similar nature are pending before the Federal Trade Commission wherein local wholesale grocers' associations or their individual members have adopted various methods to prevent distribution of food products other than through wholesale-grocery channels. The most cursory consideration of the history of these associations and their operations show that their opposition in the present instance is nothing other than a continuation of their fight against competition, based wholly upon their desire to secure an advantage in what should be the open field of competition.

METHODS OF OPPOSITION.

I charge these wholesale grocers with deliberately planning, through their local, State, and National organizations, a campaign of coercion and intimidation in order to suppress the real view of canners and others on this question; that they have written coercive and threatening letters to canners and others throughout the country. Through fear of boycott and other measures of reprisal, many have been frightened into remaining silent, and in some cases compelled to go on record against any modification of the decree, regardless of their true feelings in the matter.

As an example of the power of these grocers, I cite the action of the Prune & Apricot Growers' Association, whose manager had gone on record as favoring the modification of the decree. Subsequently a committee representing wholesale grocers called upon the directors of the association and insisted that they go on record against modification.

The Western Canners' Association, on October 3 last, at a meeting of the executive committee in Chicago, passed a resolution strongly favoring modification of the decree. There were present 35 men prominent in the canning business throughout the Middle West. The annual meeting of the association was held on November 11 and 12 at Chicago. The wholesale grocers were there in force. They had quarters adjoining the canners' convention hall, and attended the sessions. The wholesale grocers had drawn up a 100 per cent

delivery contract, which the canners, they said, would be forced to sign in selling their pack next season. The wholesalers would only withdraw this murderous contract provided the canners withdrew their former resolution and agreed to adopt and forward to the Attorney General a resolution against modification. To sweeten the dose the wholesalers offered to modify their joint policy of not buying futures and promised to buy futures next spring, something which they had refused to do last spring, and which greatly embarrassed the canners in their financing and consequently reduced their output. No argument was had before the convention on the decree matter. The president of the National Wholesale Grocers' Association was on the program for an address, and practically the whole of his address was given up to argument against modification of the decree. No one was allowed to make reply.

No additional facts were brought out at the Chicago meeting of the western canners to cause a reversal of their former decision. Why was no discussion had and why was no one allowed to address the members except the president of the National Wholesale Grocers' Association? A select committee of leaders among the canners for two days held secret sessions with the wholesalers, and a deal was made. At the last minute the resolution was jammed through without debate. I submit in confidence to your committee a copy of the original resolution with the names of the committee written by one of the members of that committee. I have attached two letters written by members of that committee to me. These letters I must request your committee to hold in confidence. They speak volumes.

I quote a letter from a corn canner which I submit. He says:

"We are flooded with letters from jobbers, requesting that we do what we can to have the decree stand as it is; but we feel that it is to our interest that the packers should be allowed again to handle canned goods."

And from another in the South:

"While we believe 100 per cent are in sympathy with your stand on setting aside the packers' decree, they are adverse to taking sides in the matter. As you are aware, they are all small canners outside of two or three, and believe they would be the victims of the wholesalers' anger. Consequently, will do nothing as an association."

I also submit a letter from one of our brokers, who is having difficulty with the wholesalers on account of our stand in this decree matter. Also a letter from a wholesale grocer to our concern. The whole letter is a thinly veiled threat to boycott us unless we reverse our position. In addition to those which I have quoted, I submit a number of other letters which I will ask to hold as confidential and return to me when you have finished with them. For obvious reasons, I must request that the committee does not publish the names of the writers of these letters.

Our own organization received a letter under date of October 22, which letter is in circular form and signed by seven wholesale grocers. Among other things, they say to us.

"You will have to be on one side or the other of the fence and stay put. It is for you to choose now as to whether you are with us or against us. You can not be both. All of us make mistakes. It is out belief that you will be big enough to realize that you have made one. We await with interest—even anxiety, information as to what conclusion you have reached to the subject matter in this letter."

Needless to say the subject matter of this letter was the modification of the decree.

Here is another written by a wholesale grocer to a canner in New York State. This is circular in form and must have been received by many canners. This wholesaler says:

"Therefore, we believe it time for us to choose the men with whom we do business, and it will be only common sense for us to choose the people who cooperate with us and do not cooperate by resolution or any other way with forces that are trying to create a monopoly in food."

If these are not letters threatening boycott and reprisal, what are they?

It is high time that these wholesale grocery organizations should be restrained; they should not further be allowed to bulldoze and terrorize and dictate to both those of whom they buy and to whom they sell. I suggest here is a fertile field for the activities of the Federal Trade Commission.

THE QUESTION OF MONOPOLY.

Before this hearing is concluded no doubt those opposed to modification of the decree will repeatedly make the charge that the packer defendants have attempted to monopolize, or will monopolize, the distribution of wholesale grocery items. As some one once said, "Assertion is not proof," and I respectfully suggest that this committee should make a searching investigation of this phase of the matter and not allow to go unchallenged mere assertions of monopoly or monopolistic control. In the reports of the Federal Trade Commission and in bulletins and letters by wholesale grocers' associations or wholesalers individually, there is a constant repetition of the term "the Big Five," and the claim that they are "extending their control" and "the alarming growth of the packers," etc. Now, all such references carry with them the idea of joint action by these packers, i. e., that they must be considered as a unit in operation, and the total of their sales considered together. This is just one of the misleading methods adopted by those interested in opposing modification of the decree. What justification, or what proof, or what facts do they have to warrant them in referring to the packer defendants as acting jointly? Do they mean to say that the so-called Big Five or the packer defendants do not compete in the purchase of wholesale grocery items, or that they do not compete in the sale of wholesale grocery items? If they so contend, let them present facts and not by innuendo or insinuation or mere assertion seek to convey the idea that these five packing concerns are not in competition in the purchase and distribution of wholesale grocery items. There is no reason for lumping together the sales of these packers and their attempting to draw some conclusion or other therefrom any more than there would be for me to add together the sales of the five largest wholesale grocers and claim that they were attempting to monopolize the sale and distribution of wholesale groceries. To my mind, this point is highly important, for the Government does not even charge in its petition in this case any attempt by these packers to monopolize through any agreement, understanding, or joint action of these packers in wholesale grocery lines. Nor does the report of the Federal Trade Commission show any joint or concerted action by these packers in such lines. We should get away, then, from the impression that these packers are acting together. Definite facts should be presented to prove any such charge. Each one of these packers and their business must be viewed separately, just as the business of each wholesale grocer must be considered separately. Each in competition with all of the others. When we approach the question from this viewpoint we find any claims of alleged monopoly wholly unfounded. For example, in the report of the Federal Trade Commission of the meat-packing industry the statement is made:

"Armour's drive into the rice market in a single year is perhaps the most striking of the potentialities in this direction."

The report then continues to say that Armour sold 16,000,000 pounds of rice in 1917; that Armour is the largest rice merchant in the world, and that the wholesale price of rice increased 65 per cent. It should be borne in mind that these facts are set up as "perhaps the most striking instances of the potentialities in this direction."

Investigation discloses that the total production of rice in the United States in 1917 was 34,739,000 bushels (see p. 504 of the 1918 Yearbook of the Department of Agriculture), at 45 cents per bushel, the figure of rough rice—this figure is larger for clean rice, but the Department of Agriculture is not clear whether it is rough rice or clean rice—and taking the smaller figure, which gives a lesser total, that equals 1,560,000,000 pounds. There were imports of rice, 266,000,000 pounds, which means a total consumption of 1,826,000,000 pounds. Sixteen million pounds of rice, therefore, handled by Armour & Co. was nine-tenths of 1 per cent of the total consumption in the United States. This the Federal Trade Commission has said "is perhaps the most striking instance of the potentiality in this direction." The consent decree prohibits Armour & Co. from handling nine-tenths of 1 per cent.

The statement that the wholesale price of rice during such period increased 65 per cent, as it stands, is undoubtedly correct. There is an insinuation in the context that Armour & Co., through handling such a large quantity of rice, forced the wholesale price up to such a point.

The truth is that the average farm price of rice in 1916 was 99.9 cents, according to the Agriculture Yearbook. In 1917 it was 189.6 cents, or an increase of 113 per cent in the price received by the grower of rice during this period. It is apparent, therefore, that the grower profited by the increased price of rice.

And so we see that "this most striking instance of the potentialities in this direction" will bear real investigation in view of the actual facts.

I find also, by reference to the Federal Trade Commission report, that Armour & Co.'s total sales of canned fish and vegetables and sundries, canned and dried fruits, fruit preserves (soda fountain supplies and grape juice constituted 4.6 per cent of their total sales. The commission points out that this does not include sales of dressed poultry, eggs, butter, and cheese, and since these items are not covered by the decree I do not include them. Wilson & Co. reported to the commission that its specialty—the canned food, preserve, and condiment business—was less than 4 per cent of its business in 1918. Morris & Co. in their answer to the petition in this case states: "It is an admitted fact that the number of wholesale grocers and the volume of business done by them since Morris & Co. entered this field in the latter part of 1917 has increased more than 10 per cent. This conclusively demonstrates that, instead of eliminating competition or even injuring the business, the competition of the packers has stimulated and been beneficial to the business. The entire business done by Morris & Co. in the so-called unrelated lines, which consists almost entirely of canned fruits and vegetables, amounted to less than 2 per cent of the total annual sales of the company.

No figures for Cudahy & Co. are available, but I feel sure the wholesale grocers will not claim that they were ever interested to any great extent in the sale of wholesale grocery lines through their own branch houses. Nor do I find in the Federal Trade Commission reports any exact figures as to the amount of Swift & Co. sales of these items, although the report does show sales of canned goods by Libby; but it appears (see p. 2967, transcript of testimony case of National Wholesale Grocers' Association v. Hines, before the I. C. C.) that 80 per cent of Libby's output was marketed through the wholesale grocers and only about 20 per cent through the selling organization of Swift & Co.

In the hearing before the Interstate Commerce Commission in the case of the National and Southern Wholesale Grocers' Association v. Walker D. Hines, Witness Haney, appearing for the Southern Wholesale Grocers' Association, stated that in his opinion the total annual wholesale grocery business of the country amounted to approximately two and one-half billions of dollars. Witness Weld, appearing for one of the packers, estimated such annual business at two and one-half to three billions of dollars. It has been estimated by others at three and one-half billions of dollars. Accepting the figures of Witness Haney, I submit that if we consider the annual business of these five defendant packers in wholesale grocery lines, it did not amount to more than 4 or possibly 5 per cent of the total of the country. If the wholesale grocers claim that such total shows monopoly, bearing in mind that each of the defendant packers is in competition with each and all of the others, as well as the 5,950 wholesale grocers of the country, I must say their claim is most unconvincing.

So much for all the definite figures available on wholesale grocery items included in this decree as handled by the packers. Now let us turn to the other side of the picture and ascertain the size and strength of the wholesale grocers. Are their numbers decreasing or increasing? In brief, is there any real danger of their elimination, or is it only in the sense that the packers do a certain amount of business that the wholesale grocer might otherwise do that they are opposed to packer competition?

I have here a book entitled, "Population and its Distribution," compiled from the figures of 1920 United States census, including distribution of retail and wholesale dealers, compiled from trade sources, issued by J. W. Walter Thompson Co. At page 309 of this volume there is compilation showing the total number of wholesale grocers by States. The total for the country is 5,950. Will the wholesale grocers assert that this number is not the result of successive increases each year?

We find that the Interstate Commerce Commission in its decision in the case above referred to stated:

"Wholesale grocers are widely scattered. They are found in every State and in practically every city of considerable size. There is a total of 5,304 wholesale grocers in the United States, located in 1,899 cities and towns. In the eastern territory, including the western termini of the eastern trunk lines, there are located 1,322; in central territory, 708; in southern territory, 1,730; and in western territory, 1,544. The distributing areas of the grocers vary. The average radius of distribution for the larger houses is between 100 and

200 miles. although some may considerably exceed these distances, particularly with specialities and standard brands. For all wholesale grocers the average does not exceed 100 miles."

This case was started in 1919, and the figures introduced in evidence were evidently not as recent as those of the Thompson Co.

By reference to Bulletin No. 26 of the Bureau of Business Research of Harvard University, entitled "Operating Expenses in the Wholesale Grocery Business in 1920," we find the following information:

"The statements from 322 wholesale grocers provide the data summarized in this bulletin. These firms were located in 45 States and Canada. Their aggregate sales in 1920 were \$643,949,000. The net sales of the individual firms ranges from \$176,000 to \$28,400,000; about one-half of the firms had sales between \$500,000 and \$1,500,000. The bureau has had complete reports from 45 firms for the entire period (1916-1920), the average net sales per firm for this group were as follows: 1916, \$1,360,000; 1917, \$1,690,000; 1918, \$1,907,000; 1919, \$2,340,000; 1920, \$2,608,000."

From the above, it is evident that the extent to which the packers have entered into the wholesale grocery business has not resulted in driving these firms out of business. All such claims of the wholesale grocers are grossly exaggerated. Otherwise, how would the average net sales of all firms from whom the complete reports were received show an increase of 100 per cent?

An interesting example of growth by a wholesale grocer is found by reference to Moody's Manual of Corporation Securities for the year 1921, pages 771, in the statement of the Western Grocer Co. of Cedar Rapids, Iowa:

"Western Grocer Co. (Inc.), February 11, 1901, in Iowa, owns and operates following: H. L. Spencer Co., Oskaloosa, Iowa; Letts-Fletcher Co., Marshalltown, Iowa; Letts-Fletcher Co., Carroll, Iowa; Letts-Spencer Smith Co., Mason City, Iowa; Letts-Parker Co., Eldorado, Kans.; Western Grocer Co., Albert Lea, Minn.; Western Grocer Mills, Marshalltown, Iowa; Western Grocer Mills, Holland, Iowa; Western Grocer Co., Dubuque, Iowa; Western Grocer Co., Clinton, Iowa; Western Grocer Co., Owatonna, Minn.; Western Grocer Co., Cedar Rapids, Iowa; Western Grocer Co., Minneapolis, Minn. Company also owns a substantial interest in the Pacific American Fisheries, Bellingham, Wash.

"Capital stock, authorized, \$6,000,000; common and preferred, \$2,500,000. Seven per cent cumulative preferred, outstanding January 1, 1921, \$5,242,600 common, and \$1,091,900 preferred, par \$100."

I do not understand that statement exactly. I may have to verify those figures.

The CHAIRMAN. Mr. Campbell, pardon me, if your statement is incorrect, and you find it so, do you desire to correct it later?

Mr. CAMPBELL. Yes; I should desire to refer to this original statement again and correct it if it is incorrect.

The CHAIRMAN. That may be done.

Mr. CAMPBELL. No funded debt. Preferred stock has preference as to assets. Stock transferred and registered by secretary and treasurer of company.

Gross sales, 1914, \$8,496,552; 1915, \$9,376,587; 1916, \$10,833,352; 1917, \$15,172,552; 1918, \$18,306,615; 1919, \$22,028,927; 1920, \$26,668,215.

The volume of business transacted by this wholesale grocery company has more than trebled in six years, and it was during those years that the packer defendants were most actively engaged in distributing wholesale grocery items. Such an increase from approximately eight and one-half millions of gross sales in 1914 to over twenty-six and one-half millions in 1920 would seem to indicate a healthy and continuous growth despite the proximity of this company to the principal packing house centers of distribution.

I believe the wholesale grocers well know their claims as to the alleged "alarming growth of the packers" will not stand up when their assertions, glittering generalities, and alarming views on this point are put to the test by real facts and figures. I believe they know also, or their lawyers know, that "there is no limit under the American law to which a business may not independently grow;" that mere increase in the amount or volume of "wholesale grocery business" handled by any one defendant or by all these defendants is not in any sense legal proof of monopoly or attempt to monopolize declared unlawful by the antitrust acts. I understand the decision of the Supreme Court in the Steel case settled very conclusively that mere size was not an offense against the antitrust acts. As I say, I believe the wholesale grocers know this and consequently have attempted heretofore at least to bolster up their claim of monopoly by asserting that these packer defendants were

accorded unfair advantages over the wholesale grocers in expedited transportation service and more favorable freight rates. This phase of the matter was fully presented by the Federal Trade Commission in one of their reports, and was insistently made by the wholesale grocers. A complete and final answer to such claims is contained in the decision of the Interstate Commerce Commission rendered under date of June 22, 1921. (62 I. C. C. Decisions, p. 375.)

The Interstate Commerce Commission there held:

"1. Practice of defendants in permitting the meat packers to load certain articles of groceries in their peddler and branch-house cars not shown to result in undue prejudice to complainants or unduly to prefer the packers.

"2. The various peddler-car rates and rules are not shown to be unreasonable or unduly prejudicial, except that the mileage scale of rates applicable on packing house products in peddler cars in southwestern territory found to be unduly prejudicial to complainants and unduly preferential of the meat packers in so far as said scale of rates applies on lard substitutes, cotton-seed cooking oil, peanut oil, corn cooking oil, soya-bean cooking oil, canned meats, canned soups, chicken tamale, chile con care, spaghetti meat chile, and canned meats with vegetable ingredients.

"3. Various rules applicable on mixed carloads of fresh meats and packing-house products found unjust, unreasonable, and unduly prejudicial. Reasonable and uniform mixing rules prescribed for the future."

This committee should know that this was a vigorous and thorough effort of the wholesale grocers to cripple competition, and was never abandoned at any time as a result of the consent decree or otherwise. The commission in its decision plainly disregarded any possible effect of the consent decree deciding the case on its merits and the chief counsel for the complainant, National Wholesale Grocers' Association, Clifford Thorne, in making report to the Wholesale Grocers' Convention at Colorado Springs, July, 1920, said:

"The trial has been somewhat imposing in the array of parties. Twenty lawyers have actively participated. The case involved practically all the railroads, and all the packers, and all the principal wholesale grocers in the Nation.

"The trial was presided over by the chairman of the Interstate Commerce Commission.

"More than 250 exhibits and several thousand pages of testimony make up the record.

"The trial lasted 30 days.

"Hearings were conducted at Chicago, Memphis, Tenn., and Washington, D. C. * * *

"In the midst of the fight—at its very climax—after we had put in practically our entire case, the packers voluntarily offered to give up the handling of about one-fourth of their groceries. But we have not accepted this compromise, tendered through the good offices of the splendid, well-meaning, but ill-advised Attorney General. We want a clear-cut victory. We want equality on all our products. The fight is on. There I have told you my story."

After the thoroughly considered decision of the Interstate Commerce Commission that the packers do not enjoy unfair advantages in transportation services the wholesale grocers should not be permitted a retrial of such issues before this committee. When the actual facts in the matter—instead of more assertions—were presented for judicial consideration, the whole case of the wholesale grocers collapsed completely.

In the reply filed by the counsel for the National Wholesale Grocers' Association in this case before the Interstate Commerce Commission they strenuously deny that their organization sought at any time to have legislation enacted that would force the packers out of the business of handling certain commodities that were handled by grocers. In this connection they state:

"The Southern Wholesale Grocers' Association did appear in favor of such legislation. The National Wholesale Grocers' Association, the complainant in this proceeding, purposely refrained from so appearing. The executive committee of the latter organization, and also the legislative committee, considered the subject carefully and determined definitely and unanimously that it would not urge any such legislation. The National Wholesale Grocers' Association did not favor any one of the numerous so-called "packers' bills" pending either in the present Congress or the previous Congress, or in any other Congress. We have the complete record and know positively that the national association has taken no such action since the date of its organization in 1906.

"The only legislation the national association would have favored, as was decided by its executive committee and its legislative committee and approved by the members, would have been a bill designed merely to place the packers and the grocers on an even plane, without any special privileges for either. It was said again and again in these meetings of the association that the entire field should be free and open both for the packer and for the wholesale grocer, as well as for any other competitor or prospective competitor."

If they were sincere in their statement that "the entire field should be free and open both for the packer and for the wholesale grocer, as well as for any other competitor," why do they now strenuously oppose modification of this decree, which will do nothing more than accomplish that very result?

Nor have the wholesale grocers always been of the opinion that the competition of any of the packers in the wholesale grocery business was such as they need fear. For example, in one of their trade journals, the Wholesale Grocer, issued in November, 1920 (nine months after the decree was in effect), appears an article entitled "Grocers not made with money," which says in part:

"Armour has very clearly demonstrated some old truths in his attempts to use his good name as a meat packer to promote other business activities. His grocery business has been a failure. The Armour Grain Co., the coffee branch of his general grocery venture and other activities closely allied with the general wholesale grocery business, all have failed of success in spite of good national advertising and an almost limitless bank account set aside for the promotion of the grocery venture.

"Armour, the trained meat packer and experienced financier, has been able to create a wonderful machine for the buying, selling, packing, and distribution of all manner of meat products. Economy and efficiency operate everywhere and work smoothly, too, in every branch of the Armour meat industry. Experts for the various departments of the business are under the supreme direction of an expert head of the business. The public know Armour, the packer. Armour is identified with good meats and good service. The people know his meats and his service. The people can not think of him seriously in other lines of business activity.

"The Armour people somehow did not understand that the wholesale grocery business requires peculiar business machinery, just as the meat-packing business does, and that the tried and successful policy of the packing industry can not be applied with success to the grocery business.

"The wholesale grocers cover the entire country thoroughly, and when they undertake to distribute the manufacturers' specialty products, they are able to back up the manufacturers' national advertising campaign. Armour with his distributing houses could not near cover the retail trade of the country and give force to his national advertising."

I now wish to submit some economic reasons for modification of this decree.

UNREASONABLE COST OF DISTRIBUTION—CONSUMERS DEMAND LOWER PRICES AND LESS COST OF DISTRIBUTION.

Canners have always claimed that the wholesale grocers were charging too much to distribute canned goods. California producers of dried and canned fruits have always felt that this was true. One of the objections urged against the reentry of the packers in distribution is the claim by the wholesale grocers that the packers follow the practice of handling only those groceries in which there are good profits. If the profits on these certain items were deduced by competition, wholesale grocers claim they would be put out of business. They reason that the producers of canned and dried fruits, canned vegetables, and other items on which they make large profits must continue to be held up by the wholesale grocers, and that the public must continue to pay extortionate prices for canned goods in order that the wholesale grocers may make these profits.

Mr. Anderson, chairman of the Agricultural Inquiry Commission, states that 37 cents of the consumer's dollar represents the cost of producing the article and the cost of material that went into it; 14 cents represents all the profits; 49 cents the cost of service of distribution. Without going into an academic discussion and study of the question of distribution, we all admit that producers and consumers are insistent that this cost shall be reduced. The wholesalers of this country are the hub around which the whole system of distribution is built, and they are resisting to the utmost any method or means by which the people will be able to save at least a part of the 49 cents they are compelled to

pay for distribution out of every dollar they are compelled to spend for necessities.

I wish to direct attention to two exceedingly important facts in connection with this hearing—such facts of importance primarily to the one hundred and ten millions of American citizens who will not appear at this hearing, and, secondarily, of importance to those who will appear here in behalf of their own interests.

The first fact is that both the retail and wholesale prices of food in this country were approximately 50 per cent higher in September, 1921, than were such prices in September of 1913 (November, 1921, issue of Monthly Labor Review of the United States Department of Labor). This is in face of the fact that farm prices are in most instances lower than in 1913. I do not attempt to assign a reason for this situation. Each person may have his own idea as to the causes. I merely call attention to the conditions and unqualifiedly state that it is of serious importance to the farmer and the working people of the country and their families.

The second fact is this: Within less than 90 days, unless this decree is modified, extensive and economical facilities for food distribution will be scrapped.

Will the destruction of such food distributive machinery help to bring back to normalcy the cost of food? Will the denial for the future of the right of those people to use such facilities help to keep down the cost of food? For the first time in the history of this country certain companies and individuals have been prohibited from engaging in business which is open to all others. Efficiency has not only been penalized but sentenced to destruction. Is a continuance of such course desirable in the best interests of not merely the wholesale grocers or the packers but in the best interests of the public? That, I take it, is primarily the question this committee must decide.

CONTROL WHOLESALERS' PROFITS WITH PACKERS' COMPETITION.

It is conceded even by the wholesale grocers that the meat packers of the United States and by the meat packers—I do not refer to the so-called Big Five, but to all those engaged in the scientific handling in interstate distribution of meats, some 300 concerns in this country—have developed the most modern and economic method of distribution yet established. As producers we insist that it is entirely against the public interest to withdraw these facilities from public use. How has the public benefited by removing this competition, thus leaving the people in the clutches of the wholesale grocers' associations?

DISTRIBUTION OF FOOD ON COMMISSION BASIS.

Armour & Co. and Wilson & Co. have already stated to the writer that they are willing to distribute food products on a commission basis. By this method, the speculative feature in the handling of foods in this country would be absolutely eliminated. The producer would be in direct competition with all food speculators. Under this plan, which would no doubt be approved by the Department of Agriculture, producers, canners, and food manufacturers will be able to reach the smaller dealer at the lowest possible cost. Consumption of these products will increase because of a lower price. Both the producing and consuming classes will be benefited. The cost of handling by the packer will decrease as his volume of business increases. The producer will profit by saving in distribution.

PRODUCERS, CANNERS, AND FOOD MANUFACTURERS NEED PACKER DISTRIBUTION.

Producers, canners, and food manufacturers, especially those who are not large enough to support complete sales and distributing organizations, should be able to avail themselves of such facilities as the packer have, to assist them in the distribution of their products. This will enable the smaller producing units to compete with large organizations on a more equal basis,

DECREE INCREASES COST OF MEAT TO CONSUMER.

We assert, and without fear of contradiction, that the restriction of the volume of business of these meat-packing concerns by compelling them to handle meat products alone, increases the cost of meat to the consumer and tends to reduce the price paid to the producer for live stock. It is a well-known fact in

the field of production, manufacture, and distribution, that volume of business decreases the cost of operation. It is then in the public interest to see that the meat packers handle the largest volume of business possible, in connection with their distribution of meats, in order to reduce the cost of operation.

EXPORT BUSINESS DESTROYED BY DECREE.

One of the most important economic problems in this country to-day is that of foreign export business. The packers have, through their distribution of meat products in foreign countries, been compelled to establish their own sales agencies throughout the world. Producers, canners, and food manufacturers were able, before the issuance of the decree, to take advantage of this most efficient means of foreign distribution. The decree absolutely prohibits five of these packers from exporting any foods other than meat products, thus depriving the producers and manufacturers of food products, of the best and most complete agency ever established in this country for the distribution of foods in foreign countries. This, we contend, was a great economic mistake, and has operated to the injury not only of the producers, but has, by destroying a certain amount of our export business, indirectly injured every individual in this country.

FACILITIES OF THE PACKERS FOR ECONOMIC DISTRIBUTION.

All of the meat packers are now under Government supervision and control, and have some 2,000 distributing houses which they call branch houses. About 1,200 of these are owned by the five packers, who are under the so-called consent decree. In addition to these branch houses, the packers have refrigerator and route cars, which are sometimes designated as peddler cars. The Federal Trade Commission, in reporting on this system of distribution, states that by these peddler cars the packers are able to distribute products direct to 37,000 points in the United States. As there are less than 3,000 towns and cities in the United States of 2,500 and over, and approximately only 28,000 incorporated towns, which includes many towns of no more than 100 population. It is evident that the meat packers, through this system of car distribution, are able to reach practically every point where foods are sold. Supplementing these cars, many packers are now using trucks, running from their branch houses and packing plants to near-by points, thus furnishing retail dealers, hotels, and other supply houses a most perfect and well-organized service.

DECREE IS ILLEGAL.

I will only touch upon one more phase of this problem, and that is the legality of the decree. I quote from a letter received from a Middle West Congressman who, in a few words, has covered the question of the legality of the decree as thoroughly as might be done in a most exhaustive brief. He says:

"Since the packers have been put under the supervision of the Secretary of Agriculture the alleged necessity for this decree disappears. The entry of the decree, to my way of thinking, was not justified under any circumstances. When the packer legislation was before the House I stated my position in regard to the decree at some length. It is my opinion as a lawyer that the decree is void because it was beyond the jurisdiction of the court to enter it. The court doubtlessly had the right to forbid restraints of trade, etc., but there is no law of the United States which authorizes a court to enter judgment forbidding anyone from engaging in a certain line of business. If there is no law pursuant to which a court can make such a judgment, then the consent of the parties can not confer the jurisdiction. If it should be deemed necessary for the common good that persons in one line of business should be prohibited from engaging in other lines of business—a very delicate question—it should be so declared by the legislative branch of the Government.

"I can not be accused of being friendly to the packers, but I take the liberty of urging that for the reasons stated the decree should be set aside, or at least that part of it which prohibits them from carrying certain commodities in their refrigerator or other cars."

CONCLUSION.

In conclusion, I respectfully submit that the so-called "packers' consent decree" is not justified in fact. Nor is it for the economic advantage of the pro-

ducer or the consumer; and, further, that it is not based upon law. I respectfully request a recommendation by your committee to the effect that the decree should be set aside because it is operating to the economic disadvantage of the people of this country, and is not sustained by either fact or law.

Respectfully submitted.

VERNON CAMPBELL,
Vice President and General Manager,
California Cooperative Canneries.

The CHAIRMAN. The committee will ask questions first, after which questions by persons present may be submitted. Judge Hainer, do you desire to ask any questions?

Judge HAINER. No.

The CHAIRMAN. Do you, Mr. Hall?

Mr. HALL. No.

The CHAIRMAN. I have some questions I would like to ask. Now, Mr. Campbell, you say that the wholesale grocers are indulging in a system of unfair methods in procuring canners to oppose this modification, and that they have power to injure such canners if they do not so oppose it. How does it come that you have not been so influenced, and do not oppose this modification?

Mr. CAMPBELL. I think my reasons are sufficiently stated in the opening of my statement, in which I showed the damage done us through the destroying of this contract which we had with Armour & Co. That contract was very valuable, and our directors considered it worth while making an effort to restore that contract, or again make connection with Armour & Co. for distribution of our goods.

The CHAIRMAN. Are you afraid they will injure you in your business because of your stand here?

Mr. CAMPBELL. Why, I am being injured to some extent at the present time, as is shown by some letters which I have submitted to you in confidence here, letters which have been written to us.

The CHAIRMAN. You say you borrowed \$250,000 of Armour & Co.?

Mr. CAMPBELL. We originally borrowed \$250,000, \$50,000 of which has been subsequently repaid to them.

The CHAIRMAN. How is that evidenced; by what, that note?

Mr. CAMPBELL. A mortgage on the plant at San Jose, Calif.

The CHAIRMAN. And that mortgage is still in existence?

Mr. CAMPBELL. That mortgage is still in existence. It runs over a period of 10 years.

The CHAIRMAN. Have you borrowed money of anybody else?

Mr. CAMPBELL. We have borrowed money of banks. We have a mortgage on other plants, which mortgage is in possession of banks in Los Angeles.

The CHAIRMAN. Well, have you any other loans; anybody else you owe money to?

Mr. CAMPBELL. We borrow money during the packing season. We borrowed quite a considerable quantity of money this year from the War Finance Corporation, from concerns in Philadelphia, and from banks elsewhere.

The CHAIRMAN. Approximately how much did you borrow from the War Finance Corporation?

Mr. CAMPBELL. \$700,000, total.

The CHAIRMAN. Do you feel that this mortgage prejudices you in favor of Armour & Co.?

Mr. CAMPBELL. Not in the least. We are prejudiced in favor of Armour & Co. by the service they can render us.

The CHAIRMAN. Are you in the employ of any packer?

Mr. CAMPBELL. Absolutely not.

The CHAIRMAN. Have they promised to pay you anything for doing anything here?

Mr. CAMPBELL. Absolutely nothing.

The CHAIRMAN. Do you expect any pay?

Mr. CAMPBELL. I do not.

Judge HAINER. What is the membership of your cooperative association, Mr. Campbell?

Mr. CAMPBELL. Well, I don't know the exact number. It is between 700 and 1,000.

Judge HAINER. Who are they, fruit growers?

Mr. CAMPBELL. Fruit growers; yes. They are fruit and vegetable growers—farmers.

The CHAIRMAN. And they own your plant?

Mr. CAMPBELL. They own our plant; yes.

Judge HAINER. When was your plant established?

Mr. CAMPBELL. Well, we built the first plant in San Jose; I think it was in the beginning of 1918, if I remember right, or the close of 1918, I believe.

The CHAIRMAN. Have any of the packers requested you to make an effort to procure this modification?

Mr. CAMPBELL. No, sir; they have not. In fact, they have resisted my efforts; some of them resisted my efforts.

The CHAIRMAN. I believe that that is all I care to ask. Judge Hainer, have you anything?

Judge HAINER. When did you first press this modification of this decree?

Mr. CAMPBELL. May, 1920.

Judge HAINER. Did you ever have an opportunity to be heard before the decree was entered, or since?

Mr. CAMPBELL. No, sir.

Judge HAINER. This is the first opportunity you have had of being heard?

Mr. CAMPBELL. Yes, sir. I have made a pretty profound study of the problem, because I was very much interested in succeeding in getting this thing done.

The CHAIRMAN. How long have you been engaged in this effort to procure a modification?

Mr. CAMPBELL. Off and on since May, 1920.

The CHAIRMAN. Do you think of anything else, Mr. Hall?

Mr. HALL. No; I do not think so.

Mr. CAMPBELL. I wish to state to the committee that if there are any other points that I have not covered in presenting our side of the case, I would welcome suggestions, that I might go and get such references as you may require. In this statement you will find, I think, that I have referred to all those authorities, so that you can easily find them.

Judge HAINER. The following question has been submitted: What effect does the packers' control act, recently enacted, have on this decree? That means the packers' and stockyards act of 1921.

Mr. CAMPBELL. Well, Judge, I am not a lawyer, but my personal opinion is that an act of the legislative branch of the Government can not affect a court decision or a court decree.

Judge HAINER. I assume this is more of a law question than a question of fact.

Mr. BREED. The packers' control bill, Judge, does not cover grocers at all. It only covers meat and meat-food products.

Judge HAINER. Well, that is still an open question whether or not it covers every article of commerce. It purports to.

Mr. CAMPBELL. Would the committee permit me to give my version of this? I don't know that I agree with the judge on this, but I would like to give my personal opinion of this act. I had something to do with the amendments of this act, and came here and came before the committee at the time, and had some of the changes made in the bill myself, and I am somewhat familiar with its provisions.

Judge HAINER. What was the purpose of it, whether it was to cover all unrelated products or not?

Mr. CAMPBELL. It might be well for the committee to hear some of the authors of this bill before the hearing on this question is over. I know some of their views myself, being acquainted with them.

Judge HAINER. I take it that the purpose of this question, Mr. Campbell, is, what the purpose of this act was.

Mr. CAMPBELL. I will try to do my best, as a layman, to show what the purpose of the bill is.

The CHAIRMAN. I would like to ask you a question before you get into that. Mr. Campbell. In your opinion, does this bill place the packers with respect to unrelated commodities under the control of the Secretary of Agriculture?

Judge HAINER. And was that its purpose?

Mr. CAMPBELL. That is my opinion, and that, I believe, was its purpose.

The CHAIRMAN. Well, in your opinion, then, Mr. Campbell, does that in any way change the circumstances and conditions which existed at the time of the entry of this decree, and change the purpose which it was intended the decree should accomplish?

Mr. CAMPBELL. That is my thought, that it does.

The CHAIRMAN. That is your opinion, then?

Mr. CAMPBELL. That is my opinion, and I base my opinion upon the reading of this bill and upon the opinion of the authors of the bill. I will try to make the bill clear to those present who are, like myself, not lawyers. I will try to give my understanding of the bill. The title of the bill is, "An act to regulate interstate and foreign commerce in live stock, live-stock products, dairy products, poultry, poultry products, and eggs, and for other purposes."

Now, the words "other purposes"—

Judge HAINER. I wish you would read (b) under section 302.

Mr. CAMPBELL. Judge, I will get all those points. I have them well in mind.

We will skip the matter of definitions here, except the term "commerce." It is important to make a careful study of the definition of commerce under this bill.

"(6) The term 'commerce' means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof, or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession or the District of Columbia.

"(b) For the purpose of this act (but not in anywise limiting the foregoing definition) a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the live-stock and meat-packing industries whereby live stock, meats, meat-food products, live-stock products, dairy products, poultry products, eggs, and other food products are sent from one State with the expectation that they will end their transit after purchase in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for slaughter of live stock within the State and the shipment outside the State of the products resulting from such slaughter. Articles normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this act. For the purpose of this paragraph the word 'State' includes Territory, the District of Columbia, possession of the United States, and foreign nation."

Now, carefully reading that subdivision (b) of section 2, I take it that for the purposes of this act a transaction—that is, any transaction in respect to any article—shall be considered in commerce if such article is a part of that current of commerce usual. Now I will refer back to that again after I read you section 202 describing those acts which are unlawful.

"Sec. 202. It shall be unlawful for any packer to:

"(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in commerce, or"—

And going over to (e)—

"(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in any article in commerce or of restraining commerce, or" and so on.

Now, some have tried to construe the definition of commerce as applying only to these items which are mentioned, beginning with the fourth line under subdivision (b), but I don't see how that construction can be read into the act, and if such construction might be read into the act I hold that a transaction in respect to any article shall be considered to be in commerce if such article is a part of that current.

Now, if the packers are undertaking now, or do in the future undertake to put into commerce any article, and that article becomes a part of that current of commerce, it immediately comes under this act, because it immediately enters that current, and if that article becomes usual, like canned meats or canned fruits, or canned vegetables, or dried fruit, or beans, or rice, or whatever that article may be, and it becomes a part of the usual commerce of that business, I say it comes under the act.

The CHAIRMAN. So you feel that in view of this act that if the packers were permitted to reengage in these unrelated lines and did so reengage and were guilty of unfair practices in commerce, that the same would be subject to the regulation and control of the Secretary of Agriculture?

Mr. CAMPBELL. I hold that, and I do not believe that any court would construe the intention of the authors of this act to intentionally allow the packers to engage in unfair practices in handling other lines while being controlled in meat lines alone.

Judge HAINER. Mr. Campbell, were you present when that was considered by the House and the Senate?

Mr. CAMPBELL. Yes; I was present and had a number of interviews with various members of the House committee particularly, and also with a few of the members of the committee of the Senate.

Judge HAINER. Well, what was the intent or purpose in enacting those provisions?

Mr. CAMPBELL. Well, I will tell you a little of the inside history. When I appeared before the House committee I objected to a provision—I have not the old bill here with me, unfortunately—but I objected to a provision in that bill which directly referred to the consent decree, and the nature of the language was such that it might be construed as fixing the decree permanently, or an indorsement by the Congress of the decree. I found, when I made a talk before this committee, that the committee was unanimously opposed to any such construction, and they immediately, at that moment, withdrew that provision in the act. And I suggested an amendment, two amendments in fact, which that night, or that evening, they agreed to write in, which would definitely instruct the Department of Justice in the withdrawal of this consent decree and place the packers back in the distribution of side lines. I can submit to this committee a copy of those amendments which I proposed, and which the committee agreed to.

Now, there was considerable discussion had at the time by the packer attorneys. I found since that three of the packers were opposed to the modification of the decree for selfish reasons, and at that time opposed the adding of this provision to the act or rather this amendment. And they agreed with me that they would not combat what I was trying to do, but would agree to an amendment rather than to put that definite provision in the act; or rather, if I would suggest to the committee that they do not put this in the act. They felt that this bill, as at that time outlined, which is practically the same as we have it to-day, was sufficient to cover the operation in side lines. I do not think there was ever any question about that matter.

Judge HAINER. By "side lines" you mean unrelated commodities, do you?

Mr. CAMPBELL. Yes, unrelated commodities, outside of meat-packing business. That has always been my understanding of it, ever since I have been discussing it with them.

The CHAIRMAN. Mr. Campbell, how much unsold have you of the pack of this year, approximately, I mean? What percentage; that would be sufficient.

Mr. CAMPBELL. I think about 15 or 20 per cent.

The CHAIRMAN. Is that large or small for this time of the season, Mr. Campbell?

Mr. CAMPBELL. Well, it is not large.

The CHAIRMAN. Have you sold any of this season's pack to Armour & Co.?

Mr. CAMPBELL. No; none to Armour & Co., but I did make a contract with Armour & Co. of London (Ltd.), which is a separate corporation; I think a majority of the stock of which is probably controlled by Armour & Co. of Chicago. I am not sure about that. I am acquainted with the fact that all of the directors of that corporation in London are English citizens, except one, who represents the Armour organization in Chicago.

The CHAIRMAN. What was the purpose of that contract?

Mr. CAMPBELL. That contract was for the purpose of foreign distribution. I was unable to distribute products in foreign countries through Armour & Co. of Chicago because of this decree.

The CHAIRMAN. You refer, I presume, to paragraph 4 of the decree, where it says:

"That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise, either for domestic trade or for export trade, the manufacturing, jobbing, selling, transporting (except as common carriers), distributing, or otherwise dealing in any of the following products or commodities"—

And then follows a list of the commodities. Is that what prevented you from dealing directly with Armour & Co. in the United States?

Mr. CAMPBELL. Yes, Mr. Chairman; that is exactly what I refer to, and that is one of the provisions of the decree which not only myself, but many others, have so strenuously objected to since the beginning.

The CHAIRMAN. Prior to the entry of this decree, did you use the export distributing facilities of Armour & Co. to any extent?

Mr. CAMPBELL. Yes, sir; a good portion of our pack was shipped to many foreign countries throughout the world.

The CHAIRMAN. And you are deprived of that now by this decree?

Mr. CAMPBELL. Absolutely.

The CHAIRMAN. That is all I care to ask.

Mr. BREED. Mr. Chairman, may I ask if the decree has gone into effect yet, and who has been debarred?

Judge HAINER. Well, that would be a matter of law.

Mr. BREED. No; the decree does not go into effect until February, 1922, and that has not been reached yet.

Mr. CAMPBELL. I would like to answer that question, Mr. Chairman, if I may do so.

The CHAIRMAN. You may if you wish.

Mr. CAMPBELL. Armour & Co. has taken a stand, as have, I believe, the other packers, that it was the intent, and they were trying to follow the spirit and intent of this decree and divorce themselves as rapidly as possible from the so-called side lines, and they refused to further enter into this business or engage in it for that reason.

The CHAIRMAN. In other words, they engaged in a process of depleting their present stocks without renewing them, is that it?

Mr. CAMPBELL. That is the proposition.

The CHAIRMAN. Mr. Campbell, you represent only your individual company, as I understand you to say?

Mr. CAMPBELL. I officially represent only my own concern, Mr. Chairman.

The CHAIRMAN. And you do not purport to represent anyone else?

Mr. CAMPBELL. I do not.

The CHAIRMAN. Are you acquainted with the feeling of growers and producers in California of fruits and vegetables?

Mr. CAMPBELL. A good many of them. In that connection I have submitted here for the use of the committee a report of a certain agricultural organization in California, which I am quite sure should not be made public, but I think will give you some information.

The CHAIRMAN. Have you talked with any producers and growers or communicated with them otherwise concerning this decree?

Mr. CAMPBELL. A great many of them; yes, sir.

The CHAIRMAN. What is the opinion, as you find it from such talks or communications, of these producers and growers?

Mr. CAMPBELL. The general opinion is that the people of this country should not be deprived of an economical means of distribution; that the entry of the packers into this business and the continuation in this business would stimulate the sale of their goods rather than otherwise.

The CHAIRMAN. I presume there are some producers or growers opposed to a modification, are there?

Mr. CAMPBELL. There may be.

The CHAIRMAN. Have you met any or talked with any producers or growers who are?

Mr. CAMPBELL. I have not.

The CHAIRMAN. Does anyone else have any questions they wish to suggest now?

Mr. HOFFMAN. Mr. Chairman, I should like to ask a question.

The CHAIRMAN. Your name?

Mr. HOFFMAN. Edward W. Hoffman, of Milwaukee, Wis.

The CHAIRMAN. And what business are you engaged in, Mr. Hoffman?

Mr. HOFFMAN. Wholesale grocer. Did I understand Mr. Campbell to say that he is not now in the employ, or never has been in the employ of the packers? Is that question permissible, Mr. Chairman?

The CHAIRMAN. Mr. Campbell, you may answer.

Mr. CAMPBELL. I think, Mr. Chairman, you asked that question and I answered it.

The CHAIRMAN. I asked the question, yes, but answer it for the gentleman who has just asked it.

Mr. CAMPBELL. I do say so; yes, sir.

Mr. HOFFMAN. You never have been?

Mr. CAMPBELL. I never have been; no, sir.

Mr. HOFFMAN. Is Mr. Campbell interested in this contract that he has with Armour & Co., in this way, that he gets a remuneration or a commission on the sale of his products? What is it, the California Cooperative Co.? Does he get a personal remuneration?

Mr. CAMPBELL. I am perfectly willing to answer that question, Mr. Chairman.

The CHAIRMAN. Well, I was just wondering whether we ought to indulge so far in private business affairs. Go ahead and answer it.

Mr. CAMPBELL. I would like to answer that, Mr. Chairman, for the reason that I have seen some published statements, printed statements, along that line, and I would like my replies to go into the record. I am not in any way interested in the contract. I made that contract, or secured that contract in opposition to, or in competition with, the California Packing Corporation, which formerly furnished Armour & Co. with the major supplies of canned goods. I do not want to claim to be a superior salesman to Charlie Bentley, the manager of the sales department of the California Packing Corporation, but we were both in Chicago at the same time, and both worked very hard for this business, and I finally secured it, and I understood at the time that Armour & Co. was buying about one-third of the total output of the California Packing Corporation.

Now, when I secured this contract, I secured it for two organizations, the California Cooperative Canneries and the California Growers' Association, two growers' cooperative organizations which I established in California, and I turned this contract over to these people without a cent of remuneration.

Now, what the gentleman refers to, I think, is my contract with the corporation.

The CHAIRMAN. Is that the California Cooperative Canneries?

Mr. CAMPBELL. That is the California Cooperative Canneries.

The CHAIRMAN. Your company?

Mr. CAMPBELL. Yes; my company, under which I work, Mr. Chairman.

The CHAIRMAN. Yes.

Mr. CAMPBELL. I am not paid a straight salary in this work. They pay me a certain percentage on all the goods which I sell, so that when we have a short season and the business is poor my income is much less. The amount of my remuneration is one-half of 1 per cent of the gross business done by the concern.

The CHAIRMAN. Is that regardless of whether it goes to Armour & Co. or to wholesale grocers, or anyone?

Mr. CAMPBELL. No; I am selling goods to DeGroff, to R. C. Williams & Co., and to other buyers in New York. All of these sales are a part of the total sales, and I am paid on the basis of the total sales of the company. I am naturally interested in the volume of business which we can get.

Mr. HOFFMAN. Are you correct, Mr. Campbell, in your statement that the California Packing Corporation sold to Armour & Co.?

Mr. CAMPBELL. I am correct in that. The California Packing Corporation did for years furnish the major portion of Armour's canned fruit supplies. In drawing up my contract with Armour & Co. we used the old contract of the California Packing Corporation as a basis of the contract which we made. The principal difference in the contract, and the one which pleased me the most, was that the California Packing Corporation were giving Armour & Co. 10 per cent discount off their regular prices, while I was only giving them 5 per cent discount.

Mr. HOFFMAN. The reason I asked that question, Mr. Chairman—and I would appreciate it if the committee would investigate it—was that I understood the California Packing Corporation have never sold Armour & Co. I do not doubt the gentleman's word, but I think it is a matter that should be verified.

Mr. CAMPBELL. I am not sure, but I hardly think that Armour & Co. would want to submit a contract here, unless in confidence, to the committee.

The CHAIRMAN. If we see fit, we will go into that further. Have you anything further?

Mr. BREED. Mr. Chairman, it is the first time, I believe, I have heard Mr. Campbell's story. It is quite an extensive one, and—

The CHAIRMAN. Well, I will state this for you, then, Mr. Breed. Mr. Campbell has been the most active proponent, perhaps, of this, and he will have an opportunity to appear in rebuttal; and if you gentlemen have anything to ask at this time I think it will be fair that you might submit it, and we will propound such questions as we think proper to Mr. Campbell.

Mr. BREED. I shall be glad to submit some typewritten pointed questions which might develop the subject matter which he has gone over, which is a very wide field, which comes from very broad accusations and statements, which, it seems to me, should require some elucidation.

The CHAIRMAN. Well, that will be the object.

Judge HAINER. You will be given an opportunity to present those questions.

Mr. CAMPBELL. Mr. Chairman, I want to say to the wholesale grocers here, and to those that represent them here, that there is no animus in my attitude at all, but naturally in presenting my case I must present it in the strongest manner, and I have been very full in this analysis—possibly I could touch more points—but my thought was that you would all have a copy of my statement and would be able to at once begin to strengthen your position as well as you could. I feel that you have no position to strengthen, as far as my side is concerned.

Mr. SMITH. Mr. Chairman, I would like for Mr. Campbell to explain a little more accurately exactly what companies he is connected with. He has in a general way referred to them.

The CHAIRMAN. I will get at that, Mr. Smith.

Mr. SMITH. I understand that it is really one company, one company of substantial size.

The CHAIRMAN. Mr. Campbell, what companies or company do you represent?

Mr. CAMPBELL. In the opening of my statement I made that very explicit, Mr. Chairman.

The CHAIRMAN. Well, just answer it now. What company do you represent?

Mr. CAMPBELL. The California Cooperative Canneries.

The CHAIRMAN. Any other?

Mr. CAMPBELL. No other.

Mr. SMITH. Then I would like to know if it was not established through a loan from Armour & Co. of \$250,000.

Mr. CAMPBELL. Absolutely not. If you would like to have me make an explanation of the early history of that matter, I will do that.

The CHAIRMAN. Go into it very briefly. If you say that it was not established by that, why—

Mr. CAMPBELL. I touched upon that, Mr. Chairman, in my statement. In fact, that charge was made once before by an enemy of the organization, and the Federal Trade Commission can furnish the parties here a full report of that matter.

The CHAIRMAN. Well, what is the title of that proceeding in the Federal Trade Commission, if you know?

Mr. CAMPBELL. Well, Mr. Chairman, I do not know that I could give you that just now.

The CHAIRMAN. Do you know, Mr. Durand?

Mr. DURAND (of the Federal Trade Commission). Docket No. 1412; I think it is Federal Trade Commission v. Armour.

Judge HAINER. What was the conclusion of the Federal Trade Commission in regard to that?

Mr. CAMPBELL. It was the conclusion of the Federal Trade Commission that we had no connection with Armour & Co. whatsoever.

Judge HAINER. And when was that decision made?

Mr. CAMPBELL. I think that was two years ago.

Mr. SMITH. The specific question which I would like to have answered is: Wasn't their cannery built through the loan made by Armour & Co.?

Mr. CAMPBELL. I think I might answer it in this way, that we are operating five canneries.

The CHAIRMAN. Well, which was the first one built?

Mr. CAMPBELL. The one at San Jose. In fact, there are two there on the same property. The first one was built without any assistance from Armour & Co. whatsoever.

The CHAIRMAN. On which factory or plant does Armour & Co. have a mortgage?

Mr. CAMPBELL. The one at San Jose.

The CHAIRMAN. Was that the first one that was built?

Mr. CAMPBELL. That was the first one that was built; yes, sir, Mr. Chairman.

The CHAIRMAN. Did the money which they loaned to you go into the erection of that plant?

Mr. CAMPBELL. The money which they loaned to us went into the erection of that plant, but we have in addition to that some \$400,000 more invested there, some \$350,000 or \$400,000 besides, but that is our own money.

Judge HAINER. What was this loan of the War Finance Corporation?

Mr. CAMPBELL. Well, that is money which we borrowed for packing purposes.

Judge HAINER. On these various places?

Mr. CAMPBELL. No; on goods. That is, simply borrowing on goods that we pack, and on our goods.

Judge HAINER. And that was during the past year?

Mr. CAMPBELL. I would explain to the Senator here that the only reason that we borrowed that money from Armour & Co at the time we did was that it was during a time when it was impossible to borrow money, during the war, when it was impossible to borrow money in California. Armour & Co. were anxious to get supplies, and supplies were hard to get anywhere. And we found that we were unable to raise enough money from our growers and from the banks in California to complete this plant, and we had plans for building plants in other points, too. So I came to Chicago to see Mr. Armour, and insisted, inasmuch as they were getting a large portion of our packing, that they should assist us in financing. I remember distinctly of sitting across the table from Mr. Armour when I discussed the matter, and he said: "We are having a great deal of trouble with these antitrust matters and the investigation by the Federal Trade Commission, and so on, and we don't want to get mixed up in any plants in California. We won't build any canneries in California, and we don't want to loan any money in California, because they will charge us with trying to gobble up everything out there." "Well," I said, "Mr. Armour, we are unable to get any more money, and we need this money to furnish you with supplies under the contract which we have made and agreed to furnish these goods." But I was there a week before I could get him to help us to borrow this money. I used to go in every afternoon about 2 o'clock—

The CHAIRMAN. Well, I don't see that it is necessary for us to go into all these matters.

Mr. CAMPBELL. Well, I used to go in every afternoon to insist about this. I want to make this clear to Senator Smith, so he will understand that it is not an Armour proposition; it is ours entirely.

The CHAIRMAN. We do not need to go into that.

Mr. SMITH. Mr. Chairman, I would like also to know the size of the other plants—other than this one that Armour & Co. have loaned money on. He says he has five companies or five plants. I would like to know the names of them.

The CHAIRMAN. Can you give the approximate capacity of these canneries, Mr. Campbell?

Mr. CAMPBELL. I think the easiest way to answer that is to say that there are \$1,200,000 invested in these plants, and that the Armour loan is \$200,000. Now, I have answered this question, Senator Smith, in my statement.

The CHAIRMAN. Well, Mr. Campbell, can you give us the approximate capacity of each of your plants, and name your plants? Can you give us the approximate capacity of them, or furnish a list of them?

Mr. CAMPBELL. That is easy; yes. I would like to know what they are trying to arrive at in this series of questions.

Mr. SMITH. I will state that I want to know the size of the plants and what he really represents, as compared to the other plants that are opposed to modification of this decree.

Mr. CAMPBELL. I think, Mr. Chairman, that I have outlined that in my statement sufficiently to cover these points.

The CHAIRMAN. We will pass that, and if we think it necessary we will consider it when he is on rebuttal, Senator. Is that all?

Mr. C. E. RICHARDSON (representing the Cannery League of California). Mr. Chairman, I would like to inquire whether or not it was the purpose of the committee to receive and consider ex parte testimony? The confidential documents that may be presented here without publication and without an opportunity to be answered?

The CHAIRMAN. We will reserve decision upon that, Mr. Richardson.

Mr. RICHARDSON. We are not objecting, Mr. Chairman, but we might like to present some of our own.

The CHAIRMAN. Yes; I understand. We will reserve that and announce it a little later.

Gentlemen, it is now 12 o'clock. We will recess until 2 o'clock.

(Thereupon, at 12 o'clock m. a recess was taken until 2 o'clock p. m. of the same day, Monday, November 28, 1921.)

AFTER RECESS.

The committee resumed at 2 o'clock p. m., pursuant to recess.

The CHAIRMAN. The committee will come to order. The first witness to appear—well, there are two witnesses to appear this afternoon, Mr. Preston McKinney and Mr. Elmer Chase.

Mr. MCKINNEY. Mr. Chairman, I suggest that Mr. Chase be put on first.

Mr. BREED. Mr. Chairman, inasmuch as Mr. Campbell seemed to base his whole opposition to this decree of the court upon the contract which he had made with Armour & Co. for 10 years, and which he says had to be changed by virtue of the conditions of this decree, do not you think it quite proper, as it seems to vitally affect this hearing, that that contract should be offered in evidence in order that the public generally and ourselves may know what its terms were?

The CHAIRMAN. Mr. Breed—

Mr. BREED (continuing). I would like to ask that Mr. Campbell produce that contract, if he will.

The CHAIRMAN. The contention of Mr. Campbell is not based entirely, as I understand it, upon the contract. The contention is based upon the economic question and the question of general public interest, the question of distribution, both as applied to the packers and to the wholesale grocers. The question arising out of the contract is really an additional reason, you might say, and is based upon a sort of equitable situation arising because of the fact that they have been deprived of the benefit of the contract.

Mr. BREED. If we can not see the contract, do we know that there is any benefit in it?

The CHAIRMAN. I might say that the Department of Justice has a copy of that contract in its files—in its confidential files, not open to the public. We will reserve decision, however, as to whether we will require Mr. Campbell to produce a copy of the contract for public inspection, and pass upon that matter later on.

Mr. BREED. I would also urge that the question seems to have arisen as to whether Armour & Co. are interested in the California canneries, and it would seem that a contract for 10 years with Armour & Co. made before the California canneries had any canneries, and followed by a loan of \$250,000, which money went into the first plant, would make that contract a very interesting document as bearing upon the question of the interest of the meat packers in this property, and therefore I would urge that the committee allow those who are interested here to see the contract, and to call upon Mr. Campbell to produce it.

The CHAIRMAN. We will consider that and decide it later. Mr. Chase, you may proceed. State your name, residence, and whom you represent.

STATEMENT OF MR. ELMER E. CHASE, OF SAN JOSE, CALIF., VICE PRESIDENT OF THE RICHMOND-CHASE CO.

Mr. CHASE. I will say that my name is Elmer E. Chase, of San Jose, Calif.; that I am vice president of the Richmond-Chase Co., of San Jose, in the business of growing fruits and packing dried fruits and canning fruits and vegetables.

The CHAIRMAN. Whom do you represent at this hearing?

Mr. CHASE. I represent the Cannerymen's League of California, the State organization of cannerymen, of which I am president, and I also represent by appointment the Dried Fruit Association of California, which is the dried fruit organization of the State.

The CHAIRMAN. Do you wish to file this letter which you have handed me as a part of the record?

Mr. CHASE. Yes, sir. The letter is as follows:

DRIED FRUIT ASSOCIATION OF CALIFORNIA,
San Francisco, November 18, 1921.

Mr. E. E. CHASE,
Pawhatan Hotel, Washington, D. C.

DEAR SIR: The executive committee of this association, learning that you are to be in Washington and in attendance at the hearing relative to the attempt of the meat packers to obtain a modification of the so-called consent decree, desire to ask that you kindly represent this association in the delibera-

tions, and you are hereby authorized to do so, this letter being, as we believe, sufficient credentials for the purpose.

Thanking you in advance for your endeavors in our behalf, we are.

Very truly yours,

[SEAL.]

DRIED FRUIT ASSOCIATION OF CALIFORNIA,
J. L. CHADDOCK, *Secretary*.

The CHAIRMAN. You may proceed in your own way.

Mr. CHASE. As Mr. McKinney, the vice president and secretary of the canners' league, is to follow me, I will not go into detail regarding the operations of the league or its functions particularly, but will leave that to him.

I might say at the outset that I regret I was so unfamiliar with the proceedings of this kind I did not know that I might have written out what I had to say, in which case I should probably have been able to give you a much more logical statement.

The CHAIRMAN. This is an informal proceeding, and we will be glad to have your statement in any way you see fit to give it, and will appreciate it.

Mr. CHASE. I thank you. The Dried Fruit Association of California represents over 95 per cent of the dried fruit output of the State. Included in that organization are the three great cooperative fruit growers associations—the Raisin Growers' Association, with a membership of about 14,000; the Prune and Apricot Growers' Association, with a membership of about 11,000; and the Peach and Fig Growers' Association, with a membership of several thousand, the exact number I do not recall at the moment.

This body also includes all the principal independent packers of the State, such as Rosenberg Bros. & Co., California Packers' Corporation, Guggenheim & Co., Richmond-Chase Co., Garcia & Maggini Co., George M. Harper, Smith-Frank Co., and O. A. Holland, and I think one or two others.

We have been informed, Mr. Chairman, that the Cooperative Canneries was the concern which first made application to the Attorney General to have this decree modified. In spite of the statement made by Mr. Vernon Campbell that the Cooperative Canneries were in nowise an Armour concern I want to present to you this situation: He has admitted that there is a mortgage on the plant of the Cooperative Canneries amounting to \$200,000 at this time. The records of Santa Clara County show that the total mortgage was \$250,000, and they do not show satisfaction of any part of that mortgage. But I have no desire whatever to question Mr. Campbell, because it might easily be that a payment had been made.

Regarding the value of this plant, I want to say that I am very familiar with values in San Jose; that I have lived there practically all my life and have been on the finance committee and the board of directors of one of the banks, and have had occasion to value property in many instances. In my opinion the value of the property is not any greater than the amount of the mortgage held by Armour & Co.

After leaving the coast it occurred to me that it might be of some value to your committee to know what the assessed valuation of this property is. I find that the assessed valuation as it appears upon the books of the county assessor—

The CHAIRMAN. Pardon me a moment—

Judge HAINER. That would not be of any value to the committee, would it?

Mr. CHASE. It would be of some interest, would it not?

The CHAIRMAN. Are you speaking of that particular plant?

Mr. CHASE. Yes, sir. The point I wanted to make, if I may explain myself, is that the mortgage that Armour & Co. has on this plant is an influence—an influence that must of necessity rest upon the owners of that plant or those in whose name it appears as owners. Shall I read this paper, Mr. Chairman?

The CHAIRMAN. You may proceed.

Mr. CHASE. The assessed valuation of the land is \$9,670, and of improvements is \$45,000, or a total assessor's valuation of \$54,670 on real estate and improvements.

It seems to me that if I owned a plant of the value of that plant as I know it and there were a mortgage of that amount on the plant, I should feel very dubious about having very much value beyond the extent of the mortgage.

Furthermore, it seems to me, Mr. Chairman, that the inspiration for this application to have the decree modified may possibly have originated, or, at least, the influence for it may have arisen on the part of the party holding the mortgage.

In California there has been, as you know, a remarkable development in cooperative fruit growers' associations, particularly among the growers and shippers of fresh fruits and among the producers of dried fruits. There has always been a very close bond of sympathy between all those cooperative associations. They have worked together in the utmost harmony, have always backed each other's undertakings, have sent their most effective speakers into districts where new drives were on for memberships, and there has been a fellowship among those cooperative organizations which included the California Cooperative Canneries.

Therefore it seems to me there must have been the best of reasons for those great dried-fruit organizations deserting one of their fellows in this effort to have this decree modified, and taking an opposite position with regard to the matter.

The total membership represented by these dried-fruit associations is in the neighborhood of 35,000 grower members. I think it is significant that practically all of the dried-fruit interests of the State of California, and nearly all the canned-fruit interests also, object and protest against any modification of this decree which would permit the meat packers to again handle their products.

When the California Cooperative Fruit Growers' Association came to San Jose they were welcomed by the business community—by the Merchants' Association, by the chamber of commerce, as a decided asset to the city because they would employ a large number of people and would have a pay roll of considerable size. Up to the present time this institution has received the full and loyal support of that community in all its undertakings. But the Merchants' Association of San Jose has passed a resolution, or did pass a resolution on this subject, that I would like to submit for your record and that I will read if you have no objection.

The CHAIRMAN. You may proceed to read it.

Mr. CHASE. Well, first, here is the affidavit regarding the mortgage.

The CHAIRMAN. Do you wish to submit that with your statement?

Mr. CHASE. Yes.

The CHAIRMAN. There is no dispute that the mortgage exists, but if you want to submit it, it may go in.

Mr. CHASE. If it means nothing to you, I have no desire to put it in.

The CHAIRMAN. Mr. Campbell admits the mortgage, so I suppose that covers that point.

Mr. CHASE. The resolution of the Merchants' Association, duly certified to by its secretary, is as follows:

RESOLUTION OF MERCHANTS' ASSOCIATION OF SAN JOSE.

Resolved, That we, the Merchants' Association of San Jose, Calif., representing over 300 merchants, located in the midst of the most prominent dried-fruit packing, canning, and fruit-producing section of the State of California, enter our objections to any modification of the "consent decree" entered into between the meat packers and the Government of the United States which would permit the meat packers to again become distributors of the general line of foodstuffs, and on the basis that conditions have not changed since this decree was entered to warrant meat-packer competition and their ultimate control of foodstuffs distribution. We are firm in our opinion that the vast majority of growers who are disinterested parties and who have given the situation consideration are opposed to any modifications being made; and, furthermore, it has been our observation that producers have had no difficulty in readily marketing their products for the season of 1921.

This is to certify that the above is a true copy of a resolution adopted by the board of directors of the Merchants' Association of San Jose duly assembled on the 27th day of October, A. D. 1921.

ROBERT R. SYER, *Secretary*.

The Chamber of Commerce of San Jose also passed a resolution, duly certified by its president and manager, which reads as follows:

MEAT PACKERS AND FRUIT DISTRIBUTION.

At the regular meeting of the board of directors of the San Jose Chamber of Commerce October 18, 1921, the following resolution was unanimously adopted:

Resolved, That this organization, the San Jose Chamber of Commerce, representing a large membership of this community, located in the very heart of the canning, dried-fruit packing, and producing industry of the State of California, is unalterably opposed to any modification of the "consent decree" whereby the meat packers might again be allowed to act as distributors for our products, and we furthermore view with alarm any modification permitting of their methods of distribution and probable ultimate control of our fruit industry.

We, the undersigned, individually certify that the above is a true and correct copy of the resolution on the subject of the consent decree and its proposed modification as unanimously adopted by the board of directors of the San Jose Chamber of Commerce October 18, 1921.

[SEAL.]

E. O. PIEPER, *President*.

ROSCOE D. WYATT, *Manager*.

I also have a telegram that is dated, I think, November 23, as follows:

CAMPBELL, CALIF.

PRESTON MCKINNEY,

Care Powhatan Hotel, Washington, D. C.:

Meeting of Orchard City Grange Tuesday, November 22, membership 280, passed resolution strongly protesting against modification packers' consent decree. Secretary writing to Congressman Arthur Free.

ERNEST BARRON.

I presume the original telegram referred to, addressed to Congressman Arthur Free, will come to you in due time. Will the filing of this telegram be of any value?

The CHAIRMAN. Yes; it may be put into the record.

Mr. CHASE. Mr. Chairman, I have been in the canned-fruit business for 43 years continuously, as employee, manager, and executive. During a good part of that time I have also been engaged in the dried-fruit business, and I have seen both these activities grow from a very small beginning until it is the largest of its kind in the world. The business has been developed gradually along the following lines:

The dried-fruit business has been handled by the packers selling their products to the wholesale trade and by taking their credentials to their bankers and financing their business, because of the confidence that had been built up in the wholesale grocery trade of the country by the bankers of that section. The dried-fruit packer has been able to pay for his fruit when it was delivered, and this business has been developed along these lines: The dried-fruit associations have, of course, handled their business in the same manner. When shipments were made, and shipments began immediately after receipt of the goods, the packer was able to take his bill of lading with draft attached into his bank and receive full credit for the amount of his draft.

The canned-goods business is somewhat different. The canning season begins the middle or latter part of May on cherries, followed by apricots, and then by peaches and pears, but the canner must of necessity make arrangements for a very much larger financing than the dried fruit packers, because a large proportion of his product must be placed in the warehouse and kept there until the late varieties are packed, so that shipments of those goods may be made in assorted cars.

The CHAIRMAN. This pack is entirely seasonal, is it?

Mr. CHASE. It is entirely seasonal; yes. He is able to get credit for his shipments by attaching draft to bill of lading in the same manner that the dried fruit operator handles his finances. The banker is always anxious to know who the buyers are so as to know whether the canner has sold the larger part of his contract, and usually wants a list of those buyers so that he may decide whether his advances made to the canner on his stock of goods in the warehouse are good loans or not.

During this past season there were quite a number of canneries that were unable to operate because they were not able to show their bankers sales made to wholesalers.

You probably known there were a larger number of new canneries in operation during the years 1917, 1918, 1919, and 1920.

In event of a modification of this decree allowing the meat packers to again distribute our products would mean that the present plan of financing would have to be discarded.

The witness who preceded me stated that two large meat packers had advised him they were willing to take these goods and distribute them on a commission

basis. These meat packers are not going to take the year's supply of canned fruit and dried fruits, as the wholesaler does, and help finance our fruit interests out there. It stands to reason that if the wholesaler is going to come into direct competition with the meat packer that he will be unable to have his goods shipped on to him when they are packed, to carry the interest on those goods, to stand the expense of warehousing and the expense of interest and insurance, and carry the responsibility of deterioration. It is going to throw the entire burden of the carrying charges back upon the California fruit producers; and I want to say to you, gentlemen, that that is one thing that worries us more than anything else about this proposed modification. The Pacific coast will not be able, it can not finance its fruit industry if we have to go back to that system of carrying our load. It will mean that the fruit grower, the man who produces the fruit, will have to stand the principal burden of this added load.

Mr. Chairman, the Richmond-Chase Co., of which I am a member, is what is known in the dried-fruit business as an independent packer. That is, we must secure our supplies of dried fruits, aside from the few hundred tons that we ourselves produce, from growers who are not members of these associations. The associations have been restricting our operations. They may eventually drive us out of business. But I want to say to you frankly that I would many times rather that should take place and that our two dried-fruit plants should remain idle than to see the meat packers back in the distribution of our product again, because I know what the final result in that case would be, and that would be absolute domination of our markets, and of the manufacturing end of the business.

The meat packers are primarily manufacturers. I do not think we can consider for a moment that they would be satisfied or contented to remain as distributors and not get into some angle of the manufacturing game. That might be by loaning money to some operators, but I do not think there would be any means of keeping them out of that angle of the business.

Mr. Chairman and gentlemen, we people of the Pacific coast of California view with greatest alarm the thought that the meat packers may again be permitted to distribute our products and bring the wholesale grocers down to the same terms of purchase that they will follow.

As to the meat packers distributing goods cheaper than the wholesale grocers, we have no figures concerning that, but the statement made by the preceding witness interested me very much—to the effect that the concern he represents allowed Armour & Co. 5 per cent commission on the purchase of their products. I want to say, gentlemen, that, so far as my concern is involved, that 5 per cent would much more than wipe out any ordinary profits made during the canning season or made in the canning plants. It has been my experience in years past that any offers that are made by the meat packers for our goods always carried with them concessions in the way of price that were not asked by the trade in general.

The statement that Mr. Campbell made regarding Mr. Coykendahl, manager of the Prune and Apricot Growers' Association, I hardly understand, because when I first went to San Jose, and for many years afterwards, there was a meat-packing concern in San Jose known as Andrews & Coykendahl. This concern had to go out of business later on. I am not entirely posted as to the exact reasons, but I do know that along about that time Swift & Co. and Morris & Co. established the Western Meat Co., that has handled the meat products of San Francisco, and they have extended branches into Oakland and Los Angeles, and they are credited at least with always having had control of the meat industry of that coast.

The CHAIRMAN. Did you say Morris & Co. are interested in that?

Mr. CHASE. I think it was Morris. Possibly I may be mistaken, and it may be Cudahy. May I correct that statement?

The CHAIRMAN. Certainly.

Mr. CHASE. I should not have spoken from memory; but, at any rate, some of the Big Five Meat packers, and I will not attempt to say who, but I think it was Swift & Co. and Cudahy.

The CHAIRMAN. I just called your attention to it, as I did not want you to make a mistake.

Mr. CHASE. I thank you. Of course, it is evident that Mr. Coykendahl did not have authority and could not have authority to speak for 11,000 members. There is a board of directors and a board of trustees of the California Prune & Apricot Association, and they would naturally be the ones, and the only ones.

who could determine a question of policy. May I read a part of a telegram on that subject?

The CHAIRMAN. You may.

Mr. CHASE. This says:

"Referring to request for modification of packers' consent decree claimed to be asked by the cooperative fruit interests of California, the California Prune & Apricot Growers' Association, a cooperative association with a membership of 11,000 growers in the State of California, protest against any modification of said decree as not being in the best interests of producer, consumer, and distributor."

This telegram is signed by H. G. Coykendall, manager. I have no doubt the original telegram has been furnished you or the Attorney General's office.

The CHAIRMAN. We have it on file.

Mr. CHASE. It is not necessary, then, to put this in?

The CHAIRMAN. Not unless you want it to go in as one of the additional reasons for your argument.

Mr. CHASE. I do not think it is in shape to be put in. Regarding the resolution passed by the Dried Fruit Association, I will read a resolution, duly certified and attested by a notary public:

"The following resolution was adopted at a regular meeting of the executive committee of the Dried Fruit Association of California, on Thursday, October 27, 1921:

"*Resolved*, That the Dried Fruit Association of California, having a membership representing over 95 per cent of the dried fruit industry, including both independent packers' and growers' associations, vigorously protests against the proposed modification of the consent decree, thereby allowing the meat packers to again enter the field of distribution of the products handled by our membership.

"And, furthermore, it is the consensus of opinion of this organization that such proposed modification is not in accord with the desire of the great majority of the growers of the State of California, and we deplore the methods used by the principal proponents from California of such modification in securing signatures of growers to telegrams to the Department of Justice."

"I, J. L. Chaddock, being duly sworn, hereby certify that I am the secretary of the Dried Fruit Association of California, and that the above resolution is a correct and true copy of the resolution passed at a regular meeting of the executive committee of said association held October 27, 1921, there being a quorum present and the meeting in every way regular.

"J. L. CHADDOCK."

I have a letter signed by the vice president and general manager of the California Peach and Fig Growers, an association of about 8,000 members, that I would like to read and file.

CALIFORNIA PEACH AND FIG GROWERS,
Fresno, Calif., October 22, 1921.

DRIED FRUIT ASSOCIATION OF CALIFORNIA,
San Francisco, Calif.

GENTLEMEN: This will acknowledge receipt of your favor of the 21st instant, inclosing copy of a letter from the National Wholesale Grocers' Association, under date of October 14, 1921, in reference to modification of decree of the former Attorney General Palmer affecting the large meat packers of Chicago.

It is our opinion that the Dried Fruit Association of California should cooperate with the National Wholesale Grocers' Association in their efforts to restrict the operations of the large meat packers. We can not see wherein any benefit can be derived, either by the producer or the consumer, in having Armour and others restored to their former position in the handling of a general line of food commodities.

Yours very truly,

CALIFORNIA PEACH AND FIG GROWERS,
J. F. NISWANDER,
Vice President and General Manager.

I might say, Mr. Chairman, I think it is a matter of public record that both the peach growers' association and the raisin growers' association did have, each one of them, one year's experience in selling to Armour & Co., and that they did not continue the arrangement.

The witness who preceded me made another statement that I do not agree with at all. I have never before heard such a charge made. That is, that the

canners and dried-fruit interests stated that the wholesalers have always charged more than they should for handling their products. I very much question whether that is the sentiment among the canners and dried-fruit packers. If it is, I have never come in contact with it.

I think, Mr. Chairman, that is about all I have to say.

The CHAIRMAN. Mr. Chase, in your statement you speak of independent canneries. That infers that there are other canneries. Will you kindly give us the division into which that falls?

Mr. CHASE. I meant to refer to independent dried-fruit packers.

The CHAIRMAN. Will you just give us an idea of what the other interests in that industry are?

Mr. CHASE. The other interests in the dried-fruit association are the dried-fruit associations, the raisin growers, the peach growers, etc., who pack, ship, and market the products of their members.

The CHAIRMAN. And that is a cooperative organization?

Mr. CHASE. Oh, absolutely; yes.

The CHAIRMAN. You introduced resolutions passed by various organizations; for instance, the California Prune and Apricot Association. Are they unanimous in this view?

Mr. CHASE. Well, I do not believe I could answer that question. It must have been passed by the board of directors.

The CHAIRMAN. Was the matter ever referred to the membership, if you know?

Mr. CHASE. Not that I know of, and I doubt it very much.

The CHAIRMAN. How many directors are there, do you know?

Mr. CHASE. I do not believe I could answer that question.

The CHAIRMAN. Do you know whether the resolutions passed by the other associations were ever referred to the individual members of such associations?

Mr. CHASE. By the chamber of commerce and the merchants' association?

The CHAIRMAN. Yes; the chamber of commerce, the merchants' association, and the dried fruit association?

Mr. CHASE. I do not think they were.

The CHAIRMAN. And those were passed by the directors of those organizations representing the membership?

Mr. CHASE. Yes. They were unanimously passed in the case of the merchants' association and the chamber of commerce, however.

The CHAIRMAN. What about the canners' league; how many members have you?

Mr. CHASE. May I leave that for Mr. McKinney to answer?

The CHAIRMAN. Surely.

Mr. CHASE. He is so thoroughly posted on that, and I have not looked it up at all.

The CHAIRMAN. We can get all that information from him. How large was the pack this year as compared with other years?

Mr. CHASE. Are you speaking of canned goods?

The CHAIRMAN. Yes.

Mr. CHASE. We have no estimate yet.

The CHAIRMAN. Can you give us an estimate of it?

Mr. CHASE. I should say the pack of canned fruit was perhaps 70 per cent to 75 per cent of what it was in 1920.

The CHAIRMAN. What was the reason for the decrease?

Mr. CHASE. There are several reasons. One is that we had a very short crop of fruit out there. Another reason is that we had a considerable number of people in the canning business totally without experience, and who had gone into it because they thought there was great profit in it; they had built up no trade, and had no reputation as packers during the time they were operating, and when the slump came, as it did a year ago last August, canned fruits of course were in oversupply, like everything else, and if it had not been for the eastern fruit crop this year going back I think we would have had great difficulty in marketing fruits generally.

The CHAIRMAN. Do you have market quotations out there of the fruit crops?

Mr. CHASE. Of the fresh fruits?

The CHAIRMAN. Well, of fresh fruits or canned fruits either.

Mr. CHASE. The canned fruit prices are published in the trade papers, usually giving only one or two canners' prices, aside from the opening prices. They vary more or less, but after that the trade papers usually confine themselves

to quotations of the California Packing Corporation, and sometimes Libby, McNeil & Libby, and sometimes other concerns are mentioned.

The CHAIRMAN. What is the size of the California Packing Corporation as compared with others?

Mr. CHASE. It is the largest concern in the canning business in the State.

The CHAIRMAN. What would you say was next?

Mr. CHASE. Probably the Libby, McNeil & Libby.

The CHAIRMAN. That is a subsidiary of Swift & Co., is it not?

Mr. CHASE. I think so.

The CHAIRMAN. Mr. Chase, you say you fear or are alarmed in event the big packers are permitted to go back into this business. Just why?

Mr. CHASE. I thought I had explained that, Mr. Chairman. Because their methods of handling goods are entirely different from the present methods as explained by Mr. Campbell. They do not buy their year's supply of goods and carry the burden of warehousing, interest, and all these things that take place in the marketing of goods; and if they do enter into this field of distribution and come into direct competition with the dealers, it stands to reason that the wholesalers will of necessity have to adopt the same methods that they use, and that is to take their supplies only as they need them, and compel the fruit interests of the Pacific coast to carry their goods from one season to another and all the burdens that naturally attach thereto.

The CHAIRMAN. How many packers were engaged in this fruit business in California before this decree was entered; do you know?

Mr. CHASE. Do you mean canners?

The CHAIRMAN. No; how many meat packers?

Mr. CHASE. I think none of them was directly interested. Of course, Libby, McNeil & Libby were supposed to be owned and controlled by Swift & Co., and the California Cooperative Canneries was supposed to be an Armour institution.

The CHAIRMAN. How many packers distributed fruits, then?

Mr. CHASE. I do not believe I could answer that question.

The CHAIRMAN. Do you know what proportion of canned fruits the packers distributed prior to the entry of this decree?

Mr. CHASE. Of the total of canned fruits?

The CHAIRMAN. Yes; by the packers, either collectively or individually.

Mr. CHASE. Well, it has been brought out that there was a contract between the California Packing Corporation and Armour & Co. I think that contract expired in 1917, and in 1918 or at that period there was an overdemand for fruit, and I doubt if they were able to secure the supplies they wanted. I think that when that contract ceased to exist they were left very much out in the cold so far as supplies of fruit were concerned.

The CHAIRMAN. Do you know what proportion the packers have handled of this kind of fruit at any time, either collectively or separately?

Mr. CHASE. I do not believe I could answer that question.

The CHAIRMAN. Could you tell us approximately?

Mr. CHASE. There are figures on that matter somewhere, but I do not believe I could give them to you.

The CHAIRMAN. Could you tell us where to get them?

Mr. CHASE. I think the Federal Trade Commission has some figures regarding distribution made by the meat packers.

The CHAIRMAN. In their report?

Mr. CHASE. Yes, sir; I think in their report. I am positive I have seen those figures somewhere.

The CHAIRMAN. Mr. Chase, here is the situation that I want to ask you about: From your standpoint as a canner, would you be willing that the decree should be modified so that the packers might handle this fruit on a commission basis alone and not buy outright or control in any way the canneries or enter into the manufacturing end of it?

Mr. CHASE. No.

The CHAIRMAN. Why not?

Mr. CHASE. Because their handling on that basis would simply result in the other handlers of these goods having to meet their competition, and the burden would still be thrown back on the California fruit producers and packers.

The CHAIRMAN. That is because of the financing end you spoke of a moment ago?

Mr. CHASE. Yes, sir.

The CHAIRMAN. I see. Do you fear that if the packers resume—and by the packers I mean the meat packers—

Mr. CHASE. I understand.

The CHAIRMAN. Resume their handling and dealing in these unrelated commodities they would sooner or later control the canneries as well as distribution?

Mr. CHASE. I feel very positive of it in my own mind. I do not think there is any doubt in the world about it.

The CHAIRMAN. Have you anything to base that upon?

Mr. CHASE. All I have to base it on is the fact that I have never known them to be satisfied with anything less than control whenever they entered into the handling of products.

The CHAIRMAN. That is, in relation to meat products you now refer to?

Mr. CHASE. Yes. They certainly have had an ambition to become handlers of canned products and dried fruits; there is no question in the world about that. There has been more than one evidence of it, and the evidence of their advancing money to build the cooperative canneries, it seems to me, is proof of it. I think, Mr. Chairman, if I may be permitted to submit something a little later, I have a telegram—

Judge HAINER. Would you consider it an injury by reason of the fact that they had loaned \$250,000 to those canneries?

Mr. CHASE. Not by itself, if it ended there.

Judge HAINER. What would be the effect if the War Finance Corporation would advance money? I understand it has advanced some \$750,000.

Mr. CHASE. That is something that I think is available to any canner, Judge, under like conditions. Originally it was only intended to cover exportations, but it was modified later and it can also be used for goods sold in this country. If the canner can show sale of his goods to responsible parties, can show by a warehouse receipt that he possesses the goods, as I understand it, this fund is available to any of them. I do not think there was any favoritism shown there at all.

The CHAIRMAN. What effect will decreased production or decreased pack have upon the market price, if any?

Mr. CHASE. You are referring now to the finished product?

The CHAIRMAN. Yes.

Mr. CHASE. Well, quite naturally, the law of supply and demand will come into force there, of course. If the supply is restricted it is going to mean a somewhat better price.

The CHAIRMAN. Were you present at the meetings when any of these resolutions you have introduced were passed?

Mr. CHASE. No; pardon me just a moment and let me look through this memoranda. [After looking through some papers.] No; absolutely not.

The CHAIRMAN. You know nothing about the circumstances attending their passage?

Mr. CHASE. Why, I have heard them referred to by different ones.

The CHAIRMAN. But that is hearsay.

Mr. CHASE. No; I know nothing of my own knowledge.

The CHAIRMAN. What has been the method of distribution by your company of your products in the past?

Mr. CHASE. We have sold through brokers to the wholesale trade exclusively.

The CHAIRMAN. Are you interested in any wholesale grocery company?

Mr. CHASE. No.

The CHAIRMAN. Is any wholesale grocery company interested in your concern?

Mr. CHASE. Not a dollar's worth.

The CHAIRMAN. Do you have a contract with them now?

Mr. CHASE. Yes; contracts only for the season, that have not been filled entirely; only for the season of 1921.

The CHAIRMAN. Does anyone have any questions they wish to suggest?

Mr. SMITH. I think, Mr. Chairman, if Mr. Chase would go over the entire list with you of the organizations in California that have passed resolutions expressing their views with reference to this modification—I think there are two or three that he has not mentioned.

Judge HAINER. Will you just call his attention to them, Senator.

The CHAIRMAN. If you think of them, call his attention to them, Senator. Would you read the list again, and if the Senator thinks of any additional ones, he can suggest them.

Mr. CHASE. The list, as I have them here, is: Dried Fruit Association, San Jose Chamber of Commerce, Merchants Association of San Jose; Prune and Apricot Growers—and that was a telegram; Peach and Fig Growers—that was a letter; and the telegram that I read to you regarding the grange.

Mr. McKINNEY. I will submit more.

The CHAIRMAN. Mr. McKinney said he will submit more.

Mr. CHASE. I have no objection to the telegram going in; only I do not want to file the telegram as a whole, because it refers to other matters.

The CHAIRMAN. I leave it to your own pleasure whether you wish to file it or not. If you do not want to file it, all right.

Mr. CHASE. I will not file it, because it relates to other matters.

Mr. SMITH. I would like for him to tell us what action the canners association took with reference to it?

Mr. CHASE. Mr. Chairman, I am going to leave that to Mr. McKinney.

The CHAIRMAN. Do you refer to the canners league, Senator?

Mr. SMITH. Yes.

The CHAIRMAN. Any more questions?

Mr. BREED. Mr. Chairman, could you inquire just a bit further to enlighten us on the methods that the packers use in connection with purchasing their supplies, whether they ever attempt to buy the raw product in wholesale and sell it in a speculative way, as distinguished from a straight legitimate purchase and sale to the retailer?

The CHAIRMAN. Well, I don't know just what you mean by "legitimate purchase."

Mr. BREED. Well, I take it to be this: The difference between being in business for the purpose of speculating buying a product and selling it for the profit that there is in it, and not particularly buying it for the purpose of distributing it to the retailer and the consumer, which is, of course, what the object of the grower is, to get his food to the consumer at the cheapest possible price.

The CHAIRMAN. Yes; I think we would be interested in that, Mr. Chase, if you could give us some information on that.

Mr. CHASE. Did the gentleman refer to packers?

The CHAIRMAN. He means meat packers.

Mr. CHASE. Meat packers. I don't know that my information would be worth much on that. I have not made any study of it particularly; that is, I mean any close study of it.

The CHAIRMAN. Do you know of any occasion when they did that, Mr. Chase? Do you remember any instance?

Mr. CHASE. Well, will you just repeat that question, please? I don't know that I quite understand what the question is.

The CHAIRMAN. Will you please read what preceded that which I said last?

(Thereupon the reporter read the following:)

"Mr. BREED. Mr. Chairman, could you inquire just a bit further to enlighten us on the methods that the packers use in connection with purchasing their supplies, whether they ever attempt to buy the raw product in wholesale and sell it in a speculative way, as distinguished from a straight legitimate purchase and sale to the retailer?"

"The CHAIRMAN. Well, I don't know just what you mean by 'legitimate purchase.'"

"Mr. BREED. Well, I take it to be this: The difference between being in business for the purpose of speculating, buying a product and selling it for the profit that there is in it, and not particularly buying it for the purpose of distributing it to the retailer and the consumer, which is, of course, what the object of the grower is, to get his food to the consumer at the cheapest possible price."

Mr. CHASE. Mr. Chairman, I have had no experience in dealing with the meat packers.

The CHAIRMAN. Has anyone else anything to ask?

Mr. SMITH. I would like for him to explain, if he knows, the size of these five canneries that the first witness referred to. What they really amount to, if he knows.

Mr. CHASE. Mr. Chairman, I never knew of but three. I noticed that Mr. Campbell stated that he had two plants in San Jose. I don't know where he would draw the line, unless it is that the cannery is on one side of the railroad track and the warehouse is on the other, but they have always been considered

one plant. I never heard them referred to as two plants. I don't know of but this plant, and one at Modesto and one of them in Tulare County.

The CHAIRMAN. Do you know the approximate combined capacity of those, Mr. Chase?

Mr. CHASE. I have never seen the one in Tulare. I have seen the Modesto plant, and I am, of course, quite familiar with the San Jose plant.

Judge HAINER. How large is that?

Mr. CHASE. San Jose is a good-sized plant; it is a large plant.

Judge HAINER. What do you mean by that?

Mr. CHASE. Well, I should say it has a capacity of at least 350,000 cases a year, possibly more.

Judge HAINER. Is this considered one of the largest plants in the valley?

Mr. CHASE. It is one of the large plants; yes.

Judge HAINER. Do you know the capacity of the others? Have you seen any of the others?

Mr. CHASE. The Modesto plant is a plant with perhaps a capacity of—now, when I say capacity I mean all that they could put through it; I do not mean what they run, because I am not familiar with that, but because of the equipment of these plants we know about what their capacity is. The Modesto plant I should say would probably be capable of turning out 125,000 to 150,000 cases.

The CHAIRMAN. And the other plant was in Tulare County, did you say?

Mr. CHASE. And the other plant is in Tulare County; yes, sir.

The CHAIRMAN. You have never seen that?

Mr. CHASE. I have never seen that plant; no, sir.

The CHAIRMAN. Do you know the number of growers connected with that company?

Mr. CHASE. No; I have no knowledge of that.

The CHAIRMAN. Are there any more questions?

Mr. SMITH. I would like for him to state his observation and opinion as to the views of the growers and packers and driers in California with reference to a modification of this decree.

Judge HAINER. Let him answer the question.

Mr. CHASE. I have never come in contact with any grower, packer, or canner in the State of California—and I have been there continuously—that wanted to have this decree modified. If they made any expression on the subject at all, they were all the other way.

The CHAIRMAN. How many growers serve your plant? Just give us the number approximately.

Mr. CHASE. Well, I presume in the neighborhood of 1,000. That is, we have some four or five plants, you know.

The CHAIRMAN. Yes. Well, what is the combined capacity of yours?

Mr. CHASE. The cannery?

The CHAIRMAN. Yes.

Mr. CHASE. About 400,000 or 450,000; about 450,000, I would say, of the two plants. The others are dried-fruit plants.

The CHAIRMAN. Four hundred and fifty thousand cases?

Mr. CHASE. Four hundred and fifty thousand cases; yes.

The CHAIRMAN. Is there anything further? I believe that is all, Mr. Chase.

(Mr. Chase was excused as a witness.)

The CHAIRMAN. Mr. McKinney.

STATEMENT OF MR. PRESTON McKINNEY, VICE PRESIDENT AND SECRETARY OF THE CANNERS LEAGUE OF CALIFORNIA, SAN FRANCISCO, CALIF.

The CHAIRMAN. Mr. McKinney, will you state your full name?

Mr. McKINNEY. Preston McKinney.

The CHAIRMAN. Your address?

Mr. McKINNEY. San Francisco, Calif.

The CHAIRMAN. And what is your business?

Mr. McKINNEY. I am vice president and secretary of the Canners League of California.

The CHAIRMAN. Mr. McKinney, just how many members are there in your organization?

Mr. McKINNEY. Fifty.

The CHAIRMAN. Proceed now, Mr. McKinney, in your own way.

Mr. McKINNEY. I might say in starting, gentlemen, that the reason Mr. Chase, the president of our organization, and I came 3,000 miles to attend this hearing

is that we are fearful if this consent decree is changed that we will be in the same position that Mr. Vernon Campbell indicated himself to be in this morning. I am informed that he has been here for a period of eight or nine months.

The CHAIRMAN. Well, we would like to have you around.

Mr. McKINNEY. Thank you, sir. And while we like Washington, our business is in California, and the packing of the fruit is in California, and we are fearful of being under the domination of Armour; and the fact, which Mr. Campbell stated this morning, that he was not even receiving any pay from Armour indicates quite a domination—his remaining here all these months without pay—and we are fearful of just such a thing. Maybe we might be forced to leave our canneries and come over here and fight Mr. Armour's battles.

I think you would be interested, probably, in a little more of the status of the Cannery League of California. The name is slightly a misnomer, because our membership is made up exclusively of members north of the Tehachapi Mountains—that is, in northern and central California. I might say in passing that a large number of southern canners have sent wires and have written us that they would like to have their opinions registered, but still I want to make it clear in the record that I am here only representing the north.

Last year, however, the members north of the Tehachapi Mountains packed 87½ per cent of the packed fruits and vegetables of the State, so while we are geographically divided, so to speak, we did pack 87½ per cent, and that is about the normal—about 87½ per cent—depending on the crops north and south.

The packing of fruits and vegetables by members of the canners' league last year, the last recorded year, amounted to 13,000,000 cases, valued, roughly, I would say, at about \$60,000,000. And our membership is 89 per cent of the canners in the territory which I refer to; that is, 89 per cent of the canners in that territory are members of this organization. I base that 89 per cent on the pack rather than on numerical numbers.

Briefly, the purpose of our association is such as any other trade association. We endeavor collectively to watch legislation. We have spent a good deal of time on the tariff. I made three trips to Washington on the tariff last year. We have a traffic committee that gets into our collective needs on freight rates and freight service. We have an arbitration department to settle as many difficulties as possible with our buyers. Through our organization the members have contact with the State; that is one of our more important jobs there instead of our individual members taking up the many questions with the State government that do come up, because our women's wages and conditions are handled by the State; through the industrial welfare commission we take up those questions. That is handled collectively.

If there is any other point about our association I would be glad to give it to you, but I just thought perhaps you might like to have a little brief résumé of what we do.

I would like to get now into the history of our connection with this packer-control matter. I am going back into the history of it, because the witness this morning indicated that there was a lot of coercion. We first heard of the matter—

Mr. SMITH (interposing). You mean the meat packers, I presume?

Judge HAINER. You mean the packers' decree?

Mr. McKINNEY. I mean the packers' decree; yes. We first heard of the consent-decree matter—I mean the efforts to modify it—on August 31. It was brought up by Mr. Frank Wilder, one of the members of our executive committee, at a meeting.

The CHAIRMAN. Pardon me, Mr. McKinney. Do you know how he learned of it?

Mr. McKINNEY. I do not; no sir. It was the immediate statement of our members there that if this thing was to be opened up we were certainly vitally interested in it and wanted to go into it, and it was decided that we would keep our eyes on it.

On September 14, which was two weeks later, we had been informed from Washington that the Attorney General was giving consideration to a recommendation to the court that the consent decree be modified. We were also informed at that time that Mr. Campbell, of the California Cooperative Canneries, had made representation that the growers and canners, fruit people, of California desired that it be changed.

The CHAIRMAN. In that connection, Mr. McKinney, I want to interrupt you just a moment to place everybody right on that matter, so far as we can.

Mr. McKINNEY. Yes; surely.

The CHAIRMAN. Mr. Campbell has never represented, so far as I know, to the Department of Justice, that he represented anyone except the California Cooperative Canneries. He has never purported to represent the growers or producers. He has stated, however, that he feels that it is to the interest of the growers and the producers.

Mr. McKINNEY. We concluded that he had probably given you that impression, because we well knew that you would not take any very active part in this until you had determined the feeling that existed. So we possibly assumed that much, and if we did, we are sorry we did.

The CHAIRMAN. Yes; it is due to Mr. Campbell, I think, to state that, in fairness to him, and everyone else here that is interested in the matter.

Mr. McKINNEY. Yes. We assumed, at any rate, that the Attorney General was so close to action, if he was so—and I am basing that only on matters I heard from the East—that the matter must have been put up to him in a way so that he had the idea that the people in the industry were interested in it.

At any rate, on September 14, as I say, we heard that the matter was up, and for immediate action, and I was instructed by our executive committee to put out a circular to all of our membership, and state to them briefly that it was the opinion of the majority of the members of the executive committee that we should enter into this matter, prepare a wire to the Attorney General along that line, and request, without any further argument than the brief argument which I have here—which is not an argument, merely a statement—that any canner who felt that the decree should not be modified wire us authority—that is, wire to the canners' league office in San Francisco authority to sign his name to it. And that was sent out on September 14, and before noon on September 15 we had received telegrams from 70 per cent of our membership requesting that this action be taken, this 70 per cent being based on the pack, of course.

I will be glad, if you desire it, to submit our bulletin sent out on this, with the statement in submitting it that the only solicitation made, verbally or otherwise, of our membership on this matter was this bulletin, and the answers came as the result of the bulletin. If you desire it, I will hand it in to you for the record.

The CHAIRMAN. It may go into the record.

(Bulletin No. 274-A of the Canners' League of California, together with the message to H. M. Daugherty, Attorney General of the United States, are as follows:)

BULLETIN No. 274-A.

CANNERS' LEAGUE OF CALIFORNIA,
San Francisco, Calif., September 14, 1921.

IMPORTANT.

To members:

We are advised by the National Wholesale Grocers' Association that the Attorney General of the United States contemplates applying to the courts for the reopening of the consent decree against the meat packers, which decree prohibits them from engaging in the canned-fruit business and other businesses not directly allied with meat packing.

It is the opinion of the majority of the members of your executive committee that the removal of restrictions on the meat packers would be against the best interests of the California canning industry and that as individual canners we should register our protest by wire. Therefore the writer has drawn the following telegram:

"H. M. DAUGHERTY,

Attorney General of the United States, Washington, D. C.:

"Representing — per cent of the commercial pack of California fruits and vegetables, we respectfully urge that no action be taken toward removing present restrictions on meat packers, at least until you shall have held a formal hearing and enabled us to present our position. If Vernon Campbell has made the statement that he reflects opinion of industry here he is in error. Alleged statement that canners here unable purchase and distribute fresh-fruit crop

this season should not be credited, as witnessed by the fact that all available crop was bought from growers at steadily increasing prices.

"Request reply to Preston McKinney, 112 Market Street, San Francisco."

If you favor the above telegram and desire that your name be attached thereto as a joint sender of same, request that you immediately telephone or telegraph the undersigned to reach him by noon to-morrow, September 15.

Prompt action is essential in this matter, for I am definitely informed that the Attorney General plans to act immediately.

Yours very truly,

PRESTON MCKINNEY.

I will fill in the percentage to-morrow morning as soon as authorities to sign are all in.

SAN FRANCISCO, CALIF., September 15, 1921.

H. M. DAUGHERTY,

Attorney General of the United States, Washington, D. C.:

Representing more than 70 per cent of the commercial pack of central and northern California fruits, vegetables, and allied products, we respectfully urge that no action be taken toward removing present restrictions on meat packers at least until you shall have held a formal hearing and enabled us to present our position.

If Vernon Campbell has made statement that he reflects opinion of industry here, he is in error.

Alleged statement that canners here unable purchase and distribute fresh-fruit crop this season should not be credited, as witnessed by the fact that all available crop was bought from growers at steadily increasing prices.

Northern California cans 80 per cent of fruits and vegetables in the State.

Request reply to Preston McKinney, 112 Market Street, San Francisco.

J. C. Ainsley Packing Co., Bayside Canning Co., F. E. Booth Co., California Food Specialties Co., California Packing Corporation, Croker Packing Co., D. Di Fiore Canning Co., Walter M. Field & Co., Filice & Perelli Canning Co., Golden State Canneries, Griffith-Durney Co., Hawaiian Pineapple Co., Hershel California Fruit Products Co., Hickmott Canning Co., Hollister Canning Co., G. W. Hume Co., Hunt Bros. Packing Co., Geo. E. Hyde & Co., H. Jones & Co., Kings County Packing Co., Leighton Cooperative Packers, Lodi Canning Co., Pacific Coast Canning Co., Pacific Coast Sirup Co., Pratt-Low Preserving Co., H. D. Prince & Co., J. F. Pyle & Co., Richmond-Chase Co., San Leandro Canning Co., Santa Clara Valley Canning Co., Santa Cruz Fruit Packing Co., Tamal Packing Co., Thomas-Body Co., Winters Canning Co., Workman Packing Co., F. G. Wool Packing Co., Smith-Frank Packing Co.

Mr. MCKINNEY. The question is whether there were any opposing. There was no opposition registered. Some fee did not reply. I have made no effort to jack them up and argue with them or anything. I simply let it ride. A vast majority was on this particular side, and we felt in sending out to the individual canner that it was a matter for him to decide individually, and we would leave that to him.

The CHAIRMAN. You say there was 70 per cent in the volume of business?

Mr. MCKINNEY. Yes.

The CHAIRMAN. Now, how many were there in numbers?

Mr. MCKINNEY. In numbers there were 37 at that time.

The CHAIRMAN. Who wired you to so protest?

Mr. MCKINNEY. Yes. The wire was sent to you.

The CHAIRMAN. Yes.

Mr. MCKINNEY. I sent that to you.

Judge HAINER. What is the membership?

Mr. MCKINNEY. Fifty. Several more requested, after the wire had been sent, to be included. You see I sent my bulletin out one day and sent you the wire the next day, and several came in later with their requests, which raised that total somewhat, so at the present time the status of it is this—there having been no solicitation, however, in between—that 82 per cent of the total pack is on

record as opposed to the change, and we have no communications favoring the change.

Having asked the question of Mr. Chase as to who the large packers are out there, it has occurred to me you would be interested in a percentage if we eliminated the two largest packers; that is, the California Packing Corporation and Libby, McNeill & Libby; taking them out of the figures entirely, and giving you the percentage who replied to this matter, of the smaller ones, because I am particularly anxious, gentlemen, to get over to you the opinion of the small canner in this matter. Eliminating the California Packing Corporation and Libby, McNeill & Libby—

The CHAIRMAN. And both of those did so protest against the modification of the decree?

Mr. MCKINNEY. No; Libby, McNeill & Libby made no answer. There was no answer made there. But they are the two largest packers, that is, the California Packing Corporation and Libby, McNeill & Libby. It is 89 per cent of our membership, eliminating the two largest packers in the State.

Now, the canners league, having itself determined its status clearly, we proceeded to determine, as best we could, what the feeling of other people in the fruit business in California was, and the business interests of the State. Mr. Chase has delivered over to you certain of the resolutions and telegrams which have been sent, and I am not going to burden you with reading the others that I have here, unless you desire it, but I have them here, which I would desire to turn over for your record, and unless you desire me to go into further detail, I will give you the other organizations.

Of course, I have down at the top of the list the Canners' League of California. The California Development Association, which is an association of agricultural and business organizations for the purpose of developing the State of California and bringing people into it. It cooperates with and has as a part of its membership a large number of the chambers of commerce of the State. I have a list of its directors here, who are among the more prominent men as growers, for example, Wylie M. Giffen, head of the raisin association; Mr. Albert Lindley, one of the largest farmers here; R. B. Hale, one of our foremost merchants in San Francisco, etc. They endeavored to reflect the united feeling of the growers, the agriculturists, and the commercial people of the State.

Would you like to have me read the resolution of the California Development Association?

The CHAIRMAN. Yes.

Mr. MCKINNEY. This is a letter from the California Development Association, San Francisco, November 8, 1921.

"Mr. PRESTON MCKINNEY,

Vice President Canners' League of California, San Francisco, Calif.

MY DEAR MR. MCKINNEY: I am inclosing herewith copy of a resolution passed by our association on Friday, November 4.

Very truly yours,

N. H. SLOANE.

The resolution is as follows:

"Be it resolved, That this board of directors of the California Development Association, created to function as a State chamber of commerce in matters vital to the welfare of agriculture and industry, after consideration of the advisability of the proposed modification of the consent decree whereby meat packers might reenter a diversified field of enterprise, and after receipt of authoritative information from various sources that the vast majority of varied major industries essential to the welfare of the State, along with many civic, commercial and cooperative organizations and associations are clearly opposed to such modification, does hereby express to the United States Attorney General its disapproval of any alteration in the consent decree herein referred to."

I next refer to the Dried Fruit Association of California, but I believe it is unnecessary to go into any detail. Mr. Chase was here as their representative.

The San Francisco Chamber of Commerce wrote the Attorney General under date of October 31 a 3-page letter, signed by the San Francisco Chamber of Commerce, by its vice president and manager, which I presume you do not desire to have read now. You received it.

The CHAIRMAN. We received it.

Mr. McKINNEY. It is unequivocally opposed to a change in the consent decree. I have here a copy of letter from the Los Angeles Chamber of Commerce. I am sorry to say that I have not the original document in this case; it should have come to me, but it did not. I overlooked it. At any rate I have a copy of a letter signed by the Los Angeles Chamber of Commerce, by Mr. Frank Wiggins, in which he states:

"We shall be glad to give our aid to this movement and have talked over the matter with Congressman Osborne who is now in the city."

Mr. SMITH. Mr. Chairman, which side of the movement does that mean? For the modification or opposed to the modification.

Mr. McKINNEY. The letter attached to this copy of letter from the Los Angeles Chamber of Commerce, clears it up, and I will put these two letters in the record, and if you will permit me, Mr. Chairman, I will give you the original letter in this case.

The CHAIRMAN. You may substitute it for that.

(The letter of September 26, 1921, sent to the chamber of commerce is as follows:)

LOS ANGELES CHAMBER OF COMMERCE,
Los Angeles, Calif.

GENTLEMEN: In February, 1920, a consent decree was entered against the meat packers, and no doubt you have noted the recent effort made to modify this action.

It is claimed that this new movement is favored by those interested in the California fruit industry. Upon investigation we find the claim is not well founded, for 90 per cent or more of this industry are opposed. We also find that the green fruit shipping interests are against the reopening of this case.

Should the suggested change take place it will mean a complete monopoly of the food business by the packers, known as the "Big Five." Leaving the wholesale grocery business out of the argument entirely, a food monopoly of the world is a serious thing to contemplate.

Representative Osborne and Senators from California have been requested to act as per enclosed copy of telegram. We have answers from Senator Johnson and Shortridge, each of whom, together with Representative Osborne, assure us of their support to the end that fairness will be done.

May the Southern California Wholesale Grocers' Association ask your earnest support to the extent that you will use your influence with the Attorney General at Washington, asking that no action be taken until a fair hearing is had, and if possible and consistent ask that no change be made.

Very truly yours,

VICTOR H. TUTTLE, *Secretary.*

(The letter from the Los Angeles Chamber of Commerce is as follows:)

SEPTEMBER 27, 1921.

Mr. VICTOR H. TUTTLE,
Secretary Southern California Wholesale Grocers' Association,
Los Angeles, Calif.

DEAR SIR: This will acknowledge receipt of your letter of September 26, inclosing copy of telegram addressed to Congressman Osborne regarding business of meat packers. We shall be glad to give our aid to this movement and have talked over the matter with Congressman Osborne, who is now in the city.

Yours very truly,

LOS ANGELES CHAMBER OF COMMERCE.
FRANK WIGGINS, *Secretary.*

Mr. SMITH. They are opposed to the modification of the decree, is that it?
Mr. McKINNEY. Opposed to the modification of the decree; yes.

Mr. Chase referred to the resolution of the San Jose Chamber of Commerce. I now refer to the resolution of the Sacramento Chamber of Commerce, which also is in your hands, Mr. Chairman, which is unequivocal. It is as follows:

NOVEMBER 16, 1921.

Whereas there is now pending a request to the Attorney General of the United States for a modification of the consent decree accepted by the five large meat-packing interests about February, 1920, then under indictment under the provisions of the Sherman Antitrust Act; and

Whereas it is claimed that the request for such modification is made principally at the instance of California fruit growing, shipping, and packing interests:

Now, therefore, the Sacramento Chamber of Commerce, having among its active membership large numbers of fruit growers, shippers, packers, and canners, thus representing a very considerable portion of the fruit-growing area of this State, and acting for the best interests of the fruit-growing industry, desires to go on record as protesting against any such modification.

SACRAMENTO CHAMBER OF COMMERCE.

I point out at this moment the fact that the Los Angeles Chamber of Commerce, the San Francisco Chamber of Commerce, the San Jose Chamber of Commerce, the Sacramento Chamber of Commerce, are all clearly on record, and they are the four largest cities of our State, and all of them deeply interested, of course, in the fruit industry.

The CHAIRMAN. Are they in the heart of the fruit-producing sections?

Mr. MCKINNEY. Yes. Sacramento and San Jose are the two smaller cities, that are in the heart of the fruit-producing sections, and Los Angeles and San Francisco are the two largest cities in the State, and they are commercial cities.

The California Dried Fruit Association and the California Peach and Fig Association have been referred to. I have here a copy of the wire sent by the California fruit distributors to the Attorney General under date of September 14. It is as follows:

SACRAMENTO, CALIF., *September 14, 1921.*

HARRY M. DAUGHERTY,
Attorney General, Washington, D. C.:

Representing, as we do, 60 per cent of the deciduous fruit shipped from the State of California, and realizing the injury it would be to the industry from a marketing standpoint were the packing companies permitted to utilize their refrigerator cars and enter into active competition with now well-established marketing organizations, we respectfully protest against any modification of the ruling by your office in 1920 prohibiting packing companies from dealing in outside lines, and we ask that no such modification of this ruling be made by your office until we have time to properly present full facts to substantiate our position.

CALIFORNIA FRUIT DISTRIBUTORS.

Mr. MCKINNEY. They handle 60 per cent of the fresh fruit—an organization of shippers which handles 60 per cent of the fresh fruit shipped out of the State.

I believe it was stated somewhere—I don't know where—that one of the troubles out there was that it was impossible to move our fruit without the meat packers to help us, and yet the fresh-fruit people, who must move it immediately or it is lost, are clearly on record in regard to this matter. I mean the shipments of fresh fruit out of the State.

I also have a wire here from the Superior California Citrus Association, which operates in eight counties in central California, which also was sent to Mr. Daugherty on October 12, putting them unequivocally on record.

The CHAIRMAN. What does that do? What is its function?

Judge HAINER. That organization is opposed to the modification of the consent decree?

Mr. MCKINNEY. Yes; they are opposed to the modification of the consent decree.

Mr. SMITH. That is what I wanted to know—what he means.

Judge HAINER. All right, Senator, whenever it is not clear please let us know, and we will endeavor to clarify it.

The CHAIRMAN. What is the function of that association?

Mr. MCKINNEY. It is a shipping organization of growers, citrus growers in that part of the State, who ship their products into the eastern market. They grow the fruit and gather it together in their own packing house and ship it east.

Judge HAINER. That is, fresh fruit?

Mr. MCKINNEY. That is fresh citrus fruit; yes, sir.

That covers the organizations which I desire to call to your attention. In summing it up I want to state that there is not a single organization that we did take it up with that turned us down, and that taken together these resolutions, these expression of opinion embody the opinion, taken collectively, of the industry of the State, the fruit industry. By the industry I mean the man who grows it and the man who markets it.

On October 19 Mr. H. S. Maddox, the State market director of California, who had been only newly appointed, sent a telegram to the Attorney General in which he expressed his own opinion that the consent decree should be modified, after it having been put up to him by some one, I don't know who. At any rate, the first we had heard that he had sent any telegram was some time later; we never had put it up to him ourselves; so after we had gone among these associations, I went to Mr. Maddox—I have known him for a long time, and I know he is square and dependable—and I said to him: "Mr. Maddox, I just want to point out to you the people who have been in this business who do not feel as you do." "Well," he said, "Mr. McKinney. I have returned from a trip all over the State. I have talked to the growers' organizations in every county in the State, and you are certainly correct." And he was man enough to send a telegram dated November 10, 1921, both to Mr. Wallace, Secretary of Agriculture, and to Mr. Daugherty, the Attorney General, which reads as follows:

"Referring to my telegram of September 19, I have just completed a tour of all important horticultural and agricultural districts of the State, and find a large percentage of growers' organizations, as well as commercial bodies on packer consent decree as it affects fruit and vegetable industry of California either are neutral or opposed to any modification of decree. As a State official in charge of marketing I desire to express to you the opinion as I find it.

"H. S. MADDOX."

Having got into this thing I attended the Fifty-fourth State Fruit Growers and Farmers' Convention at Los Angeles on October 24 to 26. This is the annual convention, which is attended by many growers. It is under the auspices of the State. It is handled by the State department of agriculture. The farm advisers gather there, they have many exhibits, and for four days farmers' problems are discussed. One-half a day was devoted to legislation affecting the farmer. There were four representatives of the California Cooperative Canneries there, a sort of flying squadron, that had been working throughout the State in an effort to create public opinion. To my amazement—it was not to my amazement either. I was not amazed—when the afternoon came it was not brought up, and it did not come up at any time during the hearing. It was not a matter that I thought I should take up, because I was on the negative side. And I call this to your attention merely as a final statement, that there was not a single member of that great convention who was interested enough in the removal of the consent decree to bring it up.

The CHAIRMAN. Was any resolution passed?

Mr. McKINNEY. Nothing was passed. There was no action taken whatsoever, nor was it mentioned.

Gentlemen, I have taken up a good deal of you time to give you the situation in California, but I am through, at any rate, with that part of it.

Now as to how we feel—the reasons for our feeling about it. The growth of the packers scares us. Coming across on the train I read—

Judge HAINER. You mean the Big Five?

Mr. McKINNEY. The Big Five, the meat packers; yes.

Judge HAINER. Not the growth of the fruit packers?

Mr. McKINNEY. No, sir.

Judge HAINER. It kind of makes Senator Smith nervous not to know which you are referring to.

Mr. SMITH. I want to know which packers he is talking about.

Mr. McKINNEY. Coming across on the train I went through the consent decree. And I desire just in a few moments to call your attention to two or three points in it which are part of the basis for our fear. I notice on the first page that the judge says, "It appearing to the court that the allegations of the petitioner state a cause of action against the defendants under the provisions" of the antitrust act—his having made that statement of there being some cause of action. I am interested in the statement on page 29 by the Attorney General in his complaint—

The CHAIRMAN. That is, in the petition?

Mr. McKINNEY. The petition, in which he states:

"This advantage was also employed temporarily to fix prices so low as to gradually eliminate competition."

He then says in the petition:

"These attempts to monopolize have resulted in complete control in many of the substitute food lines. They have made substantial headway in others. The control is extensively and rapidly increasing. New fields are gradually

being invaded, and unless prevented by a decree of this court the defendants will within the compass of a few years control the quantity and price of each article of food found on the American table."

Now, that matter of control, of course, worries us, and I am not going to go into any legal phase of this. It is just a point which, I think, through the consent decree's own figures will illustrate one of the chief bases of our fear.

On this same page I note that the packers from 1904 to 1919 increased their net worth from \$92,000,000 to \$479,000,000, and that the only money that came from the outside consisted of \$89,000,000.

I also note that the sales in 1918 of the meat packers were \$3,200,000,000. Those figures worked out indicate that taking the last 15 years as a basis the packers doubled their net capital every seven and one-half years or, roughly, eight years without the addition of outside money.

Now, in referring back to the answers of the meat packers I find most of them state they do not know and, therefore, can not answer. I notice, however, that Armour does undertake to answer, and I think his figures are just about as good as the Attorney General's. They show an increase there, without additional capital, of from \$45,000,000 to \$173,000,000, and it is a little less than four times, whereas the Attorney General says it is four times. There does not seem to be any great difference. So I think it can be accepted that those figures are correct.

Taking their sales of \$3,200,000,000, I find they turn their capital about six and one-half times a year. And looking into the future, therefore, assuming that they would increase their net worth without adding any outside capital, on the same basis we would have them say at the beginning of 1927 with \$958,000,000 worth of capital. Now, if they turn them, as they have done in the past, six and one-half times, we would have sales by the five meat packers six and one-half billions of dollars.

Their sales in 1918 being \$3,200,000,000, which are not disputed in any part of this document, added to the sales of the wholesale grocers in this country, as shown by Armour & Co.'s statement on page 74, Armour & Co. there saying "that during the year 1918 the wholesale grocers throughout the United States handled more than \$3,500,000,000 worth of wholesale grocery business"—taking Armour's figures for that, and the Attorney General's undisputed figures for the packers' own sales, we have got \$6,700,000,000; that, if they keep up their gait before this consent decree was issued, would be their sales. I guess I have put that wrong. I mean to say that their sales would be six and one-half billion dollars, and at the present rate of increase, without any added capital, their sales would be six and one-half billion dollars in 1927, and the sales in 1918, the combined sales of the meat packers and the wholesale grocers, were \$6,700,000,000.

In other words, based on the figures before the consent decree was issued, they would practically have the whole thing absorbed except for the increase in population. So let us give them another two years for increase in population, and I would figure that in about 1930 the distribution of the food products would be in their hands.

The CHAIRMAN. Well, do not their sales, in their answer, include meats as well as unrelated commodities?

Mr. McKINNEY. I speak of the distribution of the foods of the United States.

The CHAIRMAN. Oh, you are taking the total.

Mr. McKINNEY. Yes, sir; I am taking the total food of the United States. They were starting to get into the unrelated lines—

Judge HAINER. Well, what per cent of the unrelated lines do they handle?

Mr. McKINNEY. Very small, relatively small.

Judge HAINER. Well, about what per cent?

Mr. McKINNEY. I don't know. I believe they say in here about 3 per cent.

We are fearful of the future. We are fearful of their having the same ability to broaden out that they had in the meat business, and we are desirous of nipping the thing in the bud. The volume that they represented at the time the consent decree was issued was quite a big item to us out there. It was a trouble maker of a very serious nature.

Judge HAINER. This hearing is just with regard to the unrelated products. Of course they are restrained and enjoined on—

Mr. McKINNEY (interposing). But I believe it is pertinent for us, isn't it, to look into the future, as to what it would mean?

Judge HAINER. Yes.

Mr. McKINNEY. As I see it in these figures roughly worked out, in another 10 years, if they could absorb into other lines they would be doing as much business—they have got all the meat business practically—they would be doing as much business in 10 years as both the wholesale grocers and the meat packers themselves are now doing.

Now, I have no doubt that the point that is in your minds is a matter of efficiency.

Judge HAINER. What we would like to know, Mr. McKinney, is what percentage of the unrelated products these five big packers handle?

Mr. McKINNEY. I don't know.

Judge HAINER. Well, it has been stated from 3 to 5 per cent. Have you verified those figures?

Mr. McKINNEY. No; I have not. I have not done so. To me the vital point is what they can do. They were just jumping in. They had only been at it a very short time. They were just building their machine.

The CHAIRMAN. Well, was there anything unlawful in their acts that you know of?

Mr. McKINNEY. I am not a lawyer.

The CHAIRMAN. Well, do you know of anything unfair in commercial practices in the building up of that machine?

Mr. McKINNEY. Well, I feel this way: Get away from the unlawful, get away from the unfair, both of which I believe can be pointed out; but the mere hugeness is of serious moment.

Now, I think the best answer to that question which you make—and it is the last thing I am going to quote—is found on page 38 of this document, which is the answer of one of the packers. He says:

"These defendants allege that if any one or all of said defendants dominated, controlled, or monopolized a very great proportion of the food supplies of the Nation, such domination, control, or monopoly would necessarily appear in the profits made by such defendant or defendants upon the sale of their products."

And then, at the bottom of page 38 and the top of page 39, the statement continues:

"These defendants allege that neither these defendants nor any of them would be satisfied with such a nominal profit upon their business if they had the power through domination, control, or monopolization of trade to obtain a reasonable profit upon the sale of their products."

Now, gentlemen, our fear there is based on—if their growth continues as it continued up to the time of the consent decree, their control would be very dominant, and they state very clearly that if they had the control they would not be satisfied with any such profits as that.

The CHAIRMAN. That is on page 39, is it?

Mr. McKINNEY. Page 39. We are fearful of turning over to any body of men the distribution of the food products of this country, law or no law. I am not familiar with the law, therefore when I say "law or no law" I know nothing about the legal end of it; but I say we are fearful of turning over to any body of men the distribution of the food products of this country. I do not believe that there are five men—here are five packers—I do not believe there are five men in Washington who are big enough—and the biggest men of our country are gathered here—I do not believe there are five men in Washington who are big enough so that we want to turn the control of the food products of the country over to them. By "big enough" I mean big enough and broad enough American citizens.

Mr. BREED. When he says "anybody" does he mean any one person or any five persons?

Mr. McKINNEY. Any body of five men; yes.

I would like to read a few words from our brief, which we have not yet filed, on our further reasons in this matter:

"There is grave danger, in the opinion of the canners of California, that in these reconstruction times that in an effort to bridge over temporary difficulties which come as the backwash of every war we will forget and render negative the basic economic principles which our experiences through the many years of normal business operations prior to the war have proven to be sound.

"We feel deeply that the effort to modify the consent decree in the 'Big Five' meat-packer case can be so classified. Over many years of pre-war operations the 'Big Five' meat packers developed through devious means such tremendous momentum and volume of business that public opinion became aroused to the certainty that if permitted to continue their aggression they would in a

very short time control production and distribution of the country's food. It was a demonstrated fact that they did control the country's production and distribution of animal products, and it was evident to the public and to disinterested Government investigators that this control was rapidly being extended to other lines, particularly California canned fruits. We emphasize California canned fruits, not because this was the only line in which their aggression was becoming serious but because it is the line in which we are vitally interested and to which we desire to direct the attention of the committee.

"The consent decree, issued by the Supreme Court of the District of Columbia on February 27, 1920, was the crystallization of public opinion on this matter and indicated clearly that at the time this decree was issued the general public and the representatives of the Government, and even the packers themselves, recognized the fact that their aggression into the production and distribution of food products had reached and passed far into that status which the Congress in framing the antitrust laws purposed to curb and prevent.

"We submit that all of the facts which prompted this court action taken February 27, 1920, still maintain and that it is a most surprising procedure for the meat packers to have entered into this agreement to avoid criminal prosecution within less than two years, through illy concealed accomplices, to undertake to have the restrictions removed."

Getting down to our own specific condition in California, I believe Mr. Chase has covered the matter of our own financing. I might read just a paragraph that will bring that to your attention perhaps a little more concisely than I could if I gave it to you offhand:

"The fruit-canning industry of California has been built up over a period of 30 years to a point where several times as much fruit is packed in California as in all of the rest of the United States combined, and by a large number of independent operators, practically all of whom distribute through wholesale grocers. This method of distribution has been economic and has been so organized that the wholesaler has purchased his requirements early each season, and through these early purchases the canner has been able, to a considerable degree, to finance his operations. The advent of the meat packer into the distributing field would disorganize this logical and economic method of distribution, making the purchase of canned fruits by the wholesaler less desirable, and thus interfering with this proper method of financing particularly the small packer."

Now, the point I would like to cover is that "the present method of distribution through a large number of independent distributors has made it practical for a large number of independent canners to operate successfully in California, thus bringing about keen competition, and we firmly believe that if the meat packers had been permitted to continue their inroads into the industry in California the net result in a very few years would have been the concentration of the business into very few hands, as was the case in the meat industry. If the consent decree is modified, they will accomplish this purpose."

I want to reiterate that. It is a fact to-day, gentlemen, that a small canner with limited capital has a chance to begin as a canner, and if he is in the business to continue as a canner. I know a large number of small canners throughout the State; I am in touch with them all the time; canners who have over a period of may be 20 years, by ability and hard work, built up a successful business. Their position is unassailable. They have come to see their customers, may be once a year or every two years. They have built up mutual respect. Then maybe a canner of that size may have perhaps 50 customers throughout the United States, wholesale grocers. These wholesale grocers have confidence in this canner. They have confidence in the product which he produces. Many of them put their own brands in his product. And under normal conditions there is no big combination of capital that can very well assail that excellent position from the point of good business and from the point of view of the public.

The danger, as I see it, as the Cannners' League sees it, to that small packer is that if the great combinations of capital of the five meat packers enter into the field out in California, as they started to enter into it, were beginning to get their tentacles in, that small packer is immediately in a precarious position. It will be a battle for the business out there. And we feel that that small canner will be soon gobbled up one way or the other in the fight.

The statement has been made that the only purpose of the packers at this time is to get in as distributors, but we can not feel that there is much hope

to the small canner in that. The history of the meat packer is that he is a manufacturer. Distribution is a by-product to him. I mean, he has built up a distributing machine for the purpose of distributing his pack, and we feel that as soon as he had well established a demand for the product he would very soon get into the packing of it. We believe that the history of the packers will bear that out.

We have heard also quite often—and I inferred that possibly in asking the question as to the reduction in the pack this year that there might be in the minds of you gentlemen a feeling that possibly there was some relation between the reduction of the pack in California and the fact that the meat packers were not in there as extensively as before on account of the consent decree. I want to say to you that I know of not a single instance—and I think I would know it if it existed—where any cannable fruit in California in the year 1921 was not canned.

I also point out to you gentleman that the price of the green fruit paid by the cannery to the grower steadily increased from the first purchases made, through to the closing of the season, when the price was up—well, I would say from \$25 a ton at the close of the canning season, compared with the prices that were offered earlier. So, certainly the absence of the meat packer in the market did not curtail our pack, nor did it affect the return to the grower. I think that probably if we had been in, what would have happened would be that he would have had enough of it under his control so that the price to the consumer would have been quite materially affected adversely to the interests of the consumer.

Mr. BREED. Do you mean increased?

Judge HAINER. It would have been an increase to the consumer, would it not?

Mr. MCKINNEY. Yes; increase.

In closing, one point that Mr. Campbell made was that he thought it was a shame to scrap this wonderful distributing organization of the meat packers. And he also stated that as far as the distribution of outside lines, that they were only distributing 3 per cent. Certainly you are not going to scrap a machine because only 3 per cent of the business you built up has been taken away from you. This machine was built up—however good the machine may be—was built up to distribute the products that they produced, and they certainly are not going to scrap it, nor have they scrapped it, because 3 per cent being the unallied lines—I don't know whether those figures are right, but whatever they may be—because of those 3 per cent being taken away from them.

I think that is about all I have to say, gentlemen.

The CHAIRMAN. Mr. McKinney, your fear then of the packers' reentry into these unrelated lines is a fear of monopoly of these lines by the packers?

Mr. MCKINNEY. Yes, sir.

The CHAIRMAN. And that is based upon their acts with respect to other lines?

Mr. MCKINNEY. Also their sheer growth.

The CHAIRMAN. Their sheer growth?

Mr. MCKINNEY. Also their sheer growth.

The CHAIRMAN. And in these other lines you refer, I presume, to meat?

Mr. MCKINNEY. Yes, sir.

The CHAIRMAN. Have you any information of any unlawful acts by the packers, or any unfair acts in commerce or competition with respect to these unrelated lines?

Mr. MCKINNEY. I have not endeavored to get into those features of it. I have the definite feeling that such exists, but I have not gone into it.

The CHAIRMAN. You have no specific instance of that?

Mr. MCKINNEY. I have not prepared any specific figures on that. I know it to be a fact that the meat packers out in our country control the meat industry out there. I know that when I was a boy they did not.

The CHAIRMAN. But now, with reference to the unrelated lines. I am referring to any unlawful acts or unfair practices on the part of the packers with reference to unrelated lines—fruits and vegetables and wholesale groceries, and such as that. Do you know of any instance of that kind?

Mr. MCKINNEY. Well, I don't know whether they would be classed as unlawful. I don't know.

The CHAIRMAN. Well, are they unfair, in your opinion, Mr. McKinney?

Mr. MCKINNEY. Well, I feel that the opposition to them that the wholesale grocers have developed, or I suppose will develop, on this branch-house proposition is clearly unfair to the wholesale grocers. I have not prepared myself

to go into the details of it. I feel that these men will take care of themselves in that respect.

The CHAIRMAN. How did that reflect on the fruit industry?

Mr. McKINNEY. We would get it on a minute in this respect; that it is a fact—

The CHAIRMAN (interposing). I am not disagreeing with you.

Mr. McKINNEY. Yes; I understand. I was not argumentative with you, either, but it is certainly a fact that the wholesale grocer is our distributor, and if unfair competition is thrust upon him, with his willingness to advance us the necessary money on our sales, contracts will cease.

The CHAIRMAN. Your wholesale grocer is and has been for some years the distributor of the canner?

Mr. McKINNEY. Yes.

The CHAIRMAN. And you want him to continue so?

Mr. McKINNEY. We certainly do. The canned-fruit business is the one element in his distribution, and our very existence as growers and canners depends on distributors taking hold of our stuff and pushing it along for us.

The CHAIRMAN. And upon their being successful, naturally.

Mr. McKINNEY. Why, surely.

The CHAIRMAN. That is all I care to ask. Does anyone else have any question to suggest?

Mr. SMITH. Mr. Chairman, Mr. McKinney has referred to the Cooperative Canneries. I wanted to request that he give us the relative strength of the cooperative canneries in California as compared to the others numerically.

The CHAIRMAN. Senator, do you mean the California cooperative canneries?

Mr. SMITH. Yes.

Mr. McKINNEY. Well, as far as the California cooperative canneries are concerned—

Mr. SMITH (interposing). As to the quantity that they handle.

Mr. McKINNEY. Well, we have estimated, roughly, that they pack about 5 per cent of the pack.

Mr. SMITH. That was what I wanted.

Mr. McKINNEY. You speak now of the California cooperative canneries?

Mr. SMITH. Yes.

Mr. McKINNEY. There is one other cooperative company in southern California—I don't know how large they are—they are not a great, big organization, however, but there is one other organization which I do not include in there, because I do not know about them especially. I might point out that they are not here requesting the change either.

Mr. SMITH. Yes. Mr. Campbell referred in his statement this morning to possible coercion by the wholesale merchants to bring about this attitude of the men, the canners, the dried-fruit people in California. I wish you would state to the commission—may I express it in this way, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. SMITH (continuing). Whether there is anything of that sort in the State?

Mr. McKINNEY. Yes.

Gentlemen, the reason I went into so much detail covering how we went into this, and our various steps in it, was to make that clear to you. I want to say unequivocally that our attitude in this matter is one of our own self-preservation, as we feel that the big five meat packers, if they are permitted to extend as they have in the past, will very soon place the small canner out there in a position where he can not operate, and I speak now of the process of canning, as well as interfering with a method of distribution that has been built up over a period of 40 years.

The CHAIRMAN. You speak of your attitude. You mean the attitude of the canners' league?

Mr. McKINNEY. Yes; I speak for them.

The CHAIRMAN. You do not know, do you, what influence, if any, has been brought upon your individual members?

Mr. McKINNEY. No; I do not. However, I do know this, that we got into the thing immediately. I do not see how there could have been any opportunity for it to come in. That is, if the influence came it came after we had acted. Because I do not think in California that anybody had heard about this proposed change in the consent decree prior to the end of August. Certainly none of the men that I have talked to had, and I have talked to about two-thirds of our members. We have no large membership. We are able to ex-

change our ideas closely. And it was all brand new to them, the fact that there was any effort being made.

The CHAIRMAN. Anything further, Senator Smith?

Mr. SMITH. Well, then, definitely, was there any opportunity for the wholesalers to have done anything?

Mr. McKINNEY. Not a bit. We were on record before anybody had an opportunity to get any action on us, if any action was taken.

Mr. SMITH. You got your answer the next day?

Mr. McKINNEY. Yes, sir. You know the little experience we had out there with the meat packers put us pretty much on the hair trigger.

Mr. BREED. Do you know, Mr. McKinney, whether the meat packers have any special privileges or special advantages in handling or distributing your products over the wholesalers that would make competition between the two unfair, according to your idea?

The CHAIRMAN. He may answer.

Mr. McKINNEY. I don't know that I quite get that question.

The CHAIRMAN. Read the question.

(Mr. Breed's question was read by the reporter as above recorded.)

Mr. McKINNEY. Well, in California I know of no direct instance. I do know that in the East the meat packer, through his use of his fresh-meat cars, gets into a lot of territory in a car-lot way that the wholesale grocer can not get into. I base that merely on the information that I have had told me dozens of times.

Judge HAINER. Does that practice exist in California?

Mr. McKINNEY. No; it does not.

Judge HAINER. In sending your products to the East?

Mr. McKINNEY. No; not in sending them to the East. You see, we packed last year—that is, the members of the Cannery League, alone packed 13,000 carloads of fruit and vegetables, and so there is no mixed-car proposition in getting the stuff East. Any jobber can buy a car of our stuff.

The CHAIRMAN. That only arises, then, in the distribution to the retailer?

Mr. McKINNEY. Yes, sir; as far as I know. There may be some that I do not know about, but that is all. As far as the distributing of the product, the actual movement of the product from California to the wholesale grocer, I know of no—

Judge HAINER (interposing). What facilities would the five big packers have to transport your fruit products to the East from California?

Mr. McKINNEY. What would they have?

Judge HAINER. Yes.

Mr. McKINNEY. I know of no others than the going facilities of transportation—I know of no transportation facilities they would have.

Mr. BREED. Is this 5 per cent that Mr. Campbell testified to as being paid to Armour also paid to the wholesalers by members of your league for distribution?

Mr. McKINNEY. Well, I do not get into the direct selling end of it at all. I think Mr. Chase could answer that, though. He sells, and he knows. I do not know. If you would, permit him to answer the question.

The CHAIRMAN. Yes; that is all right, Mr. Chase.

Mr. CHASE. Mr. Chairman, not as far as my company is concerned; not at all, in any instance whatever, and it is not the general practice, by any means. It may occur. I can not say that it does not; but it is not the general practice.

Mr. McKINNEY. Well, my understanding, just roughly, is that there is 2½ per cent going to brokerage; that the brokerage is 2½ per cent; something like that—2 per cent.

Mr. BREED. Is the California Cooperative Canneries regarded in California as an independent corporation?

Mr. McKINNEY. Never mentioned as that. It is Armour's Cooperative California Canneries; that is the term.

Mr. BREED. Why do you say "Armour's California Cooperative Canneries"?

Mr. McKINNEY. Well, I base that on the mortgage. I may say that I base it also on my own—or I do not base the statement that is used—but I base my own opinion on it on the evidence given here, which, of course, I have known of, and everybody has known of in California.

I base it also on the fact that I used to go and see the California Cooperative Canneries quite often at their place in San Jose. I can not remember at this time of ever talking alone to either the president or the vice president in their office. During the season that I used to go down there I always talked

across the table to Mr. Davidson, who was the operating manager of Armour & Co.

Mr. BREED. Is Mr. Davidson the vice president of Armour & Co.?

Mr. MCKINNEY. I don't know his title, sir; but he was at that time the operating manager.

Mr. BREED. And in any event, the term "Armour's California Cooperative Canneries" is used in the trade, is it?

Mr. MCKINNEY. That is the general expression around the canneries; yes, sir.

The CHAIRMAN. Has anyone else any questions that they wish to suggest? If not, we will adjourn until to-morrow morning.

Mr. BREED. Mr. Chairman, before you do adjourn, as there seems to be quite a number of gentlemen here. I might beg to suggest that those of us who are here rather seeking for information as to who wants to modify this decree would be glad to know if there is anybody else here, beside Mr. Campbell, who would like to have the decree modified?

The CHAIRMAN. Well, the witnesses will be produced, Mr. Breed, in the order in which the time has been fixed for them, and we have tried to do that, as I stated before, to meet the convenience of the people who will appear here.

Mr. BREED. No; I was just wondering whether the commission would like to ask in the room here now if there was anybody else here who wanted to appear in favor of the modification of the decree.

The CHAIRMAN. Well, we have asked. I do not see any occasion for asking such a question as that. And we asked this morning if there was anyone here who wished to appear in this matter, either for or against, and who had not made such a request as yet to the Department of Justice. If there is, we would be glad to learn of them, and the time will be fixed for them.

Mr. SMITH. Mr. Chairman, this morning in conversation with you it was suggested that perhaps you would be in a position to give us a list of those who have fixed times to appear from now on, as it might aid us in preparing our case, if there is no objection to it, or in determining what we wish to do.

The CHAIRMAN. I do not feel that we should disclose that, Senator. If you have anything that you wish to rebut you can do so after the witnesses go off the stand.

Judge HAINER. We will give you full opportunity.

The CHAIRMAN. Full opportunity will be given for that.

Mr. ROLAND E. STEVENS. Mr. Chairman, in view of what you have just stated, I think I ought to ask leave to appear here on behalf of the Montpelier wholesale grocers, of Montpelier, Vt., and of other wholesale grocers in the State of Vermont.

The CHAIRMAN. May I have your name, please?

Mr. STEVENS. Roland E. Stevens.

The CHAIRMAN. We will make an effort to give you time to-morrow.

Mr. STEVENS. To-morrow is Tuesday. Probably Thursday would be well. Do you think you could give us time, then?

The CHAIRMAN. I think we can hear you sometime along then, yes.

Mr. SMITH. Mr. Chairman, we can but feel that it puts us in an unsatisfactory attitude toward putting up testimony in entire ignorance of who else is to present any kind of a case in favor of this modification. Those of us who are resisting it occupy rather a negative position. We are satisfied with the situation if all that is to come is from Mr. Campbell.

The CHAIRMAN. Well, I can assure that all that is to come is not from Mr. Campbell, if that will satisfy you.

Mr. SMITH. No; it does not, because we really think that the just course is to let us know who else it is to come from, that we may know how to shape our preparation to meet it.

The CHAIRMAN. Well, we do not feel, Senator, that that is necessary, and, in fact, we do not feel that we would be justified in so doing, and we do not feel that it can affect the question of the right or wrong of the proposition in any way. A modification is either right or it is wrong, regardless of who appears here for it or against it.

Congressman OTIS WINGO. Mr. Chairman, may I inquire if it is proposed to modify this decree other than on the unrelated products?

The CHAIRMAN. It is not; and the proposition, as I have stated, may remove all the restrictions with reference to unrelated commodities, or it may be much more limited than that.

Congressman WINGO. Has the Department of Justice made any announcement? I am not asking for an expression. Has there been any announcement made by the Department of Justice?

The CHAIRMAN. This is for its consideration.

Congressman WINGO. This is about another matter. Has the Department of Justice made any announcement with reference to its views as to the effect of the packer control act, whether or not the packers are amenable to the anti-trust law, or does the packer control act take them out from under the permanent prosecution, save and except as a penalty of that act?

Judge HAINER. That is a law question.

Congressman WINGO. Well, I say, has the department considered that and made an announcement?

The CHAIRMAN. You are Congressman Wingo?

Congressman WINGO. Yes.

The CHAIRMAN. Congressman, the Department of Justice would not make a public announcement on that question unless the matter was referred to it by the Department of Agriculture.

Congressman WINGO. I know that it was not, but I was asking for information, whether or not that has been raised.

Judge HAINER. It has not, Congressman. We will probably ask for some observation of law on that proposition. We would like to hear from eminent counsel on that proposition, of the effect of the act.

Congressman WINGO. I do not pretend to be an eminent counsel, but I have got a horse-sense view on it.

Judge HAINER. We would like to hear from you before the hearing is closed, Congressman.

Congressman WINGO. I tried to get the expression of the congressional committee, as you will find if you will refer to the record of it. I asked the effect of it on the floor.

The CHAIRMAN. That is the committee?

Congressman WINGO. Yes; the committee. I voted for the act, because I have great confidence in the committee that reported the bill. They are very honest men, and I think they wanted to do some good. Now, as to whether or not they made "confusion worse confounded" I am trying to find out. That is the reason I am asking about this. And when I see it followed up with an effort to get the decree modified on the only thing that was not covered by the legislative act I am wondering whether it is a well thought-out program of the packers, in view of what this gentleman stated this morning, about the inside conferences on the final framing of that bill, whether or not it is not a way to get out of the back door when they have been jerked in the front door, and gain a free and unrestrained field in any direction, in any way that they please.

I have a very lively appreciation of human nature. I never blame a man for doing what he is permitted to do along selfish lines if he is not restrained by public restraint.

Mr. STEVENS. Mr. Chairman, may I ask if the committee would be willing to indicate about how long the hearing will last?

The CHAIRMAN. We have practically all of the time taken from now until December 7, inclusive.

Mr. STEVENS. Many of us are here from a distance and would like to know.

The CHAIRMAN. We will try to accommodate you before that time.

Mr. SMITH. Mr. Chairman, there are some of us who feel disposed to hesitate about putting up evidence in objection to a modification of this decree until we hear from those who desire the modification or all who desire it. If we should conclude, after conference, that we do not desire to put up any evidence at this time, that we are satisfied with the situation growing out of the fight between Mr. Campbell and the other fruit people of California, would it embarrass the committee at all for us to just wait until the other evidence is put in?

The CHAIRMAN. If you do not see fit to present anything to the committee that is for you to decide, Senator.

Mr. SMITH. Well, we do see fit, but we would like to know what we have got to meet, and it does seem to me, if the commission please, that it is fair for us to know what we are going to meet. We are ready to meet Mr. Campbell's statement now. We are satisfied with the two that have already answered. But if there is a further attack to be made, we are just aiming in the dark. So far as my view of the matter is concerned, I would be content to leave Mr.

Campbell's statement and the statements of the two gentlemen from California who have answered.

Mr. Chairman, if there isn't anything else coming in favor of the modification of the decree except that, I would be content to quit right now, and just let you take the case. But if there is something else coming, we would want to meet it. But we do not want to go ahead without knowing what we have got to meet. And I appeal to the commission that it is fair for us to know. Not to make us go on in the dark.

Judge HAINER. Do you mean the names of the witnesses?

Mr. SMITH. Why, I would like to stop and hear them.

Judge HAINER. We have never heard them ourselves.

The CHAIRMAN. We do not know what they have to say.

Judge HAINER. How do we know, Senator, what they have to say any more than you do?

Mr. SMITH. Well, I don't know.

The CHAIRMAN. We do not know.

Judge HAINER. No; we do not know.

The CHAIRMAN. We know just who is coming, that is all, and in fact we do not know who is coming, because some organizations and associations have requested opportunity to appear, and we do not know the witnesses that are to appear.

Judge HAINER. We do not know any more than we did know concerning Mr. McKinney. We had met him, but we certainly did not quizz him in advance.

Mr. SMITH. If there are parties who are opposed to the modification of the decree, who, as the matter now stands, do not care to be heard, if something else comes in hereafter, I understand the commission will give them an opportunity to be heard?

The CHAIRMAN. Yes; surely.

Mr. SMITH. It may be that we will conclude to-night, after conference, that as the case now stands we do not desire to be heard, and will not take up your time.

The CHAIRMAN. Let us know in the morning.

Mr. SMITH. Thank you.

Mr. BREED. Could we ask just one question for information? For example, this is a decree of the court in an action brought by the Attorney General, and consented to by the defendants in that action. Now, the most likely people, and the people that are most affected, are the defendants themselves. Now, it seems to me rather difficult for the public on the outside to come in here and tell the Attorney General why a decree of the court should not be modified without knowing, perhaps, whether the defendants themselves—who are the parties who consented in this action to a decree being entered against them—are or are not in favor of the modification of the decree. So I would like to ask the commission if the commission can state, or will inquire here, if any of the packers are here, and if they favor this modification of the decree, and also whether the Attorney General or any of the commission have heard from the packers on the subject as to whether they are seeking a modification of the decree.

The CHAIRMAN. I have stated before that none of the packers, nor anyone claiming to represent the packers, have requested of the Department of Justice to favor a modification of this decree. This is a public hearing, in which we have no authority to require anyone to appear. We have sent the same invitation to the packers that we extended to all others interested in this matter. If they desire to come they can do so. We have not heard as yet as to whether they expect to do so.

Mr. RICHARDSON. Mr. Chairman, would the commission be willing to publish a calendar of the witnesses, as the congressional committees do?

The CHAIRMAN. We have decided not to.

Mr. RICHARDSON. We are rather accustomed to that sort of thing.

The CHAIRMAN. We have decided not to.

Mr. RICHARDSON. Can the consent decree be set aside without the consent of the packers?

The CHAIRMAN. That is a matter we have not felt like going into at this time. If you wish to go into it in your brief, you may do so.

Mr. STEVENS. Will questions of law be submitted to this committee?

The CHAIRMAN. They may be submitted in the brief, yes; or in closing arguments after hearing the witnesses.

We will now adjourn until 10 o'clock to-morrow morning, gentlemen.
(Thereupon, at 4.20 p. m., an adjournment was taken until 10 o'clock a. m., Tuesday, November 29, 1921.)

TUESDAY, NOVEMBER 29, 1921.

The committee met in room 704, Department of Commerce, at 10 o'clock a. m., Hon. Herman J. Galloway (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Mr. RICHARDSON. Mr. Chairman, Mr. McKinney and Mr. Chase both have a little additional information they would like to put into the record.

The CHAIRMAN. The committee will be glad to receive it. Which do you wish heard first?

Mr. RICHARDSON. I suggest Mr. McKinney.

The CHAIRMAN. Mr. McKinney may come around.

STATEMENT OF MR. PRESTON MCKINNEY—Resumed.

Mr. MCKINNEY. In going over the notes of my statement last night I find that in my testimony I named various organizations which had taken action on this matter, and I stated that those were all of the organizations we had interviewed. I wish now to say that I neglected to give the names of three others that we had interviewed and which have taken no action, and I desired to make that clear.

The three organizations are the California Fruit Growers' Association, which is the great citrus association in Southern California, and they informed me that they did not regard it as their immediate fight at this time and therefore they would take no action either way. Then the California Pear Growers' Association; I did not talk to them as a body, but I talked to some of their officials and they, without me being present or anyone I believe to propound our position, discussed it among themselves and decided to take no action, that being done at one of the meetings of their board. And then the Butter Growers' Association, I took it up with them, and when I left they were still in an undecided position; but I have received information meanwhile, I mean while they were in this undecided position, that this organization was being disbanded and is to become a part of the State association, the name of which I do not at this time remember.

Also with your permission I would like to read a telegram received last night from Mr. C. H. Bentley, sales manager of the California Packing Corporation, with reference to the evidence given by Mr. Campbell on yesterday morning.

The CHAIRMAN. You may proceed.

Mr. MCKINNEY. The telegram is as follows:

SAN FRANCISCO, CALIF., November 28, 1921.

PRESTON MCKINNEY.

Powhatan Hotel, Washington, D. C.:

Understand Campbell testified to-day's hearing in meat packers case that I was in Chicago soliciting Armour's business when he secured contract, and that he gave smaller discount than C. P. C. had given year previous. Please inform committee our last contract with Armour was made in March, 1917, before this country had entered the war. When business was keenly competitive in 1919 Armour opened negotiations, but we declined to entertain business on previous basis or even on the basis which we understood was offered by Campbell.

C. H. BENTLEY.

I think that is all I have to say.

The CHAIRMAN. I believe there are no other questions the committee wish to ask you. Mr. Chase, is there anything additional you wish to present?

STATEMENT OF MR. ELMER E. CHASE—Resumed.

Mr. CHASE. I received a wire last night, and I would like to read and submit it.

The CHAIRMAN. Who from?

Mr. CHASE. From an individual who was formerly president of the Tomato Growers' Association at San Jose.

The CHAIRMAN. Is it about this question?

Mr. CHASE. Oh, yes.

The CHAIRMAN. You may proceed.

Mr. CHASE. The telegram is as follows:

SAN JOSE, CALIF., November 28, 1921.

E. E. CHASE,

Care Pouchatan Hotel, Washington, D. C.:

Understand you are appearing before special committee for California canners in opposition to any modification consent decree with meat packers. Am strongly opposed to any modification being made. You will recall that during 1918 I was president California Tomato Growers' Association and generally mixed up with cooperative moves. Through extensive conferences held with Vernon Campbell during 1918 I know his ambition have Armour through California Cooperative Canneries gain complete control distribution California canned fruits. This plan and effect discussed by him with Davidson, their Chicago representative, and Pfiffer, who was at that time in Armour's Chicago office, in my presence and the presence of one other witness in San Francisco 1918. The plans were being put into operation prior to the entering of the consent decree through Armour's financing cooperative canneries and developments being promoted on coast by Vernon Campbell. Am sure this still Armour's ambition, and Campbell working to this end. Use every means to prevent this. Such monopoly would be dangerous both to producer and consumer, will eliminate many buyers for producers, also eliminate wholesaler and beneficial effects for competition on trade. If necessary you may use this telegram as evidence.

MARK GRIMES.

The CHAIRMAN. What is his business?

Mr. CHASE. His business is that of fruit grower now. He was at that time president of the Cooperative Tomato Growers' Association.

The CHAIRMAN. At San Jose, Calif.?

Mr. CHASE. I think that was his headquarters.

The CHAIRMAN. Do you know how large an organization that is, approximately?

Mr. CHASE. I do not believe I can say, except that it included the most of the tomato growers of that section, which is quite a large tomato-growing section.

The CHAIRMAN. Very well; if that is all you wish to present.

STATEMENT OF HON. HOKE SMITH, OF COUNSEL FOR THE SOUTHERN WHOLESALE GROCERS' ASSOCIATION; RESIDENCE, WASHINGTON, D. C.

Mr. SMITH. Mr. Chairman and gentlemen of the committee, there are a large number of members of the Southern Wholesale Grocers' Association here from all over the United States, and I have been requested by them to make a statement embodying, in part, some information I have of my own, and to put some documents into the record for them, and with your permission I would be glad to do so, not by way of argument.

The CHAIRMAN. You may proceed.

Mr. SMITH. These gentlemen are here and anxious to serve you in any way they can and to give to you and through you to the Attorney General all the information they have and that you may desire to obtain from them, feeling, as they do, and I do, the utmost confidence in the fairness of the Attorney General and in his wisdom and judgment. They have not condensed their views yet, and they are endeavoring now to do so. They will probably furnish them to you in writing, as individuals, offering themselves for cross-examination a little later on, but they have not yet had time to put their views in writing and they think it will save your time by their doing so.

We have already filed a somewhat elaborate brief, and that is before you. I do not suppose it is necessary to include it in the record, although we are perfectly willing for it to be printed in the record, and for anything I have furnished to be printed in the record; and they will offer you nothing that is not to be subject to public gaze; that the parties who sign are responsible and willing to take the responsibility before the entire public for what they say.

You called attention, Mr. Chairman, in your letter to the fact that the more important requests for modification came from growers and canners of fruits and vegetables. These gentlemen feel that it is especially valuable that you

hear from people of that class, because they believe that just as the two representatives from California have appeared before you, when you get the real sentiment of the growers and canners you will find that the overwhelming sentiment among them is against a modification of this decree.

I wish to add that so far as the California condition is concerned, the wholesale grocers would be willing to leave the case just where the three witnesses from that State have left it.

I wish to read from a statement made by the present Secretary of Commerce and have it put into the record; made by him in a report which he gave to President Wilson shortly before the latter's retirement from office, not a great while before. Mr. Hoover then said:

"I scarcely need to report the views that I expressed to you nearly a year ago that there is here a growing and dangerous domination of the handling of the Nation's foodstuffs.

"The problem we have to consider, however, is the ultimate social result of this expanding domination, and whether it can be replaced by a system of better social character, and of equal economic efficiency for the present and of greater promise for the future.

"The worst social result of this whole growth in domination of trades is the undermining of the initiative and equal opportunity of our people and the tyranny which necessarily follows in the commercial world."

That was a statement he made in a hearing before a congressional committee. He further said:

"It seems to me, however, that this whole phase of absorption of other food industries requires consideration. It appears to me at least worth thought as to whether these aggregations should not be confined to more narrow and limited activities—say those involved in the slaughter of animals, the preparation and marketing of the products therefrom alone. Such a course might solve the branch-house problem and it is not unknown legislative control, as instance our banks, railways, and insurance companies."

The CHAIRMAN. Could you cite the committee before which he gave that testimony?

Mr. SMITH. Yes.

The CHAIRMAN. I think I have it; in fact I know I have it, but we would like to have it in the record.

Mr. SMITH. It was in the hearings upon H. R. 13324, Sixty-fifth Congress, third session, pages 2405-2406; and in hearings upon H. R. 13324, page 2407.

(The brief submitted by the Southern Wholesale Grocers' Association is as follows:)

In re: Proposed modification of the consent decree in the case of United States v. Swift & Co. et al. In the Supreme Court of the District of Columbia.

To the Hon. Herman Galloway, Hon. B. T. Haigner, and Hon. F. C. Hall, committee appointed by the Department of Justice to consider the foregoing subject matter:

Complying with the circular notice of October 12, 1921. Southern Wholesale Grocers' Association files herewith its views as to a modification of the decree in the case cited above and its reasons in opposition to any such modification.

1. *The Supreme Court of the District of Columbia has no jurisdiction to set aside the consent decree.*—By consent of the parties a decree was entered in the case of United States against Swift & Co. and others on the 27th of February, 1920. This consent decree terminated controversies theretofore existing between the defendants to the decree and the United States and between the defendants to that decree and wholesale grocers directly injured by the unlawful business practices of the defendants thereto. Such decree was in part the fruit of the efforts of the Southern Wholesale Grocers' Association and its members. (See par. 1, Opinion of Mr. Justice Stafford of November 1.) This, in effect, made Southern Wholesale Grocers' Association and its members parties to said decree, and this substantial position as parties has now become the formal position of the Southern Wholesale Grocers' Association and its members by the judgment of the court confirmed by the opinion of Mr. Justice Stafford of November 1, 1921. The Southern Wholesale Grocers' Association, those who intervened with it, and the members of that association generally decline to consent to any modification of the decree and are opposed to any such modification.

Authorities: In *Pacific R. R. Co. v. Ketchum* (101 U. S. 289, 297, 25 L. Ed. 932, 936), the Supreme Court of the United States said:

"Parties to a suit have the right to agree to anything they please in reference to the subject matter of their litigation, and the court, when applied to, will ordinarily give effect to their agreement, if it comes within the general scope of the case made by the pleadings. It was within the power of the parties to this suit to agree that a decree might be entered for a sale of the mortgaged property, without any specific finding of the amount due."

The principle is stated in 23 Cyc., at page 733, as follows:

"A court has power to open or vacate a judgment entered by consent or agreement of parties on adequate grounds, but it can not alter or correct it except with the consent of all the parties affected by the judgment, nor can it set aside such a judgment after the expiration of the time allowed by statute for instituting proceedings for that purpose."

To sustain the principle numerous authorities are cited.

One of the cases most definitely and forcefully stating the principles for which we contend is *United States Construction Co. v. Armour Packing Co.* (35 Okla. 179; 128 Pac. 731, 732), where the court said:

"Several assignments of error are urged for reversal of the judgment, but there is one principle of law which conclusively determines this case, and that principle is that a court has no power after stipulation for settlement, agreed to and signed by all the parties in interest, has been filed and after judgment has been entered in accordance with such stipulation to vacate and set aside or modify the judgment after the term at which it was rendered, in the absence of fraud between the parties agreeing to settlement by consent or stipulation, except for mistake, negligence, or omission of the clerk. In *Morris v. Peyton* (29 W. Va. 201; 11 S. E. 954), Mr. Justice Green, speaking for the court on the question of whether the court has power to vacate a decree entered by consent of the parties to the action, said: 'As such a decree is not the judgment of the court upon the merits of the case, but the act of the parties to the suit, it is obvious that it can not be modified, set aside, or annulled by any order in the cause made by the court below without the order in the consent of all the parties to the cause. * * * Nor could it be appealed from nor modified by this court unless, perhaps, it should be so entirely foreign to the matters in controversy in the cause that for this or some other reason the court below had no jurisdiction or authority to enter such decree by consent or otherwise.'

"The judgment in this case was the final ascertainment of the rights by consent of the parties to the suit, and can not be changed by any subsequent order of the court without like consent. (*Seller v. Union Manufacturing Co.*, 50 W. Va. 208; 40 S. E. 547.) And to the same effect is the holding of the Supreme Court of Alabama in *Alder et al. v. Van Kirk Land & Construction Co.* (114 Ala. 551; 21 South. 490; 62 Am. St. Rep. 133), wherein it is said: 'In the absence of fraud in its procurement, and between parties sui juris who are competent to make the consent, not standing in confidential relations to each other, a judgment or decree of a court having jurisdiction of the subject matter, rendered by consent of parties, though without any ascertainment by the court of the truth of the facts averred, is, according to the great weight of American authority, as binding and conclusive between the parties and their privies as if the suit had been an adversary one and the conclusions embodied in the decree had been rendered upon controverted issues of fact and a due consideration thereof by the court.' (See also to the same effect 2 Black on Judgm. sec. 705; Freeman on Judgm. sec. 330; *Walsh v. Walsh*, 116 Mass. 383; 17 Am. Rep. 162; *Nashville & C. R. Co. v. U. S.*, 113 U. S. 261; 5 Sup. Ct. 460; 28 L. Ed. 971; 23 Cyc. 733.)

"No attempt was made after the parties entered into the stipulation consenting to the entry of judgment thereon, and before the court entered judgment, to show cause why judgment should not be entered as per stipulation. On the other hand, the decree entered had the approval at the time of all the parties, and no fraud is alleged or shown. We therefore hold that the judgment entered in this case was entered in accordance with the stipulation agreed to by all the parties in interest, and, in the absence of fraud on the part of the parties to the case, is final and conclusive as between the parties, and that the court committed no error in overruling the motion to vacate."

In *Daniell Chancery Practice*, volume 1, page 79d, the learned author says:

"After a decree has been made of such a kind that other persons besides the parties on the record are interested in the prosecution of it, neither the plaintiff

nor the defendant, on the consent of the other, can obtain an order for the dismissal of the bill. This, where a plaintiff sues on behalf of himself and all other persons of the same class, although he acts on his own mere motion, and retains the absolute dominion of the suit until the decree, and may dismiss the bill at his pleasure, yet after a decree he can not by his conduct deprive others of the same class of the benefit of a decree if they think fit to prosecute it."

The court in *Collins v. Taylor's Executors* (4 N. J. Eq. 163) said:

"After a decree made establishing right of legatees to recover on a bill filed by one of several legatees, the complainant can not after such decree dismiss his bill to the prejudice of the other legatees."

2. *If jurisdiction existed to modify the decree, the rule of estoppel prevents such modification.*—Hon. John Atwood, in an address at St. Louis in May, 1920, referred to the activities of the Southern Wholesale Grocers' Association in procuring the decree of February 27, 1920. Mr. Atwood was special attorney for the Government in the petition filed in the case of United States against Swift & Co. and others, and was familiar with the action of the president and counsel of the Southern Wholesale Grocers' Association. The petition, page 29 of the printed proceedings in United States against Swift & Co., shows that the United States recognized the peculiar situation of wholesale grocers and sought to protect them by its suit. The testimony of Mr. Attorney General Palmer before the Senate committee confirms that situation. The Southern Wholesale Grocers' Association was deprived of the opportunity to win in its complaint before the Interstate Commerce Commission by virtue of the decree now proposed to be modified.

These matters are set up in the brief of the Southern Wholesale Grocers' Association filed in the case of United States of America against Swift & Co. in the Supreme Court of the District of Columbia, at pages 59 and 64, inclusive, and reference to that brief is here made. Mr. Justice Stafford recognized the validity of the argument made by the Southern Wholesale Grocers' Association, and in his opinion of November 1, 1921, speaking of said association, said:

"2. They abandoned the pursuit of other remedies in reliance upon this decree.

"3. The protection afforded them by this decree might have been secured in a proceeding in their own name and behalf.

"4. The change suggested would leave them in an embarrassed position in now seeking to secure the same protection."

3. *Argument that distribution was lessened by the decree is unsound.*—It is unquestionably true that beginning in May, 1920, there was a falling off in the consumption of all kinds of goods. Financial stringency was the principal cause of this, and the disposition on the part of consumers to be more conservative in spending money was a contributing cause. Thus, there was a less distribution of the commodities included in the business of canning than there had been theretofore. Coincidence of a falling off in distribution with the existence of the so-called packers' decree led some shortsighted canners to believe that there was the relation of cause and effect between the decree and the falling off. There is no justification for such conclusion, and the conclusion is illustrative of the fallacy of the argument *post hoc ergo propter hoc*. That the argument is fallacious is further supported by the fact that there was and is a like falling off in consumption of all kinds of goods. The situation applies to commodities not heretofore handled by packers as well as those commodities which the packers formerly did handle.

Prices have materially declined since 1920, and the consumer might with equal justice argue that the decree of February 27, 1920, tended to lower prices. The Monthly Labor Review, issued by the United States Bureau of Labor Statistics, shows:

Index numbers of wholesale food prices, by months, 1920, 1921.

1920:		1921:	
May	287	January	162
June	279	February	158
July	268	March	150
August	235	April	141
September	223	May	132
October	204		
November	195		
December	122		

These facts, and other facts which will be presented orally on the hearing before your honorable committee, definitely show that the claim that the canners have had less distribution as a result of the packers' decree lacks support in fact and in logic.

4. *Packers' former practices economically wrong.*—The truth of the proposition stated above has been definitely established by the Federal Trade Commission, was recognized and pleaded in the so-called packers' case, and is further confirmed by the history of the packing industry. Perhaps no more forceful statement of conditions has ever been made than that made by Mr. Herbert Hoover in his report to President Wilson, where he said:

"I scarcely need to repeat the views that I expressed to you nearly a year ago that there is here a growing and dangerous domination of the handling of the Nation's foodstuffs.

"The problem we have to consider, however, is the ultimate social result of this expanding domination, and whether it can be replaced by a system of better social character and of equal economic efficiency for the present and of greater promise for the future.

"The worst social result of this whole growth in domination of trades is the undermining of the initiative and equal opportunity of our people and the tyranny which necessarily follows in the commercial world."

[Hearings, H. R. 13324, Sixty-fifth Congress, third session, p. 2405-2407.]

"* * * It seems to me, however, that this whole phase of absorption of other food industries requires consideration. It appears to me at least worth thought as to whether these aggregations should not be confined to more narrow and limited activities—say, those involved in the slaughter of animals, the preparation and marketing of the products therefrom alone. Such a course might solve the branch-house problem, and it is not unknown legislation control, as instance our banks, railways, and insurance companies."

5. *Competition is needed.*—It is contended that competition is restricted by excluding the five big packers, but such a statement is contrary to the facts. The Department of Justice was confronted with the proposition when it filed the original petition in United States against Swift & Co. that either the five packers should distribute the commodities referred to in the decree of February 27, 1920, in paragraph 4 thereof, or the wholesale grocers should distribute such commodities. With the advantages that the packers had they could exclude, and were gradually excluding, wholesale grocers from competition, so the question was not whether the packers and grocers should continue to distribute, but whether the packers alone should have the power to distribute. The report of the Federal Trade Commission, the pleadings of the Department of Justice, the testimony of Mr. Attorney General Palmer, all referred to in the brief of the Southern Wholesale Grocers' Association in the Supreme Court of the District of Columbia, clearly demonstrate that the packers were gradually obtaining such a dominance in the distribution of the commodities referred to as unrelated commodities in the decree of February 27, 1920, that the wholesale grocer was gradually being eliminated as a competitor.

Thomas Grocery Register for 1919 lists 6,051 wholesale grocers, 4,000 of whom are stated to be strictly wholesale grocers. Dun's report for the same year lists 5,600 wholesale grocers, 3,000 of whom are rated at or over \$100,000. R. G. Dun & Co. for the year 1913 listed as strictly wholesale grocers 3,840. It is therefore clear that there are in existence what is designated as strictly wholesale grocers a number in excess of 4,000. These 4,000 are in direct competition with each other, and it is impossible for them to make any agreement in restraint of trade. It is, therefore, better for the country and to the interest of the whole public that these 4,000 be permitted to compete rather than that five large institutions shall have a monopoly of the distribution of food products.

The statement issued by the Canners' League on October 3, 1921, and which statement will be exhibited in full on the hearing hereof, sets out briefly but forcefully the objection to a modification of the decree. After stating how the fruit-canning industry in California had been built up by a number of independent operators, practically all of whom it was said distributed through wholesale grocers, the committee representing the Canners' League say:

"The advent of the meat packer into the distributing field would disorganize this logical and economic method of distribution, making the purchase of canned fruits by the wholesaler less desirable and thus interfering with this proper method of financing particularly the small packer. * * * The pres-

ent method of distribution through a large number of independent distributors has made it practical for a large number of independent canners to operate successfully in California, and we firmly believe that if the meat packers had been permitted to continue their inroads into the industry in California the net result in a few years would have been the concentration of the business into very few hands, as was the case in the meat industry. If the consent decree is modified they will accomplish this purpose. * * * It was found, when the meat packers were buyers of California canned fruit, that in an effort to own the product at a lower price than their competitors they favored those lots in which quality was skimmed. For this reason most of the quality packers of California never were sellers to the meat packers, and would not be if the consent decree were modified. * * * We are informed that the advocates of modification of the consent decree assert that a need exists for this added means of packing and distribution, and base this on the claim that soon after the consent decree became operative prices fell and many canners throughout the country suffered severe losses. We do not believe anyone would take this contention seriously for the reason that, as everyone knows, a general change in economic conditions came at this time which brought about even sharper reductions in prices for rubber, cotton, and practically all commodities. If this claim should be true, we submit that the ramifications of the packers' operations are far greater than generally understood, and therefore their control was far greater and more dangerous than people realize."

The foregoing is an outline of the contentions of wholesale grocers, and it is the intention of the Southern Wholesale Grocers' Association to present witnesses on November 28 or such date thereafter as may be assigned for that purpose, giving in detail facts from which the foregoing outlined argument is drawn. It is believed that when the Department of Justice first gave consideration to this matter that it was misinformed as to the true situation, and when the full facts are presented, it is respectfully insisted that the Department of Justice should conclude that it is not now possible to modify the decree of February 27, 1920, and that if it were legally possible so to do, such action would be economically wrong.

Respectfully submitted.

SOUTHERN WHOLESALE GROCERS' ASSOCIATION,
By EDGAR WATKINS, *General Counsel*.
HOKE SMITH, *Of Counsel*.

Mr. SMITH. Mr. Chairman and gentlemen of the committee, as to matters with which I have considerable personal knowledge, I have here an extract from the statement made by the Attorney General before the Committee on Agriculture of the Senate at the time I was a member of that committee—and I was a member until the 4th of March.

The CHAIRMAN. That was Attorney General Palmer?

Mr. SMITH. Yes, sir; Attorney General Palmer. It is an extract in which he discusses this proposed decree. I bring it to your attention not only for what it contains but also for its effect upon the packer bill and its aid in the consideration of that bill. [Reading:]

"The ATTORNEY GENERAL. Another clause in this decree will perpetually restrain and enjoin these defendants, their successors and assigns from using or permitting to be used their distributing system in any way, shape, or manner for the purpose of dealing in any of this business in the unrelated lines. I have understood it that the vice of the unrelated lines—of their engaging in the business of unrelated lines—lay in the fact that they were able to destroy effective competition with themselves by reason of the advantage which they had with their distributing system and their branch houses. They could go into the wholesale grocery business without additional fixed charges by way of overhead expense, and thus destroy the wholesale grocer or other dealer in the community who was dealing in the same kind of article. Under this decree neither these companies nor anybody else who acquires any right, title, or interest in them in any way, shape, or manner can ever use, by purchase, by lease, or any other kind of an arrangement, this distributing system for that purpose, nor can they resort to any other device or arrangement which has the purpose and effect of giving that kind of an advantage to them. They are clever and able and ingenious in business, and I insisted upon that clause that they should not be permitted to devise anything which would give them the chance to do with the wholesale grocery business what their distributing system has permitted them to do. * * *

"The CHAIRMAN. The main fight, of course, that has been carried on before this committee—at least during our hearings this session, has been by the wholesale grocers to compete, because, you stated a moment ago, the overhead expense would be the same for the packers, whether they carried on this grocery business or not, and that they were also favored with respect to refrigerator cars, that they owned their own cars.

"The ATTORNEY GENERAL. I should think likely that you would have fewer visitors of that kind after this goes into effect than you had in the past. * * * We have taken these defendants out of every business except that which is usually the business of the butcher, the meat business, and these products which are generally handled by butchers—butter, cheese, and poultry. I do not mean it to be as brutal as it sounds, but we have made 'butchers' of them. We have gotten them back, it seems to me, to the business which they originally went into; and, as to that business, we have bound them by perpetual injunction, restraining them and all these defendants from amongst or with anybody else agreeing or combining or arranging to do anything which is an attempt to monopolize that business or in restraint of trade in exactly the kind that the Sherman antitrust law contemplates for the Government to get against any men charged with a conspiracy in restraint of trade. The effect of that is that as to the meat business and its by-products and these things which they are permitted to continue in the Government in the future, if there be evidence of monopoly or restraint of trade, will be able to go to the court in this very case and present the facts to a judge, and hold these defendants guilty of contempt of court, if there be a violation. So that we shall not have to proceed through all the processes of either the criminal or the civil courts in respect to that.

"The second thing we have done is to restrain and enjoin them forever collectively and individually and in every other fashion from engaging in any unlawful trade practices. The result of that would be that any person, of any concern, the Government or any individual who was able to show an unlawful practice by these defendants, or any of them, will be permitted to come into court in this very case and present a showing which would entitle them to adjudication against the defendant for contempt. These are all the things that we could possibly accomplish by a bill and an adverse decree. * * *

"Senator McNARY. General Palmer, I think you have brought great good to the American people by the decree. You have given the matter very great study. At this time, you can say to the committee, as giving your best opinion, that any further legislation upon the statute would bring greater and better relief to the American public and the American consumer.

"The ATTORNEY GENERAL. Well, Senator, I hesitate to make any recommendation of that sort. My personal view is that I would like to see this tried out. I believe this is a great, long step forward. I believe we have gotten the thing that we have been fighting for for years, apparently without hope of getting. I think it will do great good. I do not promise it is going to mean immediate lowering of prices. There is great strength in the argument of an efficient, big concern, resulting in lower prices to the consumer, but it is the argument of the efficiency of autocracy. At any rate, what we have done, if we destroyed that efficiency, which might result in lower prices, we have destroyed autocracy and returned to the freedom of our democratic kind of Government for business. We have made it possible for men of all kinds, in all classes, to get into these businesses; and if that does not result in benefit to the American people, then our whole theory of competition is wrong."

Now, gentlemen of the committee, the Senate Committee on Agriculture had practically this same bill before it which was passed last August; in many respects they were the same. I think you can safely say that in the legislation the bill was directed at what the meat packers were still permitted to handle.

Mr. BREED. What bill are you referring to, Senator?

Mr. SMITH. The bill of August 15, 1921, known as the bill to restrain the meat packers.

Mr. BREED. The packers' control bill?

Mr. SMITH. Yes; the packers' control bill. Now, gentlemen, the title of that bill is "An act to regulate interstate and foreign commerce in live stock, live-stock products, dairy products, poultry, poultry products, and eggs, and for other purposes." It named those commodities which under this consent decree the meat packers were still permitted to handle. It named nothing else, because there had been a consent decree enjoining the meat packers from handling other commodities, and the other purposes of this bill referred to are the detailed plans of enforcing the law.

If you go through the bill carefully, you will find that wherever the subject of commodities is referred to again are named those commodities which the meat packers were still permitted to handle under the consent decree. So that it would be very difficult for a court to find that the legislative intent was directed toward anything except those commodities the meat packers under this consent decree were still permitted to handle. And if this consent decree were modified, it would be very difficult to persuade the court that this legislation reached the other commodities. Taken as a whole, it is apparent that the only commodities the Congress had in view, and I feel sure that is true, were those commodities not affected by this injunction. And the legislation was shaped because this consent decree had been taken; it was shaped as it was relying upon the consent decree to protect the public against monopolistic action by the meat packers in those commodities which they had agreed to be enjoined from interfering with.

I wanted to call your attention to that as a suggestion for your consideration that the history of this legislation indicates the fullness with which to the committee had been presented this consent decree, and that the legislation was shaped to meet the other things and not those covered by the consent decree.

Reference was made by Mr. Palmer to exports. We will call your attention still further later on—

The CHAIRMAN (Interposing). Did you say Mr. Palmer?

Mr. SMITH. No; Mr. Campbell, I meant. Reference was made by Mr. Campbell to the export business. It seems that he presented himself the fact that Armour & Co. had a handling corporation and handled the export trade through it, and that there was no difficulty in handling it through organizations of that kind. There will probably be still further evidence furnished to you on that subject.

The CHAIRMAN. I am very much interested in that question, and I think I can speak for the other members of the committee as well.

Mr. HALL. Yes; I am very much interested in that.

Judge HATNER. So am I.

Mr. SMITH. We intend to try to furnish you some more information on that subject.

Now, just one or two words more. Mr. Campbell's suggestion that the wholesalers desired to build up a monopoly and are alone in the fight against modification—we will press still further the fact that there are 5,000 wholesalers in business. We will show you by them, probably through written statements that will be more satisfactory to you no doubt than just cursory talks, that they are in most active competition, and that the meat packer system is one under which meat packers dominate the manufacture, and that the difficulty about competing with the meat packer is that he will dominate the manufacture of the product, and, dominating the manufacture of the product, he will still be compelled to use distributing agencies similar to the wholesaler. But there would be only a few of them, of the meat packers, as many as you could count on your fingers, perhaps, and, while the middleman must still exist in the shape of wholesalers and distributors who will be the representatives of the manufacturer, yet from the original producer to the ultimate consumer there will be manufacture controlled by the meat packers; the distributing agent or wholesaler, very few in number, controlled by the meat packer; and the price regulated that is paid to the producer, and also control of the price paid by the consumer; and that is what is dreaded by the producer and the consumer. And that is what is so dangerous, that, instead of lessening competition by enjoining the meat packers from handling the class of goods that the 5,000 wholesalers now handle, you will substitute for the 5,000 wholesalers the meat packers, and there will be no opportunity for individual initiative, either in the manufacture or in the wholesale handling of goods; you will put the packer, controlling the manufacture and controlling the wholesale trade through a few of its own agencies as wholesalers, in charge of the matter, and there you eliminate competition and break down initiative both in manufacture and in wholesaling and consolidate the business according to the system they have used heretofore.

We will undertake to prepare statements in writing. These gentlemen will stay here and be subject to your call at any time, but they will put in writing their views. They are not prepared this morning to go on, and they do not think they can go on orally as satisfactorily as they could if they made a memorandum of what they want to say of the facts that will be of interest to

you, but they will stay here and they are at your call, and they want to serve you and want to assist you in every way possible.

The CHAIRMAN. Senator Smith, what is the position of your organization with reference to a question like this: If the decree should be modified so as to permit the packers to distribute these commodities but not to buy them outright or to manufacture them; in other words, if they should be permitted to distribute them on a commission basis only, what would you think of it?

Mr. SMITH. I think they are a very dangerous element in any business. I think they have brought about monopoly in their own work. I think they have broken down the cattle business in a great many instances, and I think their powers of distribution, that their great facilities for distribution are such, with their accumulated wealth, that they will break down to a large extent the competitive wholesale business as it now exists. I think they are a menace.

The CHAIRMAN. You would say, then, that your organization would be opposed to any modification that would permit them to handle these unrelated lines but not to manufacture them.

Mr. SMITH. I am speaking more now as a citizen. I have not asked their views about that. But for myself personally, as a citizen, I would dread to see them broaden their control of food supplies. I have not asked the view of the organization, and I do not speak for the organization, however, on that point.

The CHAIRMAN. Could you give us a thought on this: What would be your position with reference to a modification of the consent decree that would permit the meat packers to handle this business for export, but not to do any domestic business in it?

Mr. SMITH. I doubt the wisdom of interfering with the decree at all, but that would be a subject that would stand upon a somewhat different basis. I think that the goods ought to be exported.

Judge HAINER. Would not that broaden the market, Senator?

Mr. SMITH. It might broaden the market.

Judge HAINER. Would that be detrimental to the wholesalers or fruit growers or canners in California or in New England or in any other State in the Union?

Mr. SMITH. I am not prepared to say. I do not know what their views are on that subject. I myself believe in expanding our exports just as much as we can, but I am speaking now as a citizen and not for them.

Judge HAINER. Senator, you will recall that on yesterday Mr. Campbell referred to section 202 e, I believe it was, of the packers and stockyards act.

Mr. SMITH. Section 202 e?

Judge HAINER. I think that was it. It was where there were the words "any article of commerce; handling or marketing any article in commerce." Is it your opinion that that relates merely to the commodities named in the act?

Mr. SMITH. Let me see if I can find that section.

Judge HAINER. Let me see if I have called your attention to the right section.

Mr. SMITH. I did not go that far in the act, I believe.

Judge HAINER. Have you the packer act?

Mr. SMITH. Here is the act in the consolidated form.

Judge HAINER. I believe I have a copy of the act here. Right at the beginning of section 202 it says, "It shall be unlawful for any packer to"—and then certain things are recited, and among them is subdivision (e), which reads:

"Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in any article in commerce or of restraining commerce."

Mr. SMITH. Well, I think that is practically the old Sherman Antitrust Act or Clayton Act. I think it goes that far, about. I think that is almost a repetition of the Clayton Act. The bill clearly shows that it had reference to the things that the packers were still allowed to handle. That is the proposition that I wanted to emphasize, and it was undoubtedly the view of the Congress in passing it that they were dealing with that subject. Whether there is any language that could be broadened beyond that I am not prepared to say, but it was not in the legislative mind at the time, as the other products were considered disposed of. I know that in the hearings before the Senate Committee on Agriculture we regarded that as eliminated, as a thing that had been taken care of.

The CHAIRMAN. As a closed incident.

Mr. SMITH. Yes; as a closed incident.

The CHAIRMAN. Senator Smith, as I understand, the persons here representing the Southern Wholesale Grocers' Association do not wish to appear personally?

Mr. SMITH. Not orally at present. If you want them they will come, anyone of them that you may want, and we will give you lots of them. They are going to reduce their statements to writing so that they will have them in more condensed form, and they will be at your disposal as the case goes on. There may be something beyond what they will put in writing that they will want to say.

The CHAIRMAN. To-day and to-morrow were given over entirely, at the request of Mr. Watkins, general counsel for the Southern Wholesale Grocers' Association—and, by the way, how is he this morning?

Mr. SMITH. I understand that he is some better; that he is out of danger.

The CHAIRMAN. I am mighty glad to hear that. He asked for these days for the Southern Wholesale Grocers' Association. The list handed to me includes Mr. Cross, Mr. Gates, Mr. Hoffman, Mr. Tate, Mr. Blackburn, Mr. Wilson, Mr. Morton, Mr. McLaurin, Senator Smith, Mr. Aswell, Dr. C. S. Duncan, an economist. These were assigned for to-day and to-morrow.

I will ask the question, Are any of these gentlemen here in the room who wish to be heard at this time, except Senator SMITH, who has already been heard? (There was no response.)

Mr. SMITH. I think they are nearly all here, Mr. Chairman, but I think they would all prefer to reduce their views to writing and file them.

The CHAIRMAN. And be subject to cross-examination?

Mr. SMITH. Oh, yes; they are subject to cross-examination, and are ready to do anything you may suggest they should do.

The CHAIRMAN. Gentlemen, are any other persons present who desire to be heard at this time in lieu of the gentlemen who were assigned the time for to-day; are any other gentlemen here now, and do they wish to submit their statements in writing?

(No response.)

The CHAIRMAN. Mr. Breed, does the National Wholesale Grocers' Association wish to proceed at this time, or do you wish to wait until the time assigned to you?

Mr. BREED. Our witnesses are not here. We were supposed to be heard December 1 in the afternoon and on December 2.

The CHAIRMAN. It is all right with the committee for you to wait for your own time. We are trying, however, as much as possible to get along and not keep the people here any longer than is necessary.

Mr. BREED. Of course, we would very much hope that any parties who are favorable to a modification of this consent decree may be invited to come in before December 1 and 2, when we go on, and we would be very glad to be in position to try to answer any argument that may be made in favor of modification.

The CHAIRMAN. I have sent telegrams to those who were scheduled to come later on, at their own request as to time, and stated if they would arrive earlier, it is very probable the committee would hear them.

Mr. BREED. That is fine.

The CHAIRMAN. So you will see that we have tried to expedite the hearing as much as possible.

Mr. BREED. We appreciate that.

The CHAIRMAN. Gentlemen, we have decided to read the list of those for whom time has been assigned.

Mr. SMITH. That is good.

The CHAIRMAN. I see Senator Smith is smiling, but we did not have this list present on yesterday. We have read the list for to-day and to-morrow. Following that will be Mr. H. A. N. Dalley, and I do not have his address here; that is, for December 1.

Mr. BREED. Could you give us any indication as to whether these people have asked to be heard for or against modification of the consent decree?

The CHAIRMAN. In some instances they have not indicated. On December 1 is Mr. H. A. N. Dalley. Then J. M. Gillespie. I, last night, received a letter from him, stating that he could not be here on that date. I have wired him to come either before or after that time. Then the H-O Cereal Co., W. J. Sears, and, I understand, some others will be with him.

December 2 has been assigned to the St. Louis Wholesale Grocers' Association and the National Wholesale Grocers' Association. December 3 has been assigned to the National Wholesale Grocers' Association.

For December 5 is the National Coffee Association, the New York Canneries (Inc.), and the National Kraut Packers' Association.

On December 6 the Ohio Wholesale Grocers' Association, E. B. Hawk, the Maine sardine canners, and the Portland Wholesale Grocers' Association of Maine.

On December 7 the National Retail Grocers' Association. I have a letter this morning from these people in which they say it will be impossible for them to attend at that time and that they will submit their statement in writing. I expect to wire them that any earlier time will be agreeable, and we will try to hear them when they come. Also the National Retail Tea and Coffee Association.

Gentlemen, that completes our list.

Mr. BREED. Mr. Chairman, I notice that in the list of parties asking to be heard appears no one representing defendants in this action of the United States against the various packers. Is there any power in the committee or in the Attorney General's Office which might be used to put upon this record for the benefit of all concerned the question as to where the defendants, the meat packers, who consented to the decree being entered in the action of the Government against them—to state their position with reference to modification? The only reason that I ask this question is upon the possible legal point as to whether this decree could be modified without the consent of defendants, the parties to the action. It seems to me that the time of every one, of organizations from all over the United States—and there are men here from California and elsewhere—is in a way being taken up while they are in the dark as to the attitude of defendants in the action the Government brought against them. I feel there at least is a question whether if the Government does wish to take action itself to modify this decree the packers might oppose modification, and for the reason that they must have entered into this consent decree for some reason, based upon a great deal of thought and consideration, for there certainly is in it a very serious economic problem. My idea is that so far as the packers are concerned if this decree were opened at the instigation of the Government or a motion made to that effect that the whole situation would be opened. The Congress has acted and passed a control bill which only deals with meat and meat-food products and leaves the packers' monopoly unregulated or uncontrolled as to these other lines of business, and it would have to act again taking up these subjects. Prior to the beginning of the equity action of the Government against the packers there has been at least one year's investigation by an important branch of the Government, the Federal Trade Commission, who had gone into this subject from a scientific point of view and gathered a great deal of data with respect to the power of the monopoly which the packers held, which evidence was in possession of the Government, and—

The CHAIRMAN (interposing). Mr. Breed, will you confine your statement to evidence of the existing situation and not indulge in argument? You will have time to make an argument later on.

Mr. BREED. I realize that you do not want an argument to begin with, but—

Judge HAINER (interposing). At the outset we stated that we reserved argument for a latter time.

Mr. BREED. I realize that.

Judge HAINER. You are discussing law questions now.

Mr. BREED. They are not exactly law questions, but—

The CHAIRMAN (interposing). I think I can answer your question now, if you will permit me, and perhaps prevent further discussion. This committee has no authority to require the packers to appear. As I stated before we have invited them, the same as everyone else, but we have not heard whether they expect to be heard or not. We have read a list of those who requested time, and everyone who has requested time has been assigned time. So you are in as good position as we are to judge as to whether the packers will appear or not. We have received no communications from them concerning this matter.

Mr. BREED. Then, there is no power in the committee or in the office of the Attorney General to compel the attendance of the packers here to state whether they are favorable to modification of this decree or not?

The CHAIRMAN. None that I know of.

Mr. BREED. May I ask whether—

Judge HAINER (interposing). Of course, you understand determine the policy of the Attorney General whether he should move in the Supreme Court for a

modification of the decree. This hearing is not final and conclusive, our action is not.

Mr. BREED. Yes. May I ask the committee whether the economic questions, which certainly received consideration of an important branch of the Government and of the Attorney General's office prior to the beginning of this suit and the beginning of the grand jury investigations in Chicago and New York in 1920, are to be presented to you?

The CHAIRMAN. The Federal Trade Commission expects to appear after the other witnesses have been heard. We have invited them and they have accepted.

Mr. BREED. So that the Federal Trade Commission, then, will be asked to express their views on the economic questions that were under investigation just prior to the time when this action was brought and the decree entered?

The CHAIRMAN. Their invitation is the same as the invitation extended to everyone else—to state their reasons for or against modification.

Judge HAINER. Or to submit any proof of facts upon which their action was based in reference to the matters in dispute here.

Mr. BREED. May I ask whether this committee has before it the evidence of the grand jury investigations in Chicago and New York against the packers just prior to the beginning of this equity action?

The CHAIRMAN. I might say that I am familiar with what took place there. Of course, that is confidential information and not to be divulged.

Mr. BREED. Yes; but it is to be placed before the committee?

The CHAIRMAN. The Attorney General will be furnished with that information.

Mr. BREED. May I ask if the committee has made any ruling on the question as to whether the contract between Mr. Vernon Campbell and Armour & Co. for 10 years, which he testified about, is to be made a part of the record and become public information?

Judge HAINER. No; we have not taken that up yet.

Mr. BREED. Being a written instrument we would like to see whether his testimony jibes with the written instrument.

The CHAIRMAN. We have not decided as to that yet. Gentlemen, I will state that the committee has decided that nothing will be considered except what is introduced and open to the public; nothing will be considered in connection with the record except the oral statements and documents presented here.

Mr. BREED. Does that mean that Mr. Campbell can take back his confidential letters he offered on yesterday?

The CHAIRMAN. He certainly can.

Judge HAINER. We will not consider them. We will not consider confidential matters submitted to the committee, and that applies to both sides.

Mr. SMITH. We will not offer any.

Mr. ROLAND E. STEVENS. Has the contract that Mr. Vernon Campbell testified to been offered yet?

The CHAIRMAN. No; it has been requested but we have not passed on the request as yet. Senator Smith, when will your people be prepared with their statements?

Mr. SMITH. They are going to work on them to-day.

The CHAIRMAN. In two or three days they will be ready?

Mr. SMITH. Yes; I think so.

The CHAIRMAN. Then I think we had better adjourn until day after to-morrow.

Mr. SMITH. Yes, sir; that would be better, probably.

The CHAIRMAN. I regret to keep everybody here.

Mr. SMITH. Yes; but it can not be helped.

Judge HAINER. Will that be satisfactory for us to adjourn until day after to-morrow?

Mr. BREED. One gentleman just asked me if you could state where Mr. Gillespie, who is to be heard, is from?

The CHAIRMAN. I do not have his address here.

Mr. HEWITT. Mr. Chairman—

The CHAIRMAN. What is your name?

Mr. HEWITT. James Hewitt.

The CHAIRMAN. Where are you from?

STATEMENT OF MR. JAMES HEWITT, OF THE FIRM OF H. KELLOGG & SONS, PHILADELPHIA, AND MEMBER OF THE ADVISORY BOARD OF THE PENNSYLVANIA, NEW JERSEY, AND DELAWARE WHOLESALE GROCERS' ASSOCIATION.

Mr. HEWITT. I am of the firm of H. Kellogg & Sons, Philadelphia; and president of the Grocers and Importers' Exchange of that city; vice president of the Wholesale Grocers' Sales Co., of Philadelphia, and a member of the Wholesale Grocers' Association.

Mr. Chairman and gentlemen of the committee, I came to Washington to represent them merely to state that in the judgment of the grocers of that section they are opposed to opening the consent decree.

The grocers of my section view with alarm the entrance of the packers into the wholesale grocery business, because they feel that the ultimate action of the packers will be the shutting out of competitive sources of supply. We have seen that done in the shrinkage of the cheese business in the wholesale grocery line. If we go back long enough we see it done in the absorption of the independent meat packers. We recognize the fact of the abundant money supply, the power that they have in the matter of production, with the result that an active wholesale grocer will find that his sources of supply are one after another cut off.

While we might be judged as being somewhat selfish in the matter of self-preservation, we look upon it in a broader light than that; that it does destroy the initiative in business, that it is entirely un-American to place the business of food supply of the Nation in the hands of four or five corporations rather than to be as it is, a distributing agency, in which some four or five thousand wholesale houses are interested, some four hundred thousand retail grocers, and a large army of salesmen, who make their living by the means of carrying the food supplies through the wholesaler to the retailer.

Active competition with the wholesale grocers keeps prices down. We can not be considered a monopoly, as was suggested by Mr. Campbell, because there are too many of us. Our interests are diverse. We are far apart from one another, and each community has its own particular phases of food favorites, as it were. So that, to my mind, does away with any thought of a monopoly of 5,000 people. If that is a monopoly, why it would be an exceedingly mild one, in my judgment.

Suggestion was made as to efficiency. There would be a difference in distribution only in thought. The meat packer would have his factory to pack his fruit, he would have his warehouses in which to store them, he would have transportation to pay, he would have help to hire and he would have salesmen. All that is done by the wholesale grocer, as has been shown here, upon an average net profit of about 2 cents on the dollar. Ninety-eight cents of that goes into the food itself, and 2 cents goes as a sort of a reward for the handling of the business on the part of the wholesale grocery trade.

The CHAIRMAN. If I won't bother you, I would like to ask you a question right in that connection, Mr. Hewitt. Will it bother you to interrupt to ask a question on that?

Mr. HEWITT. No.

The CHAIRMAN. Does that 2 cents include the profit that you get, as well as the cost of the distribution? That 2 cents on the dollar that you referred to?

Mr. HEWITT. Yes; 2 cents on the dollar. An average net profit of about 2 cents on the dollar.

Mr. STIX. Mr. Chairman, I think the witness misunderstood you.

Mr. HEWITT. Maybe I did.

The CHAIRMAN. The 2 cents that you take includes the cost of your services, as well as a profit to you?

Mr. HEWITT. Oh, no; no.

The CHAIRMAN. Well, I was not clear on that. Will you make an explanation of that?

Mr. HEWITT. The 2 cents is the net profit that is left on each dollar of business that is done. Those figures can be verified from the Harvard figures, which you probably have seen. And we have often to our sorrow found that we have gotten even less than that, particularly in the last year.

Now, the effect of placing the business in the hands of a few men—2,000 packers or anyone else—means a great deal to the consuming public. I do not think the packers are particularly interested in distribution as they are in production. They would like to get into the packing of fruits and pears and vege-

tables of all kinds, controlling that market. By controlling that market they control practically everything else: the matter of distribution, the matter of price to be paid to the farmer. They could practically control, if they had that business to themselves, what they would pay the farmer or producer for his fruits or vegetables. They could pass the price—to pay quite a fine profit to them—to the ultimate consumer simply because there would not be that competition that there is among the four or five thousand wholesale grocers, with their great army and body of retail grocers.

While we might be accused of being entirely selfish in this thing, and looking out for the preservation of our business, we are doing a very valuable service to the public at large in gathering into our warehouses the food products of whole world, carrying them for the retail grocer, distributing the food to the retailer as his needs require, and all for a very small compensation. That compensation becomes larger according to the volume of the business which each wholesale grocer has in his business. And in no other way. The result of it is that the little country store yonder down by the wayside, the small grocer in the city—they are able to make at least a living. And the small grocer is able to supply the wants of his neighborhood. And the initiative is preserved, and a whole multitude of people are employed who make a living out of this food distribution.

I was rather surprised to find that the petition for opening this consent decree comes from apparently such a small source, comparatively. It looks to me somewhat as though behind the scenes was the power that was using an individual to accomplish something or other that would be of great advantage to himself. When you look at that great State of California, and find a great body of cannerymen, one after another, and associations protesting against the opening of the decree—95 per cent of them, according to the testimony here, and only 5 per cent that seem to be in favor of it, and he a gentleman that has had money advanced to him by a great packer to build his factories—a man who has got a 10-year contract, and had no capital of his own—I question very much the true purpose of his desire, at least the expressed purpose of his desire for the reopening of the decree.

Now, Mr. Chairman, I do not wish to take any more of your time.

The CHAIRMAN. Mr. Hewitt, we will desire to ask you some questions, but Senator Shortridge is in the room, and if you will just pardon us we will ask you some questions after the Senator is through.

STATEMENT OF SENATOR SAMUEL M. SHORTRIDGE, OF CALIFORNIA.

The CHAIRMAN. We will be glad to hear from you, Senator.

Senator SHORTRIDGE. Mr. Chairman, as of about the time when some application was made for a modification of this so-called consent decree it became known to citizens of California, and certain constituents of mine commenced to communicate with me. Thence on down until very recently I continued to receive many letters and telegrams from various associations, firms, and individuals, which I have here before me, and which I have thought it proper in performance of my duty to submit to you gentlemen. And I add that if you think it will be of service, I can leave them all with you. If it does not take up too much of your time, I will call attention to the persons or concerns or associations who have communicated to me their views in regard to this matter.

The CHAIRMAN. We would be very glad to receive them, Senator.

Senator SHORTRIDGE. I have here a telegram from the secretary of the Cannerymen's League of California, dated September 15 of this year. This one I will take the liberty of reading, and thereafter, perhaps, I will abbreviate the communications—that is, I will merely give the names of the senders and in substance what they say. This telegram, however, reads as follows:

SAN FRANCISCO, CALIF., September 15, 1921.

Senator SAMUEL SHORTRIDGE, Washington, D. C.:

More than 30 largest packers, who can two-thirds of fruit and vegetables in California to-day, sent joint wire to Attorney General Daugherty urging him not to take proposed action toward removing consent-decree restrictions on operations of meat packers and urging California cannerymen given a hearing. They would appreciate your taking matter up with Daugherty. Assertion that cannerymen have been unable to buy growers' fruit is false, as witnessed by fact that all growers' fruits have already been bought and at advancing prices. Will also

appreciate any information on status of case which you can send by wire collect, same wire going to Senator Johnson.

PRESTON MCKINNEY,
Secretary Cannery League of California.

I turn aside to say, gentlemen, that, responding to the wishes of many of those sending these telegrams, I got into communication with the Attorney General, and by him, or by Colonel Goff, was advised touching these hearings, which I in turn communicated to these gentlemen in California. And if there are some appreciative references to myself in this, you will pardon me if I read it.

There is another telegram from Hall, Luhrs & Co., Sacramento, Calif., dated September 15, 1921, which reads as follows:

"Senator SAMUEL SHORTRIDGE, *Washington, D. C.*:

"We earnestly and most decidedly request that the meat-packers' case be not reopened unless the National Wholesale Grocers' Association be given the opportunity to place our case before the Department of Justice. We consider the modifying of the consent decree would be ruinous to our business.

"HALL, LUHRS & Co."

I have here a telegram from Stetson Barrett Co., of Los Angeles. All these severally are addressed to me. This is dated September 15, 1921. It reads as follows:

"Senator SAMUEL SHORTRIDGE, *Washington, D. C.*:

"Will you please use your influence with the Attorney General to withhold modification of packers' decree until opposing interest may be heard? Particulars wired you by P. C. Drescher explaining the basis for protest.

"STETSON BARRETT Co."

Some of these are more or less repetitious, but perhaps I will save time by reading on for a few moments.

I have here a telegram as of date September 16, from Wellman Peck Co., San Diego Wholesale Grocers' Association, Klauber Wahgenheim Co., Simon Levi Co., Southwestern Grocery Co. This, as I say, is from San Diego, and is as follows:

"We respectfully urge that you intervene with the Attorney General to withhold modifications of packers' decree until opposing interests may be heard. We refer you to full particulars wired by P. C. Drescher, Sacramento, Calif., explaining the basis for protest. Wellman Peck Co., San Diego Wholesale Grocers' Association, Klauber Wahgenheim Co., Simon Levi Co., Southwestern Grocery Co."

Here is a telegram, as of date September 16, sent from Marysville, Calif. That is in the Upper Sacramento Valley. It reads as follows:

"We earnestly request your interviewing with the Attorney General to withhold modification of packers' decree until opposing interests may be heard and refer to P. C. Drescher's wire for particulars explaining basis for protest.

"J. R. GARRETT Co."

The CHAIRMAN. Is that a wholesale grocer or canner, do you know, Senator? Senator SHORTRIDGE. I believe that is a grocer, though I am not sure.

The CHAIRMAN. If you could, as you go along, Senator, give us that information. I am sure it would be quite helpful.

Senator SHORTRIDGE. I will do so, Mr. Chairman.

I have here a telegram dated September 15 from San Francisco, from J. H. Newbauer & Co., wholesale grocers of that city. It reads as follows:

"Please request Attorney General to postpone action on packers' proposed consent decree modification until various interests opposed can be heard. Those requesting modification are small minority while great majority of canners and growers are decidedly opposed. Quick action necessary.

"J. N. NEWBAUER & Co."

And we always get quick action here in Washington.

Judge HAINER. Especially in the Senate.

Senator SHORTRIDGE. Particularly, yes, sir; in the upper House. Well, we are a deliberative body, you know.

Here is a telegram from William Cluff Co., of San Francisco, wholesale grocers. It is dated September 16, and it reads as follows:

"Strongly urge that you use influence with Attorney General Daugherty"—

You see, they assume that I have some influence with the Attorney General—"to delay anticipated action on his part asking court to modify decree consented to by packers 1920 until wholesale grocers interested throughout country have opportunity fully presenting their objections. Understand some California interests favoring modification owing to personal benefits and believe these interests are in a way associated with packers. If decree modified nothing preventing packers from eventually dominating grocery business seriously affecting distribution and creating monopolistic conditions. Quick action is necessary and trust that we may have your support, for which we thank you.

"WILLIAM CLUFF Co."

Here is a telegram from Dodge Sweeney & Co., of San Francisco, wholesale grocers. It is dated September 16. It is substantially the same as the previous one but worded a little differently. It reads:

"We understand Attorney General favors modifying consent decree entered against meat packers 1920, prohibiting them from engaging in unrelated lines. We ask your influence to restrain the Attorney General until wholesale grocers can be heard in opposition to modification.

"DODGE SWEENEY & Co."

Great confidence.

Here is a telegram from Tillman & Bendel (Inc.), wholesale grocers of San Francisco. It is addressed to me, and is dated September 15, and reads as follows:

"Please request Attorney General to delay action upon packers' proposed consent decree modifications until various interests opposed can be heard. Granting of modifications would tend toward monopolizing of foods by capitalistic interests and result in injury to consumers. California interests favoring modifications represent very small percentage of industries affected. The great majority of canners and growers being decidedly opposed. Quick action necessary. Letter follows giving full particulars.

"TILLMAN & BENDEL (Inc.)."

A telegram coming from San Francisco, signed by P. C. Brescher, as of date September 14, which reads as follows:

"Senator SAMUEL SHORTRIDGE, Washington, D. C.:

"Attorney General Daugherty acting this week proposes to ask court to modify very materially packers' consent decree entered February last year. This action said to be largely at solicitation of California cooperative canners. If decree is modified as proposed it will enable packers with their special privileges in transportation to monopolize food industry and distribution. This against interest both producer and consumer as also present channels of distribution. California parties reported behind this move heretofore aligned with Armour and other packers represent probably barely 5 per cent of growers or canners this State. Investigation shows balance California producers, fruit growers, shippers, and canners strongly protest against modification. All wholesale grocers, retail grocers, and other important business interests join in this protest and urgently request you to promptly take such steps as may seem proper and effective to you to cause Attorney General to at least delay action until full hearing may be had enabling all interests and especially California important interests to be heard.

"P. C. DRESCHER."

I have here a telegram addressed to me by Haas Bros., of San Francisco, wholesale grocers, dated September 22, which reads as follows:

"Please use your influence toward having Attorney General defer modifying packers' consent decree now pending before the Department of Justice until our interests can be heard.

"HAAS BROS."

I hope I am not taking up your time unduly, gentlemen.

The CHAIRMAN. No; not at all, Senator.

Senator SHORTRIDGE. Doubtless many of these matters have been brought to your attention—that is, the names of these various concerns—and I would have you understand that after consultation with others it seemed to me quite proper to lay these matters before you, you to determine what you shall advise and think proper.

I have here a letter from Los Angeles, addressed to me, as of September 16, 1921, from the Channell Commercial Co. It reads as follows:

"Hon. SAMUEL M. SHORTRIDGE,

"United States Senate, Washington, D. C.

"DEAR SIR: We are wiring you as follows:

"We believe that the request for modification of the consent decree in case of the packers should be denied strictly on the ground of public policy. While we are interested parties, yet we can clearly see that if the activities of the packers are not curbed that a monopoly over distribution of all food products will soon be created, very much to the detriment of the public."

"Very little can be said in addition to the argument given in the telegram, excepting to add details. With the advantage that the packers have from their peculiar situation, their country-wide operations, and their advantages in transportation, coupled together with their aggressiveness, there is in our mind no question whatever but that if given a free hand that long before the next 20 years have expired they will have driven out of business all large distributors of food products, and will have a complete monopoly of that line of business. That such a monopoly is against public interest, needs no argument. History is full of startling examples of the unquestioned fact that no human being has ever been created who can safely be entrusted with that degree of power over his fellow human beings which would be given through such a control of the necessities of life.

"The fact that the wholesale grocers and a large part of the retail grocers would have their business destroyed is merely incidental to the question, and can and should have no weight with you in deciding the merits of the case. If the future destruction of our business was to be occasioned by a process of development which would be of large benefit to the public, then our business would have to go; but to have the great food business wiped off the face of the earth and at the same time have this destruction to the unquestionable injury of the public welfare is unthinkable.

"We ask you to kindly give this question your earnest investigation and to use your personal influence against a step that can not but lead to disaster for the producer, the distributor, and more than all, to the public themselves.

"Yours very truly,

"CHANNELL COMMERCIAL CO.,
"W. R. H. WELDON, President."

I have here a letter from Tillman & Bendel (Inc.), their principal place of business being San Francisco, as of date September 16. Addressing me, the letter proceeds:

"This is to confirm our telegram to you of yesterday reading as follows:

"Please request Attorney General to delay action upon packers' consent-decree modifications until various interests opposed can be heard. Granting of modifications would tend toward monopolizing of foods by capitalistic interests and result in injury to consumers. California interests favoring modifications represent very small percentage of industries affected, the great majority of canners and growers being decidedly opposed. Quick action necessary. Letter follows giving full particulars."

"Our understanding is that the request for modifications of the packers' proposed consent decree came from California, and inquiry develops the fact that certain few cooperative canning interests and growers, associated with these canning interests, were behind the movement, and our further understanding is that these interests do not represent more than 5 per cent of the canning and growing industries of the State. It also seems to be the belief that Armour & Co. advanced money to the growers who owned stock in one of these cooperative canning concerns for the purpose of building a cannery, in return for which Armour & Co. are supposed to have received a very favorable contract. It is also the impression that these cooperative canneries lost considerable sums of money during the past few years. It would, therefore, seem quite plausible that meat-packing interests may be responsible for the requests for modification of the consent decree which have been made to the Attorney General.

"The receipt of telegraphic advices from the National Wholesale Grocers' Association to the effect that the Attorney General intended to take favorable action this week caused us to wire you asking your assistance in having the Attorney General delay action until such time as opposing interests can be heard, and we want to thank you sincerely for such assistance as you may

have felt disposed to render. The tendency of the meat-packing interests to place themselves in a position to practically control the manufacture and distribution of many important items of food up to the time when the consent decree was entered into was so pronounced and so well recognized that we assume you are thoroughly familiar with this menace as ultimately being opposed to the interests of the consumer, to say nothing of the interests of other legitimate lines of business.

"Again thanking you for your attention, we are,

"Very truly yours,

"TILLMAN & BENDEL (INC.)."

(By the secretary.)

I have here a telegram from San Diego, signed by Klauber, Wahgenheim Co., dated September 16, which reads as follows:

"Modification of decree regarding packers controlling food products should not be made until other food distributors have an opportunity to be heard. We hope you will intervene accordingly with Attorney General.

"KLAUBER, WAHGENHEIM CO."

The CHAIRMAN. Are they canners or wholesalers?

Senator SHORTRIDGE. I believe they are wholesale grocers in San Diego. If I am in error in response to any of your questions, of course, there are gentlemen here who will correct me. We have such a great State, and so many industries, that while I am fairly well known in some of the villages there I do not profess to know all of my constituents. They seem to know me, though, fairly well.

Here is a copy of a telegram addressed to the Attorney General, which was furnished to me. I merely hand it to the reporter. Doubtless, it is among your files. It appears to be signed here by a great many citizens of California—concerns. It is dated, I see, September the 15th, this year. There is an opening sentence which perhaps it might be well to call to your attention now:

"Representing more than 70 per cent of the commercial pack of central and northern California fruits, vegetables, and allied products, we respectfully urge that no action be taken toward removing present restrictions on meat packers at least until you shall have held a formal hearing and enabled us to present our position."

It is signed, as I say, to repeat here, by a large number of concerns in central and northern California.

The CHAIRMAN. Those are the members of the canners' league, Senator.

Senator SHORTRIDGE. I think so; yes. And I would like to have it go of record that when I speak of northern California and central California and southern California—there is but one California.

I have now a telegram of September the 16th, which comes from San Jose, addressed to me, from the Walsh Cot Co.—that may be the abbreviation of some firm. It reads as follows:

"Intervene with the Attorney General to withhold modification of packers decree until opposing interests may be heard. You may refer to full particulars wired by P. O. Drescher to both Senators and Congressman Curry explaining the basis for protest.

"WALSH COT CO."

Here is a telegram from the Channell Commercial Co., of Los Angeles, dated September 16, addressed to me, which reads as follows:

"We believe that the request for modification of the consent decree in case of the packers should be denied strictly on the ground of public policy. While we are interested parties, yet we can clearly see that if the activities of the packers are not curbed that a monopoly over distribution of all food products will soon be created, very much to the detriment of the public.

"CHANNEL COMMERCIAL CO."—

I think this telegram was incorporated in the letter which I read.

Attention is called now to this telegram from M. A. Newmark & Co., a Los Angeles wholesale grocer, dated September 16, and addressed to me:

"Large packers are endeavoring to have package decree prohibiting them from handling full lines of groceries modified. We beg your assistance in preventing such a calamity to the wholesale and retail grocery business. If they succeed, a mere handful of men will ultimately control the entire food supply of America. We understand the Attorney General is favorable. We urgently request that every effort be made to prevent modification of packers' decree.

"M. A. NEWMARK & CO."

I hold in my hand a letter from the Cannerymen's League of California, which, I observe, is merely a courteous acknowledgment of a telegram which I sent to them, and, therefore, I will not read it nor put it in the record.

I have in my hand a letter from J. H. Newbauer & Co., San Francisco, dated September 17, 1921, which reads:

PACKERS' CONSENT DECREE.

"Senator SAMUEL SHORTRIDGE,

"Washington, D. C.

"HONORABLE SIR: We beg to acknowledge your telegram of the 16th, and thank you very kindly for the information that the Attorney General advises that the packers' consent decree would not be modified, if at all, until all parties in interest have full opportunity to be heard."

That was the substance of all the telegrams I sent to my people in California after I had consulted with the Attorney General and Colonel Goff, advising them as to about the time of hearing, and that they, of course, would be all given a full opportunity before he would advise or act or consent in respect to this decree.

It continues:

"Please be assured we appreciate the interest you are taking in this matter, and we are convinced that to make any change in the decree would be a step backward, and if these people were permitted to enter the grocery business it would be but a short time before the Big Four would control the entire food supply of the United States, which we are convinced is against public policy.

"If there is any further information you desire, would be glad to supply it, and remain.

"Respectfully yours,

"J. H. NEWBAUER & Co.,

"By S. R. NEWBAUER, Vice President."

Here is a telegram I received from Sussman, Wormser & Co., of San Francisco, dated September 16:

"Department of Justice has now under consideration for prompt action modification of consent decree entered into between the Government and the Big Five meat packers which in effect prevents the meat packers from securing dominance or control of the food business unrelated to meat packing. We respectfully ask that you use your influence to have action deferred, so we may have ample time to prepare and present the reason in opposition to reopening the consent decree.

"SUSSMAN, WORMSER & Co."

I will now read this letter, because I say it states clearly what I have just referred to. It is a letter from Klauber Wangenheim Co., of San Diego, dated September 19, 1921. Addressing me, they say:

"We beg to acknowledge receipt of your wire September 17, as follows."

Here follows the telegram which I sent, and I think, as we lawyers would say, *mutatis mutandis*; that I said the same to the different people who inquired. The telegram they quote is as follows:

"Attorney General through Colonel Goff advises me that packer decree referred to in your September 16 telegram will not be modified if at all until all parties in interest have full opportunity to be heard. I shall continue to give matter close attention."

"We thank you for your prompt attention to this matter, and also for your expression of continued interest.

"Very truly yours,

"MELVILLE KLAUBER,

"President Klauber Wangenheim Co."

I hope, gentlemen, that I am not taking too much of your time?

The CHAIRMAN. No, Senator.

Senator SHORTRIDGE. As I say, I wanted you gentlemen to have the information which came to me. That is my purpose.

The CHAIRMAN. We appreciate that.

Senator SHORTRIDGE. A letter from Tillman & Bendel (Inc.), dated September 19 1921. Addressing me, they write:

"We duly received your telegram of the 16th instant and desire to thank you sincerely for your efforts in inducing the Attorney General to postpone his

decision on the packers' consent decree until all parties in interest have had full opportunity to be heard."

I think it proper for me to observe, gentlemen, that, in my judgment, the Attorney General was not disposed to take any action without the fullest opportunity of all parties to be heard. People away yonder across the plains and mountains perhaps thought that he would act precipitately and without giving full opportunity to all parties in interest to be heard, but we know that he would not take any such course, as I reassured them in my several telegrams.

They continue as follows:

"From the information which we have been able to obtain, it is the general impression among the independent growing and canning interests that the request for modification of the packers' consent decree emanated from interests closely connected with the big packers, but unfortunately we have no direct evidence to place before you. It is common gossip in the Santa Clara Valley that Armour & Co. advanced money to the growers who own the stock of the cooperative canneries located in San Jose, securing in return a very favorable contract, and it is also the impression that on account of heavy losses sustained in the last two years the assets of the cooperative canneries have been affected, and it is quite possible that the indebtedness has not entirely been liquidated. Under these circumstances the request for modification coming from these sources can readily be understood. It is also our understanding that the cannery referred to is not run as a cooperative cannery at the present time, but just like any other corporation so far as buying fruit from the farmers and selling the canned commodity to the dealers.

"A case having an important bearing on the desire of the meat packers to reenter the canning business is that of Dunkley & Co., supposed to be largely owned and wholly controlled by Libby, McNeill & Libby, against a number of independent California cannery owners on the grounds of alleged infringement of a peach-peeling patent. Upon the outcome of this case, according to the independent cannery owners, depends the future of the independent cannery owners, as an adverse decision by the courts would curtail their operation greatly. It is the opinion of some of the independent cannery owners that an adverse decision would place Libby, McNeill & Libby in position to monopolize the California canning industry.

"We have gone into this subject at some length on account of the vital interests of the great majority of growers, cannery owners, and distributors of food products, and it is our candid opinion that if the meat packers are permitted to reenter the food-distribution field with their immense assets, powerful control and special privileges extended to them in past years, it will mean that this combination will, within a few years, enjoy a monopoly of the food-distributing business to the ultimate disadvantage of the consumer.

"Assuring you that such assistance as you may be able to render will be sincerely appreciated, we are,

"Yours very truly,

"TILLMAN & BENDELL (INC.),

"(By the Secretary.)"

I have here, I see, a letter acknowledging the receipt of my telegram, from Sussman, Wormser & Co., which I merely refer to without reading.

I have here a letter from Dodge, Sweeney & Co. This is dated September 21, addressed to me, and it reads:

"We gratefully acknowledge receipt of your reply to our telegram of September 15, and we appreciate the interest that you are taking. The opposition has been undertaken by the National Wholesale Grocers' Association, and we assure that their counsel, Dana P. Ackerley, will present it in Washington.

"It is commonly believed that the cooperative growers and the cooperative cannery owners of San Jose, Calif., who are pleading for a return of the meat packers into the canned-goods business, are inspired by Armour & Co., to whom they are indebted for financial assistance. Most of the representative cannery owners are opposed to the packers' return, and we understand that the cannery owners' league, representing the best and largest packers in California, have put themselves on record, the same as the wholesale grocers have.

"We have requested the national association to make you acquainted with our side of the matter, and trust that the arguments will convince you that it is for the best interests of the country at large that the packers be barred from handling lines not related to the meat-packing industry. We remain,

"Yours truly,

"DODGE, SWEENEY & Co.

"E. G. WILLIAMS."

Here is a brief letter from Mr. P. C. Drescher, which perhaps is worthy of being read. It comes from Sacramento, dated September 22. Addressing me, he says:

"I inclose herewith copy of wire sent to you on the 14th instant, while I happened to be in San Francisco. The same wire was sent at the time to Senator Johnson and Congressman Curry. You have doubtless heard from some of your other constituents regarding this same subject. I note from the press that you were probably not in Washington at the time the telegram was received there, which no doubt accounts for the reason that I have not had any direct reply from you.

"The matter covered in the telegram is of considerable importance to both producers and consumers of this and other States, but particularly of this State, as well as to the distributors of food products, and I am sure that, recognizing this, you will assist in putting the matter in the proper form before the department should any further occasion arise for doing so.

"Thanking you in advance, I remain, with kind personal regards,

"Sincerely yours,

"P. C. DRESCHER."

And then he incloses a copy of the telegram which he sent to Senator Johnson and to me and to Congressman Curry.

Here is a letter of acknowledgment of receipt of telegram from me, advising them as stated.

I trembled, Mr. Chairman, when I read that, lest my constituents feared that I was over in some place in New Jersey, there seeing an affair between France and America. But as usual, America came out on deck.

Another courteous letter acknowledging receipt of my telegram, from Haas Bros., which I will not read nor put in the record.

Here is a telegram from the Cannerymen's League of California, which is in substance the same as has just been read, and I will not read it.

Another letter from Tillman, Bendle & Co., which is briefer than the one read a moment ago, but in substance the same, expressing their views and quoting a telegram which they had sent to me, which I will not read.

I hold in my hand a letter from William Oluff Co., of San Francisco, dated October 14, 1921, later than the earlier one referred to. Addressing me, the letter reads:

"We wish to thank you very kindly for your wire, which we received to-day, advising us of the time set by the Attorney General for hearings in connection with modification of packers' decree.

"This information is very valuable to us, as it will enable us to accordingly prepare our arguments in connection with the subject, and I might state that the National Wholesale Grocers' Association, as well as other interests that have allied themselves with our cause, will be represented.

"It might be of interest for you to learn that we have been informed by the California Prune and Apricot Association, which represents a membership of 11,000 growers in the State of California, that they have passed a resolution protesting against any modification, and a copy of same has been sent to the Attorney General.

"This shows the attitude of an organization representing an important industry in our State, in face of the fact that the packers contend that the agricultural industry are in favor of a modification.

"We feel very much gratified that we can"—

Well—

Mr. SMITH. Read the compliment, Senator.

Senator SHORTRIDGE. You know they say that the man who blushes is not quite a brute, so I blush.

"We feel very much gratified that we can count upon your support, and we want you to know that we exceedingly appreciate your interest in the matter.

"Yours respectfully,

"WILLIAM CLUFF CO."

I have not been in the Senate long enough to overcome native modesty.

Mr. SMITH. You will soon get over it.

Senator SHORTRIDGE. Here, gentleman, is a letter from J. H. Newbauer & Co., of San Francisco, dated October 14. I decline to read that. But it is a very courteous letter.

Judge HAINER. You might submit it confidentially.

Senator SHORTRIDGE. But not for the record.

A later letter from Haas Bros., October 14. Addressing me, it reads as follows:

"We are in receipt of your night letter of yesterday, and hasten to thank you for your interest which you have evinced in the packers' consent decree case.

"We need not assure you that we will be represented at the oral hearings, which will begin November 28, to present our arguments. Written statements will also be filed with the Attorney General on or before November 18.

"Again thanking you and assuring you of our appreciation, we remain,

"Very truly yours,

"HAAS BROS.,
By "CHAS. W. HAAS, *President.*"

Here, gentlemen, is a later letter of October 15 from Dodge, Sweeney & Co., addressed to me, which reads as follows:

"We are very much obliged for your telegram telling us how to proceed in regard to hearings on the question of modifying the packers' decree.

"Your interest and activity in these matters are very much appreciated by the entire grocery community, both wholesale and retail.

"It might interest you to know that the Prune and Apricot Growers' Association, one of the largest growers' associations in the State, with a membership of 1,400, have gone definitely on record by wiring a protest to Attorney General Daugherty against modifying the decree. We note that it has been stated that Attorney General Daugherty is giving this matter consideration at the behest of the California Growers' Association.

"Again thanking you, we remain,

"Yours truly,

"DODGE, SWEENEY & Co."

A letter of acknowledgment from Sussman, Wormser & Co. evincing their interest in this matter. I will not read it.

Here is a letter from Mr. Aaron Sapiro, from New York, dated October 12, 1921. Addressing me he says:

"Representatives of various cooperative associations in California have been advised that Attorney General Daugherty is considering the reopening of the packers' consent decree, for the purpose of permitting the Chicago packers to go back into the matters of canning and selling fruits and foods.

"It was further stated that the initiative for this activity on the part of the Attorney General arose from an appeal from the organized fruit growers of California to the Attorney General.

"Further information indicates that the spokesman in this case seems to be Mr. Vernon Campbell, of San Jose

"Mr. Campbell is the manager of a cannery known as the California Co-operative Canneries of San Jose, which owns and operates a very large cannery, built at an expense of approximately \$500,000, of which practically all the money was originally put up by Armour & Co.

"Armour & Co. then took a mortgage back, although the mortgage was practically as large as the entire original investment.

"At the same time Mr. Campbell had a contract with Armour & Co. whereby the products of the cannery would be sold to Armour & Co. at prices to be fixed as there stated. It is reported that Mr. Campbell was personally to receive a reward of one-half of 1 per cent of the gross sale price of these products covered by the contract to Armour & Co.

"Then a Santa Clara fruit growers' association was organized as a cooperative association, to which the growers would deliver fruit to be canned by the cannery company.

"Whether or not this was organized for the interest of the growers is distinctly an open question, on which, if necessary, you can secure direct statements from San Jose.

"Many of the growers who delivered fruit to the growers' association have had to take stock in the canneries in payment for part thereof.

"Unquestionably some growers therefore have a bona fide interest in the stock as well as the canning activities of the California Cooperative Canneries. I believe you will find that the actual number of fruit growers so interested is much less than 1,000.

"Whether or not this situation could be called a cooperative concern or an Armour-Campbell concern is another open question.

"In any event, Mr. Campbell was unquestionably authorized to speak for this particular concern.

"But as a whole, the fruit growers of California and the cooperative organizations handling their fruit do not request or approve any amendment of the packer decree which will bring Armour & Co., or Swift & Co., or the other Chicago packers into their old activities again.

"As counsel for the California Prune and Apricot Growers, San Jose, embracing approximately 12,000 members and marketing the greater part of the prune and apricot crops of California; for the California Pear Growers' Association, San Francisco, which markets about 80 per cent of the canning pears of California; for the Fruit Growers of California (Inc.), San Jose, which markets a large amount, but not the controlling amount of apricots, cherries, and small fruits for canning purposes in the Santa Clara Valley; for the Central California Berry Growers, San Francisco, which markets almost the entire canning berry crop of central California; and for other cooperative associations, I ask that you make this situation clear to the Attorney General.

"One of the California Congressmen in September definitely requested the manager of the California Prune & Apricot Growers (Inc.) and the manager of the Fruit Growers of California (Inc.) to wire or write to the Attorney General supporting the request of Mr. Campbell, with the express and distinct statement that he desired the matter reopened so as to permit Armour & Co. to handle fruits, etc., because of the unusual efficiency, and so on, of that firm.

"The managers, of course, declined to give any such indorsement.

"We are a bit fearful that the Attorney General may be misled as to the real attitude of the fruit growers of California and their representatives.

"Will you take this up with the Attorney General and find out the present status?

"I will deeply appreciate your courtesy herein.

"Very truly yours,

"AARON SAPIRO."

The CHAIRMAN. Senator, he purports to represent these associations as counsel?

Senator SHORTRIDGE. He so states; yes, Mr. Chairman.

The CHAIRMAN. Do you know whether it was ever referred to any of these organizations, to the membership, or in any way?

Senator SHORTRIDGE. No; I do not. Nor do I recall that I have had the pleasure of meeting him. I found that among the files turned over to me yesterday.

Here is a letter from Sacramento, dated November the 2d, this month, from Mr. P. C. Drescher, who had formerly telegraphed and written me. It reads as follows:

"I desire to acknowledge with due appreciation your expressed interest and helpfulness in connection with the suggested modification of the packers' consent decree.

"No doubt you have learned since the matter first arose how near the Attorney General's office was in asking the court for a modification"—

I don't know what prompted him to say that, but I am not in possession of any information which would warrant it. I say that because from time to time I have gotten into touch with the Department of Justice and learned merely this, that he intended to have the matter looked into most thoroughly, reserving decision until the whole matter was fully heard and considered.

However, to repeat:

"No doubt you have learned since the matter first arose how near the Attorney General's office was in asking the court for a modification, seemingly without giving any opportunity for public expression and acting almost entirely on representations largely outside of the facts as made by a certain California cooperative interest representing a very, very small percentage of the canning industry, and in fact heretofore financed and controlled by one of the large meat packers.

"All kinds of misinformation has been used and is being used by this interest, but where the question has had a fair consideration and the ultimate, inevitable consequences considered the producers of this State have gone on record in their own protection as strongly opposing any modification, as, for instance, among others, the California Prune and Apricot Growers' Association, representing a membership of 11,000 growers; the Cannerymen's League of California, representing the output of over 70 per cent of the canned fruits and vegetables

packed in this State; the California Peach and Fig Growers' Association, representing a very, very large proportion of those products grown in this State; the Superior California Citrus Exchange, operating in eight counties of superior California."

You see, we have a superior California. It is proper, though, to say to you gentlemen that that refers to the citrus-growing tier of counties lying in what we call northern California, for we raise oranges there in northern California as well as in southern California. We raise everything there.

Mr. HEWITT. You raise hell.

Senator SHORTBRIDGE. Yes. Well, they raise that in other States, too. Continuing, the letter says:

"The California Dried Fruit Association, representing over 95 per cent of the dried-fruit industry of the State; the California Fruit Distributors, representing over 60 per cent of the deciduous fruits shipped green from this State. Also several chambers of commerce have given the subject careful consideration and have gone on record actively in opposing any modification whatever of said decree, among others being the San Francisco Chamber of Commerce, the Los Angeles Chamber of Commerce, the San Jose Chamber of Commerce, and the San Jose Merchants' Association. These are all representative bodies, representing very largely the real interests producing, manufacturing, and distributing food products.

"In one of your letters you suggested that you would like to be furnished some information in connection with the subject. With this in mind, I will forward you later copy of a letter along general lines which I trust will give you briefly the facts and an outline of the inevitable consequences if a modification is had. Copies of said letter may also be furnished to some of our other Representatives in Congress.

"The subject is regarded here as a very important one for the producing interests of this State, as evidenced by the expressions cited and many others of similar import. Everyone here feels that you may be relied upon to cooperate in every way for the protection and the best interests of California—producer, distributor, and consumer—and can assure you that such cooperation will be highly appreciated.

"Some of the California interests will be represented at the hearings to be had before the commission organized by the Attorney General for such purpose, and probably will get in touch with you at that time. Meanwhile should there be any other information that you require, I will gladly arrange to furnish it as far as may be possible.

"Thanking you again for the deep interest you have already shown in this question, I remain, with kind personal regards,

"Very sincerely yours,

"P. C. DRESCHER."

Here is a letter from Griffith-Burney Co., of San Francisco, dated November 4, 1921, which is merely to say that they had written me formerly, inclosing a statement, quite an elaborate statement or document, which reads:

"Statement by committee representing cannery members who oppose change in consent decree against meat packers."

It is quite an elaborate statement, as I say, and I do not know whether you gentlemen have been furnished with it or not.

The CHAIRMAN. I do not think we have.

Judge HAINER. You may read it, Senator.

The CHAIRMAN. I do not think we have received that statement, Senator.

Mr. McKINNEY. I may say that that is what might be called the first draft of the argument I presented.

The CHAIRMAN. Mr. McKinney has appeared here, Senator, and so has Mr. Chase; they are, respectively, the secretary and president of the cannery league. I do not think we have that statement in the record, however.

Mr. McKINNEY. Griffith-Burney Co. are simply a canner company of San Francisco.

The CHAIRMAN. You may put it in.

Senator SHORTBRIDGE. Their letter addressed to me is as follows:

"We wrote you a few days ago in connection with the movement to modify the decree restricting Armour & Co. and the balance of the 'Big Five' packers. We inclose herewith statement issued by the Cannery League of California, together with a copy of the wire that was sent to the Attorney General, which I commend to your kind attention, and would ask that you do everything you

possibly can to protect the interests of the California canners and wholesale grocers of the United States, to prevent any modification of the decree.

Very respectfully,

"C. S. DURNAY."

I will hand the statement to the reporter.
(The statement is as follows:)

OCTOBER 3, 1921.

STATEMENT BY COMMITTEE REPRESENTING CANNERS' LEAGUE MEMBERS WHO OPPOSE
CHANGE IN CONSENT DECREE AGAINST MEAT PACKERS.

Attached is copy of telegram sent to Attorney General Daugherty September 15, 1921, and bearing individual signatures of canners. In this telegram reference is made to Vernon Campbell, general manager of the California Cooperative Canneries, because of the misstatements he is alleged to have made; but we want to make it very clear that this is not a controversy between those engaged in the cooperative movement in California and the canners. We could not fairly oppose any cooperative movement which is honorably managed and which meets its obligations with the growers, but we do oppose statements alleged to have been made by the representative of a concern which everyone knows to have been financed from the start by Armour & Co.

We feel, therefore, that it is not necessary to go into any special detail covering his allegations, because he surely does not represent the canning industry, and we think investigation will show that he does not represent any large percentage of the growers. The California Cooperative Canneries' three plants represent less than 5 per cent of the number of plants in operation in the State and we believe we are safe in saying that they pack less than 5 per cent of the fruit and vegetables of the State.

Our opposition to the modification of the consent decree can be summed up briefly as follows:

1. The fruit-canning industry of California has been built up over a period of 30 years to a point where more fruit is packed in California than in all of the rest of the United States combined, and by a large number of independent operators, practically all of whom distribute through wholesale grocers. This method of distribution has been economic and has been so organized that the wholesaler has purchased his requirements early each season, and through these early purchases the canner has been able, to a considerable degree, to finance his operations. The advent of the meat packer into the distributing field would disorganize this logical and economic method of distribution, making the purchase of canned fruits by the wholesaler less desirable and thus interfering with this proper method of financing particularly the small packer.

2. The present method of distribution through a large number of independent distributors has made it practical for a large number of independent canners to operate successfully in California, and we firmly believe that if the meat packers had been permitted to continue their inroads into the industry in California the net result in a very few years would have been the concentration of the business into very few hands, as was the case in the meat industry. If the consent decree is modified, they will accomplish this purpose.

3. The success of the California canned fruit industry has been built up on superior quality and the pride which leading packers in California have taken in the good name of their product. It was found when the meat packers were buyers of California canned fruit that in an effort to own the product at a lower price than their competitors, they favored those lots in which quality was skimped. For this reason most of the quality packers of California never were sellers to the meat packers and would not be if the consent decree were modified.

4. We are told that the contention of the meat packers is that they desire again to enter the California fruit industry merely as distributors, but we do not believe the history of the growth of the meat packers bears out any such contention. In the period of their early growth naturally the distributing facilities which they built up were for the purpose of distributing their own products, and while now at times their first entry into outside industries is through the distributing end, still we are thoroughly convinced, and believe all the facts will bear us out, that they are primarily manufacturers and that from this base their operations and control are directed both ways; that is, back to the source of production and forward to the means of distribution.

We are convinced that if they are permitted to enter the distributing end of the business, they will steadily expand into manufacturing and production. The best proof of this is in their operations through the California Cooperative Canneries. Already Armour is alleged to, and we believe does, control not only the canning plants but also, through crop advances, made by the California Cooperative Canneries, controls many orchards.

5. We are informed that the advocates of modification of the consent decree assert that a need exists for this added means of packing and distribution, and base this on the claim that soon after the consent decree became operative, prices fell and many canners throughout the country suffered severe losses. We do not believe any one would take this contention seriously for the reason that, as every one knows, a general change in economic conditions came at this time which brought about even sharper reductions in price for rubber, cotton and practically all commodities. If this claim should be true, we submit that the ramifications of the packers' operations are far greater than generally understood and therefore their control was far greater and more dangerous than people realize.

(Attached thereto is telegram of September 15, 1921, to H. M. Daugherty, Attorney General of the United States, which has heretofore been placed in the record.)

Senator SHORTRIDGE. Here is a letter dated November the 5th from the Dried Fruit Association of California, 417 Market Street, San Francisco. Addressed to me, it reads as follows:

"You are doubtless informed as to the effort being made by the so-called Big Five meat packers to obtain a modification of the consent decree entered into with the Attorney General.

"Certain interests in California have interested themselves in this fight and we feel have given a false impression as to the wishes of the farmers and business houses of this State.

"This feeling we have embodied in the form of a resolution, a copy of which we inclose. We will not attempt to make any arguments other than to say that we believe that all the reasons affecting this decree in the first place are still in force and that there should be no modifications at this time.

"We trust that you will, if occasion offers, give this matter your careful attention and not be deceived by the propaganda of those interests, that are for evident selfish reasons, seeking to have just restrictions removed.

"Yours very truly,

"DRIED FRUIT ASSOCIATION OF CALIFORNIA,
"J. L. CHADDOCK, *Secretary*."

And, then, attached to this letter is the resolution referred to.

The CHAIRMAN. Senator, I might lessen your work by stating that the resolution has been offered in evidence here, and is now in the record.

Senator SHORTRIDGE. I see. Thank you.

Here is a later letter from the White Star Canning Co. That company is located at East San Pedro, Calif. San Pedro, however, now, is a part of the city of Los Angeles. A city, as you know, of probably 700,000 inhabitants, and will have a million in 1925.

This letter was furnished me, and it may be in the record. It is addressed to the Attorney General.

The CHAIRMAN. That has been sent direct to the Attorney General; yes, Senator.

Senator SHORTRIDGE. Then I will not trouble you with reading it. I will hand it to the reporter.

The CHAIRMAN. It has been sent direct to the Attorney General, Senator.

Senator SHORTRIDGE. I will not read it, but just hand it in.

(The letter referred to is as follows:)

WHITE STAR CANNING Co.,
East San Pedro, Calif., November 12, 1921.

Hon. H. M. DAUGHERTY,

Attorney General, Department of Justice, Washington, D. C.

HONORABLE SIR: It is claimed that the reentry of the Big Five packers into the distribution of all food products would be of great benefit to the canners. On the contrary, we believe that it would be a great detriment to the fish canners, as it would eventually cause the jobbers and wholesale grocers of the country to withdraw from the handling of fishery products, owing to

their inability to compete with the Big Five, who handle these products as a side line. This would result in the narrowing of the trade channels through which the canners dispose of their products; would make the canners dependent upon the Big Five for the marketing of these products, and enable the Big Five to dictate prices, terms, etc.

Just as soon as this condition existed the Big Five would, as a matter of course, enter the canning business. This could lead to the establishment of a monopoly, which does not and can not exist under the present conditions, and would result in hardships to the trade at large.

Therefore, we consider the proposed modification of the packers' consent decree a grave menace to the fish-canning industry, which at present is the result of 10 years of time, labor, and money spent in the establishment of same and in the introduction of the products which are being packed.

We desire to protest against any modification of this decree whatever.

Yours respectfully,

WHITE STAR CANNING Co.
W. J. KING, *Secretary*.

CC. Hon. Hiram Johnson, Hon. Samuel Shortridge, and Hon. Henry Z. Osborne.

Senator SHORTRIDGE. Here is another letter from Griffith-Durney Co., as of this month, November 2. Perhaps it will serve some purpose to read it. It is not long. It reads:

"As you are probably aware, the Chicago meat packers are endeavoring to modify the decree by which they were prohibited from handling many articles outside of their regular lines.

"If it is the intention of the present United States officials to create a further monopoly in foodstuffs, all that is necessary is to put the stamp of approval on the past business methods of the Big Five packers by modifying the consent decree whereby packers may handle all food products. They may not only be content in course of time to handle such food commodities as purely wholesalers or jobbers, but may eventually strike at the source of production with a view of controlling it, thereby creating a monopoly far worse than any other that has ever existed, and the ultimate outcome would be sky-high prices, which, of course, the consumer must bear. From a common-sense viewpoint, it surely would be a great deal safer to trust four or five thousand independent business concerns, scattered throughout the entire country, to market in a wholesale or jobbing way food commodities rather than to take a chance on a few financially powerful concerns, whose interests, it is said, are largely more or less closely interwoven. Common sense should and must prevail in this matter.

"Very respectfully yours,

"J. S. DURNERY."

Here is a letter addressed to me by the Chamber of Commerce of San Jose. The gentlemen knew that I am very well acquainted with every street and alley in San Jose. I have occupied two offices, Senator, in my life—janitor of a public school and my present position. But I know San Jose. But that is apart. This letter is dated October 21, addressed to me, and it reads as follows:

"At a regular meeting of our board of directors held October 18, 1921, the following resolution was unanimously adopted:

"*Resolved*, That this organization, the San Jose Chamber of Commerce, representing a large membership of this community, located in the very heart of the canning, dried-fruit packing, and producing industry of the State of California, is unalterably opposed to any modification of the consent decree whereby the meat packers might again be allowed to act as distributors for our products, and we furthermore view with alarm any modification permitting of their methods of distribution and probable ultimate control of our fruit industry."

"Very truly yours,

"ROSCOE D. WYATT, *Manager*."

I think I have called attention to all that I have received, with the exception of what I am now about to add. I have here a list of all the people from whom I have received communications, as follows:

Preston McKinney, secretary Canners' League of California, San Francisco.
Hall Luhrs & Co., Sacramento, Calif.

Stetson Barrett Co., Los Angeles, Calif.
 Wellman Peck Co., San Diego, Calif.
 San Diego Wholesale Grocers' Association, San Diego, Calif.
 Klauber Wangenheim Co., San Diego, Calif.
 Simon Levi Co., San Diego, Calif.
 Southwestern Grocery Co., San Diego, Calif.
 J. R. Garrett Co., Marysville, Calif.
 J. H. Newbauer & Co., San Francisco, Calif.
 William Cluff Co., San Francisco, Calif.
 Dodge Sweeney & Co., San Francisco, Calif.
 Tillman & Bendel (Inc.), San Francisco, Calif.
 P. C. Drescher, San Francisco, Calif.
 Haas Bros., San Francisco, Calif.
 W. R. Weldon, president Channell Commercial Co., Los Angeles, Calif.
 Walsh Cot Co., San Jose, Calif.
 M. A. Newmark & Co., Los Angeles, Calif.
 Sussman Wormser & Co., San Francisco, Calif.
 Mebius & Drescher Co., Sacramento, Calif.
 Aaron Sapiro, San Francisco.
 Roscoe D. Wyatt, manager Chamber of Commerce, San Jose, Calif.
 Griffith-Durney Co., San Francisco, Calif.
 Dried Fruit Association of California, San Francisco, Calif.
 White Star Canning Co., East San Pedro, Calif.
 A. O. Oullahan, managing secretary Chamber of Commerce, Stockton, Calif.

Now, I think I have called attention to each and all of the letters and telegrams which came to me from California in regard to this matter, with the exception of what I am now going to invite your attention to, in fairness, for, to repeat myself, I have felt its simply my duty—no more, no less—to let you gentlemen have the information which came to me.

Now, it is but only fair to call your attention to four telegrams that came to me from Visalia. That is down in the San Joaquin Valley. They are a rich county there in what we may call the lower tier of counties, in the San Joaquin Valley.

Now, these four telegrams are all dated, I see, on September the 17th, and, with your permission, I will read them for the record. They are all addressed to me.

"VISALIA, CALIF., September 17.

"Fruit interests of California, with exception of few private concerns who work with wholesale groceries, earnestly desire modifications of packers' decree allowing those efficient and economical distributing organizations to market our products. We have ahead of us tremendous increase in production and need all possible outlet to avoid stagnant markets and financial disaster.

"VISALIA GROWERS' ASSOCIATION,
 "F. F. WEINCH, *President*.
 "R. W. CORE, *Secretary*."

Another telegram from the same city, of the same date, reads as follows:

"Fruit men of California practically unanimous for modification of packers' decree allow existing organizations with years of experience efficient and economical distribution to market their fruit every avenue must be kept open for our crops.

"SMALL LAND CO."

Another telegram from Visalia, dated the same date, September 17, reads as follows:

"Protect California fruit crops, modify packers' decree, permit experienced distributing concerns continue marketing of our stock. Markets should be available for increased production. Hold overs must not occur as past season.

"W. J. FULGHAM."

And another from Visalia, as follows:

"Coming peach growers of California earnestly request change in packer decree allowing distributing organizations to handle our products. We are

approaching a period of greatly increased production and need all possible outlets for our goods to avoid financial disaster.

"J. K. TUTTLE."

Senator SHORTRIDGE. And I received also two letters from Mr. Vernon Campbell. The first one I have before me is dated October 26, 1921, and the other is a little earlier—October 20. And in one or the other, or in both, there were inclosed printed matters which I have here, and which, of course, I am glad to leave with the committee, as it may serve some purpose.

The CHAIRMAN. I think the printed matter, Senator, is in our files. I do not think it is in the record of this public hearing, however.

Senator SHORTRIDGE. Well, I will read these letters, and if you wish I will place this printed matter in the record.

The CHAIRMAN. It may go in if you wish. Just as you see fit, Senator.

Senator SHORTRIDGE. Very well. I think it is only fair, of course, to put it in. But I am not here in any other attitude than to present the information which comes to me. I will put it in the record. Now, this letter of October 26, I don't know whether that has been read or not. It is from Mr. Vernon Campbell.

The CHAIRMAN. I don't know whether that letter has been read at all.

Senator SHORTRIDGE. It is brief, and probably it will be helpful. He addresses me from San Jose, as follows:

OCTOBER 26, 1921.

Senator SAMUEL M. SHORTRIDGE,
United States Senate.

DEAR SIR: I am a California farmer organization leader. Been at it many years, most of my life, and believe I know what I'm talking about. The subject discussed in inclosures is live, vital, and may require your official attention any moment.

The sore spot in our social structure is distribution. We continue to use the ox cart when a steam railway is needed.

The producers now have a modern piece of machinery under Government control, but "special interests" are moving heaven and earth to prevent our use of it.

Good Lord, if this country could save the billions that are wasted and extracted from the people through the present so-called system of distribution, which is an uncoordinated, hit and miss, unintelligent, go as you please, hold-up game, we would not need to worry about the cost of freight, the wages of railroad workers, the cost of armaments, or the need of good roads. There would be more money than anybody would know what to do with, at least until Henry increased his fliver factory and output sufficiently to absorb the surplus cash.

Yours truly,

VERNON CAMPBELL.

(The inclosures in Mr. Campbell's letter are as follows:)

CALIFORNIA COOPERATIVE CANNERIES,
SAN JOSE, CALIF., *October 20, 1921.*

GENTLEMEN: For more than a year past, in fact ever since the issuance of the so-called "Packers' decree," I have been urging the Government to amend it or set it aside entirely. As spokesman for a large number of canners, producers' organizations, and others, I urge your assistance.

We want the decree set aside or modified so as to allow the packers to again handle canners' and farmers' products. I inclose a copy of a resolution passed by the Western Canners' Association, which includes practically all of the canners in 16 of the Middle Western States, also copies of recent editorials appearing in the Canner and the Canning Trade. I am also inclosing a copy of a general notice sent out by the Attorney General's office.

The department is beginning to realize that a great injustice has been done to the canners, farmers, and consumers; that the wholesale grocers "put one over" on the public and now have a monopoly. The wholesale grocers are deadly enemies of the mail-order houses, chain stores, packers, and any other agency that tends to shorten the distance between the producer and consumer. Through the Wholesale Grocers' Association, which is practically a trust, the wholesale grocers are exerting all the power of their wealth and influence to prevent

modification. They are bombarding Members of the House and Senate with wires and letters, and are doing their utmost to influence the Attorney General and other cabinet members.

This matter will be decided shortly—there is no time to be lost. Write Attorney General Harry M. Daugherty, requesting a modification of the decree. I also urge you to draw up a petition and have a large number of farmers and others sign immediately and mail to the Attorney General. Write at once also to your Congressman and Senators, stating your views in the strongest terms.

Yours truly,

VEENON CAMPBELL.

P. S.—Read the inclosed printed statement. I have briefly outlined the facts. I have also inclosed clippings and copies of communications which are interesting.

Address any communication intended for me care Powhatan Hotel, Washington, D. C.

OCTOBER 21, 1921.

HUGH J. HUGHES,

Director of Markets, Department of Agriculture, St. Paul, Minn.

MY DEAR MR. HUGHES: I am the manager of a farmers' large cooperative organization in California. Having found some of the meat packers were giving us good service in distribution of California products, both in this and foreign countries, we protested heartily against the so-called "Packers' consent decree," which prohibits them from continuing their most economical and useful service.

The world has made great strides in the arts of production, manufacture, and transportation, but is worse than 5,000 years behind in the art of distribution, for in early times the producer bartered directly with the consumer in disposing of his products; no intermediaries were necessary.

Almost half of our productive energy is wasted in distribution, as has been shown by numerous investigations covering this subject and as both the labor inquiry and the joint agriculture inquiry commissions lately reported. The cost of distribution under present uncoordinated and unintelligent methods is enormous.

The handling of food is controlled by three great trade combinations:

First, agents, brokers, and commission men who are organized in local, State, and national associations.

Second, dealers, jobbers, and wholesalers who are organized in local, State, and national associations.

Third, retail dealers and small distributors who are organized in local, State, and national associations.

These factors constitute what is commonly called the regular channel of trade. Any method or system which has for its purpose the elimination of the speculation, waste, extravagance, and extortion of the present uneconomical methods is resisted by these combinations to the utmost. These organizations do not hesitate to employ the boycott and other intimidating methods against any person or corporation which does not submit to their rules and regulations.

It seems ridiculous that any set of men could bring themselves to believe that under the Constitution of the United States any person or corporation can legally be prohibited from engaging in a trade or business of any nature whatsoever that anyone else is allowed to engage in. Wholesale grocers are simply endeavoring to eliminate a number of strong competitors, and they are entirely to blame for that feature of the decree relating to the distribution of foods other than meat products. They should realize that the decree is unconstitutional on the face of it and would be so declared by the Supreme Court of the United States if ever tried out.

Packers have already agreed with some of the producers to handle their products on a commission basis; the cost of handling to be determined by the Secretary of Agriculture and a very small percentage on the turnover charged for the service; thus the producer, canner, and food manufacturer would have some say as to the price received for products. Speculation of other factors would be eliminated or greatly reduced through the competition of the producers selling through the packer distributing system. This is a result greatly to be desired by all those interested in obtaining a fair price for the producer and in reducing the cost of living to the consumer. The packer

distributing facilities are now under the control of the Secretary of Agriculture, and we are very anxious to immediately take advantage of this system for the distribution of our products.

The public can by the use of the meat packers of the country once and for all time break down the present "artificial restraints in trade" exercised by the present system of distribution. The producers' organizations will insist and the Secretary of Agriculture can rule that there shall be no "discrimination in trade" that the packers shall sell meat and all other foods to any and all persons at one price regardless of trade affiliations, that all who offer to buy for cash may buy on equal terms, prices, and conditions.

This will give the producers' organizations and the consumers the use of not only the Big Five, but of all the meat packers of the United States as national public markets. These markets could, of course, handle and sell only in original-package lots, such as a crate, box, sack, or barrel.

Whenever "service" through the "regular channel of trade" becomes burdensome to the public there will be a place where the consumer can buy direct from the producer.

We trust you will get squarely behind us on this proposition in the same way Mr. Maddox, State market director of California, has already done.

Yours very truly,

VERNON CAMPBELL.

P. S.—I am taking the liberty of inclosing a copy of a letter which I have sent to our canner friends.

THE WHOLESALE GROCERS' "COMBINE" USED THE GOVERNMENT TO ELIMINATE THEIR ONLY REAL COMPETITORS AND "PUT ONE OVER" ON THE GENERAL PUBLIC—THEY REFER TO THE DECREE AS THEIR "VICTORY" OVER THE PACKERS.

The so-called "Packers' consent decree" has forced the packers to discontinue handling all foods except meat and dairy products, thus depriving farmers, canners, and others of one of their best outlets. It is universally admitted that the packers have a most efficient and economical system of distribution, which is world-wide.

FOREIGN MARKETS DESTROYED BY DECREE.

Not only does the decree prevent the packers from distributing these foods in this country, but it also prohibits them from exporting. They have branches throughout all the principal countries of the world. They are the only concerns in this country which have built up adequate foreign food-marketing facilities. They were rapidly developing markets for canned goods and other American food products throughout the entire world. By this decree they are absolutely prohibited from continuing this export business. Thus canners, farmers, and business generally are being made to suffer through the loss of these export facilities at the very time when the country is clamoring for foreign markets.

DOMESTIC MARKETS NOW CONTROLLED BY WHOLESALERS' COMBINATION.

The five large packers have over 1,200 branch houses located in the principal towns and cities of the United States. They have also route cars which serve some 37,000 points in this country, which means practically every town and hamlet of the United States. By this decree producers and consumers have been deprived of the most complete and effective system of distribution ever devised. The wholesalers now have a monopoly. They are thoroughly organized. There is now no competition, for the packers were the only real competitors the wholesale grocers ever had.

ECONOMIC DISTRIBUTION NEEDED.

During these most difficult times through which we are passing the country needs every available effective and economical means for the domestic and foreign distribution of foods. The most crying need in this country to-day is for intelligent and economical methods of distribution. Why should the wholesale grocers' associations be allowed to befuddle the issue, deceive the Government and use it to eliminate their competitors in order to continue their control of the Nation's food supply?

CANNERS AND GENERAL PUBLIC SHOULD DEMAND USE OF PACKERS' DISTRIBUTING FACILITIES.

The packers' competition in buying tended to increase the price to the canner and producer, while their competition in selling tended to lower the price to the consumer. The packers' policy is to handle a large volume on a small margin of profit, thus reducing the cost of distribution. By depriving the packers of their right to distribute all classes of food the volume of their business is reduced, thus increasing the cost of distributing their meat products. This additional cost must be borne by the live-stock producers and the consumer. In the interest of the general public those concerns should not only be permitted and encouraged but the public should demand that they handle a full and complete line of foods to the end that profiteering and the impossible cost and waste of distribution, now borne by the people, may be reduced.

DECREE INTERFERES WITH THE ADMINISTRATION OF THE LAW.

The National Wholesale Grocers' Association charged that the packers had undue advantages in the transportation of canned goods and other products by reason of their private-car equipment and route-car system. By a recent decision the Interstate Commerce Commission, after lengthy hearings and thorough investigation, has held that the packers had no such undue advantages as charged by the wholesale grocers.

The decree makes no charge of monopoly; none has ever been proved. Had there been any reason for the issuance of this decree such reason does not now exist, because Congress has passed a law which places the control and guidance of the entire meat-packing industry, including some 200 concerns, in the hands of the Secretary of Agriculture. The entire decree should be set aside if for no other reason than to enable the Secretary of Agriculture to properly administer the law. Furthermore, the people of this country are absolutely opposed to government by consent decrees. Congress is our legislative body, not the courts.

VERNON CAMPBELL.

OCTOBER 20, 1921.

RESOLUTION.

The Western Canners' Association, in a special session at Chicago, Ill., on Monday, October 3, 1921, unanimously adopted the following resolution:

Whereas the course of canned food distribution has been radically disturbed, and serious loss has accrued to the growers of canning crops, to the canners, and to the entire consuming public as a result of the so-called consent decree restraining the meat packers from handling food products other than meat products; and

Whereas the effect of said decree is seemingly to forever limit and restrict distributive processes, and create monopoly rather than allow the free play of competition; and

Whereas the rationing of the people with the maximum of economy is now and will ever be a dominant need; and

Whereas sound public economy should require and enforce rather than restrict the use of any agency or facility for the economic distribution of foods: Therefore be it

Resolved, That this association indorse the action, which it is understood the Department of Justice contemplates taking, looking to the modification or withdrawal of said decree to the end that canned food distribution may again proceed with unrestricted competition and in conformity with American ideals of business and progress; and

Be it further resolved, That a copy of this resolution be transmitted by wire to the Attorney General, and that request be made that if hearings are held a committee of this association be permitted to be heard.

RESOLUTION.

JACKSON, MICH., June 25, 1921.

The National Kraut Packers' Association in convention assembled at Toledo, Ohio, on June 8, 1921, adopted the following resolution:

Whereas it is self-evident that if the Big Five meat packers are brought under Federal control, as now being proposed in Congress, their handling of the so-called unrelated lines, from the marketing of which they are now forbidden, will not be a menace to trade but of material benefit;

Whereas the members of the National Kraut Packers' Association represent the majority of the manufacturers and canners of kraut of the United States who have heretofore marketed a material part of their product through the Big Five meat packers;

Whereas the meat packers, through their efficient and economic distribution covering retail trade not generally reached by other distributing agencies, particularly retail meat markets where the public are accustomed to purchase kraut;

Whereas, prior to the meat packers being restricted from the handling of unrelated lines a liberal quantity of kraut was sold them as "futures," helping thereby to stabilize production and the market;

Whereas this year very little, if any, kraut has been sold as "futures" and production materially curtailed;

Whereas an increase in the market for and the consumption of kraut would stimulate the growing of cabbage and broaden the farmer's market;

Resolved, That the decree imposed upon the Big Five packers against handling unrelated lines should be removed, and that copies of this resolution shall be sent to the congressional Representatives and Senators of the districts in which our members are located.

THE NATIONAL KRAUT PACKERS' ASSOCIATION,
By WILLIAM H. KNOX, *Secretary*.

Quoting from letter received July 2 from Harry P. Strasbaugh, president National Canners' Association, he says that from this observation the decree has been disastrous to the interests of the fruit and vegetable canners of the United States, and, continuing, says:

"I understand this decree has seriously affected the distribution of some varieties of canned fruits so far as export is concerned, and I am sure from the present existing conditions has materially lessened the distribution of canned fruits and vegetables during the past 12 months.

"In view of the fact that the packers will be regulated by the bill which is now practically through Congress, it would certainly seem unnecessary to have further regulation governing their operations under the present decree, and for these reasons I bespeak your cooperation."

The following reprints of duplicate communications received from the senders by me are fair samples of numerous wires and letters that are being sent by interested people every day:

Hon. H. M. DAUGHERTY,
Attorney General, Washington, D. C.

DEAR SIR: I am engaged in the retail business through the operation of 80 chain stores to the extent of several million dollars annually, and I have given the matter some thought and believe I have apprised myself of the facts pretty thoroughly, and I want to go on record as stating that this corporation is heartily in favor of the modification of the decree. * * *

I have come in contact with both wholesale grocers and packers in the past 10 years to a large extent, and the packers' methods of doing business have been the ones that appealed to me, because they know what they are doing, and the other fellows have been guessing at it most of the time.

Certainly in a time like this the most direct method of food distribution can not be decried by anybody who wants to give full assistance toward getting the country back to a normal condition.

A modification of the packers' consent decree is not only fair and just at this time, but a step toward further reconstruction.

FEDERAL GROCER CO.,
J. A. DALEY, *President*.

[Telegram.]

CALIFORNIA, September 19, 1921.

Hon. H. C. WALLACE,
Secretary of Agriculture;

Hon. H. M. DAUGHERTY,
United States Attorney General, Washington, D. C.:

This office interested solely protecting interests producers of food products and consumers thereof. Producers of dried and canned California fruits facing

serious problems marketing, owing increased production requiring every possible channel of trade this country and throughout world. The efficient and economical system distribution established by packers should afford great relief and assistance in working out their problems. We read in Republican platform that party believe in the right of producers to form cooperative associations for marketing their products and protection against discrimination, hence we feel that modification of the packer decree permitting them to market fruits while under Federal jurisdiction or supervision would be of great benefit to producers this State.

H. S. MADDOX,
State Market Director.

[Telegram.]

CALIFORNIA, September 16, 1921.

Hon. H. M. DAUGHERTY,
Attorney General, Washington, D. C.:

As chairman of the State legislative committee of the Farmers' Educational and Cooperative Union of America, of California, and as an extensive fruit grower vitally interested in cooperative marketing, I am sending you this telegram earnestly urging upon your consideration the necessity of modifying the decree regarding the handling of canned fruit by the meat packers. In my opinion there is nothing that could be done that would be so beneficial to the fruit growers as this modification and at the same time it would result in lower prices to the consumer. The Farmers' Union stands irrevocably for the policy that returns a fair price to the producer and a reasonable one to the consumer.

L. WOODARD,
Chairman State Legislative Committee, Farmers' Union.

[Telegram.]

Hon. H. M. DAUGHERTY,
Attorney General, Department of Justice, Washington, D. C.:

Cooperative fruit interests of California undoubtedly favor modification of packers' decree, which will mean more economical and large distribution of fruit products. The tremendous gain in horticultural products of California foreshadowed for the future will necessitate use of every economical method of distribution. Packers' participation prevents monopoly.

PACIFIC RURAL PRESS.

[Editorial from The Canning Trade, September 26, 1921, A. I. Judge, editor.]

Will the customer be benefited? When the Government was asked to ease down on the consent decree against the five big meat packers, and permit them to again reenter the distributing field, the answer was made that if it were for the benefit of the consumers it might be done. As a shining example of political tomfoolery, we recommend that. The reason these big meat packers were driven out of the distributing business by the wholesale grocers was because they, the meat packers, could distribute food products more cheaply and efficiently than could the jobbers or wholesalers. If the dear consumer had been considered for one single moment, which of the two distributors would have been chosen as the consumers' friend? And the crass nonsense of this whole enactment is only equalled by the claim of the wholesale grocers that the meat packers had no right to be engaged in the handling of other products than meats as produced by slaughter. Picture the wholesale grocer, who handles every commodity under the sun in addition to groceries or foods, from tooth-picks to pianos, telling the lawmakers that the meat packers have no right to handle other than meat products. And the lawmakers harkened to them and complied. Ye gods and little fishes, in all the annals of recorded history can you find its equal? And yet in this day the Attorney General asks if the public will be served. "When ignorance is bliss it is folly to be wise."

[Extracts from editorials from *The Canner*, October 8, 1921, James I. Mulligan, editor.]

CANNERS' ATTITUDE ON "CONSENT DECREE."

Canners favor the wiping out of the "consent decree" by which the Chicago meat packers quit buying and distributing canned foods because they are convinced that the elimination of this big buying power and its extensive machinery for economical distribution narrowed the outlet for canned foods, thereby widening the gap between the packer and the people who consume the packer's products.

Canners feel that the industry would not have experienced such acute depression had the meat packers been actively buying and as actively distributing canned foods, and advertising them in the domestic market and exporting them to foreign countries.

They feel that with more competition at both the buying and wholesaling ends of the business canned foods would cost the retailer and likewise the consumer less, and therefore that consumption would increase.

The canner wants larger demand for canned foods and believes that more economical methods of distribution would bring it about.

And he does not take much stock in the idea that the meat packers are going to monopolize either the canning of foods or their distribution. He doesn't believe at all that the reentry of the Big Five in the canned goods business will put the jobbers out of business. He does not want anything of the kind to happen.

It is suspected that Attorney General Daugherty isn't very popular among the grocery jobbers.

Great indignation, if we are to judge by reports from New York, is felt by wholesale grocers because of a prospect that the Government will modify the famous "consent agreement" and permit the Big Five, or the "Chicago crowd," to reenter the canned-foods business. Perhaps the jobbers understand this year how the Big Five felt last year.

[Extract from statement by Congressman Sidney Y. Anderson.]

When the consumer spends a dollar, here is where it goes, according to an analysis made by Representative Sidney Y. Anderson, chairman of the Joint Congressional Committee on agricultural Inquiry: Cost of production, 37 cents; for profit, 14 cents; for service, 49 cents.

According to Representative Anderson's calculations, service includes packing, transportation, selling expenses, insurance, rent, wages, and overhead. Representative Anderson thinks that while some of this is necessary, there must be something wrong with a system that charges one-third more to get commodities to the consumer than it costs to produce them. He figures that this big service charge will dwindle by moving consumers closer to producers, building factories nearer the farms and mines, and with farmers cooperating in organizations as other business men do.

[From the *Christian Science Monitor*, October 4, 1921.]

THE GROCERS AND THE PUBLIC.

The public was told and reassured during the months in which the wholesale grocers of the United States, through their organizations, were fighting their battle against the packers that the denial to the packers of the privilege of transporting other than the legitimate products of their own plants in their privately-owned refrigerator cars was necessary in order to prevent the monopolization of the Nation's food supply. So convincingly was this insisted upon that it was not at all surprising, when the so-called packer consent decree was entered in the District Supreme Court at Washington, that provision was made that from the time when it was to become effective the packers were to be precluded from transporting groceries, fruits, or any kind of foodstuffs except those which could be clearly defined as the products of the packing plants. The decree as it now stands seeks to prevent the packers from dealing in any and all kinds of food products, no matter what their origin or source, except those allied

with the meat industry. It was at first attempted simply to make it impossible for the packers, because of their improved methods of transportation, to gain an advantage over their competitors who dealt in the same kind of commodities. In other words, the wholesale grocers sought to deny to the packer the right when shipping a consignment of the products of his plant from Chicago to New Orleans, for instance, to include in the consignment, for shipment in the same car, such articles as apples, raisins, oatmeal, pickles, or any other staples or perishable articles which could not be classed as plant products.

No doubt some satisfaction was felt among the people generally because of what they regarded as a wise provision against the building up of something which they were told was becoming a dangerous monopoly. It was not made exactly clear why two monopolies which seek control of the same class of commodities were more to be shunned than one. It might be asked, now that there is a prospect that the so-called consent decree will be amended as a result of the appeal of the fruit growers in the western States, just what equities the grocers have which the public is bound to consider or protect. The question involved in the reconsideration of the terms of the consent decree is one in which the burden of proof is, or should be, on the grocers to show wherein their asserted rights are greater than the rights of the public. The fact is established that the grocers, wholesalers, jobbers, and retailers, have contributed little to the solution of the problems of readjustment, even under the stimulus of the paternal provisions of the consent decree, the provisions of which they now insist shall be perpetuated. The grocers admit that under the operation of the transportation system, which they had supposed was to be done away with, the tendency was more and more to eliminate the middlemen. The people had been told that this condition, if continued, would eventually place the control of the bulk of the distribution of foodstuffs under the control of the packers. But even conceding this result, the grocers have failed to show that the public would be at a greater disadvantage than at present. It has not been proved, as has been said, that one monopoly can be more grasping than two, although the general supposition is that it can be, provided its control of a given commodity is complete.

On the other hand, there is a general conviction that so long as competition can be maintained in the selling and distribution of foodstuffs, the better chance the consumer will have to buy at somewhere near a fair market price. It may be said that the mere assumption that continued carrying of some commodities, such as fresh and canned fruits, in the refrigerator cars operated by the packers will destroy competition and give the packers a monopoly that these cars, after carrying consignments from the Chicago, Kansas City, or Omaha plants of the packers to the Pacific coast, can transport fruit on the return trip more economically than that fruit can be carried by another method. The burden of proof in the present instance, is not upon the packer, the fruit grower, or the ultimate consumer to show affirmatively what benefits would accrue to the public by the revision of the terms of the decree. It is, rather, upon the allied grocer organizations to show, and that conclusively, wherein they are able to establish equities which must be considered.

Senator SHORTRIDGE. Gentlemen, I have now performed what I deemed to be my duty, and I thank you very much.

The CHAIRMAN. Thank you very much, Senator for coming here.

Mr. Hewitt, we desire to ask you a few questions. I think, and then we will suspend.

Senator SHORTRIDGE. Mr. Chairman, before I leave, when your reporter is through with those various letters and telegrams, will you have the kindness to have them returned to me?

The CHAIRMAN. They will be returned to you, Senator.

STATEMENT OF JAMES HEWITT—Resumed.

The CHAIRMAN. Mr. Hewitt, a few moments ago you spoke of the profits of the distributors. Can you tell us approximately what, in addition to those profits, the distributor has to charge for the services which he renders? How many cents on the dollar? As near, approximately, as you can?

Mr. HEWITT. Repeat that question.

(The reporter read the question propounded by the chairman, as above recorded.)

Mr. HEWITT. Why, we have nothing to charge.

The CHAIRMAN. Well, you charge something for your service in distributing this?

Mr. HEWITT. Yes; a wholesale grocery house, an ordinary wholesale grocery house. Our firm, for instance, is not an incorporated firm; it is a partnership. We have employees. We have stores, and as partners we have salaries. Is that what you mean? Is that what you want to get at?

The CHAIRMAN. No; what I want to get at is how much or how great a part of every dollar that the retailer pays for goods goes to the wholesale grocers, either for service rendered or profit?

Mr. HEWITT. Why, 2 cents.

The CHAIRMAN. That covers the service and profits both?

Mr. HEWITT. Yes.

The CHAIRMAN. That is what I tried to get at.

Mr. SMITH. No; he wants to know the gross expense.

Mr. HEWITT. Oh; the gross profits?

Mr. SMITH. Yes.

Mr. HEWITT. I beg your pardon.

The CHAIRMAN. That is all right. We want to understand each other; that is all.

Mr. HEWITT. Well, it varies, of course, in different sections. I should say the gross profit in the section that I represent, under the present conditions, is about 10½ cents on the dollar.

The CHAIRMAN. And of that about 2 cents is for net profit?

Mr. HEWITT. Net profit; yes.

The CHAIRMAN. Mr. Hewitt, what advantages, in your opinion, has the meat packer over the wholesale grocer in the distribution of groceries and the so-called unrelated lines?

Mr. HEWITT. Well, the advantages might be his huge capital condensed into the hands of a few men as it is. As far as distribution is concerned of that capital, his advantages are largely in the methods of special transportation that he did enjoy before this decree was given, in being able to put into his meat cars unrelated merchandise that did not require refrigeration. Also special deliveries on special trains of meats which would also include this unrelated merchandise, when a wholesale grocer could not do it. Those conditions affected primarily the Chicago markets rather than the Pennsylvania markets.

The CHAIRMAN. Then, you would say that his principal advantage is the capital, the large capital which he has, together with separate transportation facilities?

Mr. HEWITT. Yes; and the danger of that large capital putting the business of food supplies of the United States into the hands of four or five is that the final analysis of the thing would be higher food prices to the consuming public.

The CHAIRMAN. Do you fear that the packer, if permitted to resume the handling of these lines, will acquire a monopoly of those?

Mr. HEWITT. I certainly do.

The CHAIRMAN. And what is that fear based upon?

Mr. HEWITT. By observing the operations of the meat packers in the past. We recollect in earlier times the formation of the meat packers; it was the gradual absorption of one and another until the survival of the fittest has arrived.

The CHAIRMAN. You mean their activities with respect to meat?

Mr. HEWITT. Yes.

The CHAIRMAN. Do you know, as a matter of fact, whether or not the packers had acquired control to any extent in these unrelated lines prior to the decree?

Mr. HEWITT. Prior to the decree?

The CHAIRMAN. Yes.

Mr. HEWITT. They were rapidly doing it. They had begun it. There was the rice business, which has been referred to. They were acquiring and have acquired the control practically of the cheese distribution. Recently, just prior to the issuing of the decree, they had gone into the packing of cereals, under the name of the Armour Grain Co.

Mr. CHAIRMAN. Do you know what proportion of any of these commodities they handled?

Mr. HEWITT. Not personally; I do not. I have heard that they handle of the cheese business now about 52 per cent—more than half.

The CHAIRMAN. That is not covered by the decree, the cheese business, is not?

Mr. HEWITT. No. I am merely using that as an illustration, Mr. Chairman.

The CHAIRMAN. Yes. Do you know what percentage they had acquired on any of these other businesses?

Mr. HEWITT. No; I do not. I only know that it was an increasing percentage of business—that is, was rapidly growing. The whole tendency of the operation of the packers was to eventually get control of that distribution in which they were at that time specially interested.

The CHAIRMAN. Do you know of any unfair practices or acts on the part of the packers that were responsible for their increasing percentages in these lines?

Mr. HEWITT. Not personally, but I believe there are gentlemen in this room that can give you illustrations of that kind.

The CHAIRMAN. We are interested in that, you know. I believe that is all I care to ask.

Judge HAINER. Can you state what per cent of the grocery business the packers handled at the time this decree was entered?

Mr. HEWITT. No; I have not the figures before me, Judge. I could not answer that clearly.

Judge HAINER. Well, did it exceed 5 per cent of the total business of the country?

Mr. HEWITT. As I understand it, 5 per cent of their total business, which was around about four billions of dollars, would mean about two hundred millions of dollars worth of business, as I have understood it.

Judge HAINER. You would not consider that as a monopoly or danger at that point, would you? It is the fear of the future?

Mr. HEWITT. It is the growth of the thing now. What it would mean when it continued to grow and that two hundred millions of dollars was being absorbed in particular lines, like the canned-fruit line, which has been specially mentioned.

Judge HAINER. Do you think that the five big packers should manufacture and handle the meat products?

Mr. HEWITT. That they should?

Judge HAINER. Should they continue to handle and manufacture any meat products, and distribute them?

Mr. HEWITT. Yes; that is their business. I do not see why they should not. That is their business, in which they have been brought up. They know it.

Judge HAINER. Do you know the number of meat packers in the country? That is, independent meat packers, including the Big Five?

Mr. HEWITT. I have understood there were about 1,200 or 1,500. Maybe I am wrong, but that is what I have understood.

Judge HAINER. Do any of the independent packers handle grocery lines?

Mr. HEWITT. I do not know whether they do or not. It has never come to my attention. I don't think they do.

Mr. BREED. I don't want to inject myself into the record, but I would ask Mr. Hewitt if he meant from 1,200 to 1,500, or 120 to 150?

Judge HAINER. He said 1,200.

Mr. BREED. Well, I wanted to ask him if he meant that or 120 to 150?

Mr. HEWITT. Well, I don't know, but I say, Mr. Breed, that I thought there were that many. I might be wrong. I don't know.

Mr. BREED. Did you mean 1,200 to 1,500 or 120 to 150?

Mr. HEWITT. Well, it might be that, I don't know, of independent meat packers. I don't know. I merely ventured a guess on that. I might be far out of the way.

Mr. BREED. About 1,000 per cent.

Mr. HEWITT. Well, I don't know.

The CHAIRMAN. Mr. Hewitt, what would be your position upon the question of modifying this decree so as to permit the meat packers to handle the unrelated lines only on a commission basis without ever buying the wholesale groceries?

Mr. HEWITT. Why, I think it would be a bad practice, Mr. Chairman.

The CHAIRMAN. And why?

Mr. HEWITT. I believe it would be—well, it would mean the elimination of the wholesale grocer. I believe that that would not be a good thing for the consuming public. It would mean the eventual control of the food supplies in the hands of a few men. The commission charged, judging from some thing that I read, in the way of the charges of commission merchants—the charge of commission might cover quite a multitude of things which would not be closely the inspection of daylight. After all a commission, even if it is a small

commission, could not be much smaller than the commission which is already earned by the distribution through the wholesale grocer.

Judge HAINER. Mr. Hewitt, do you think that any company or corporation should be prohibited from exporting food products of this country?

Mr. HEWITT. No; I am interested to see that the exports grow and increase. Probably something could be done along that line. Already that exporting of food products is being done.

Judge HAINER. This decree prohibits the five meat packers from exporting these food products or unrelated lines, does it not?

Mr. HEWITT. Yes. Well, I think exporters of food products like the prune and apricot growers or the California Packing Corporation could answer that question more intelligently than I could, Judge.

Judge HAINER. Well, do you think the five packers should be prohibited from exporting these food products?

Mr. HEWITT. I think it could be done. They have got the machinery for it.

Judge HAINER. What is the wholesale price of groceries as compared with prewar prices? Have they come down any at this time?

Mr. HEWITT. Yes; they have come down. I should think that the present prices of wholesale groceries, as compared with prewar prices, is probably 20 per cent.

Judge HAINER. Is there any concert of action among the wholesale grocers over the country to keep up the price of groceries?

Mr. HEWITT. Not at all, not at all, Judge. It would not be possible to do it.

Judge HAINER. You understand there is a great deal of complaint that the high prices prevailing for groceries—

Mr. HEWITT (interposing). The wholesale grocer took his loss right away. It meant many thousands of dollars. The retail grocer naturally has been somewhat slower in reducing his prices. But food products are certainly 35 per cent lower than they were a year or two years ago.

The CHAIRMAN. Mr. Hewitt, has the number of wholesale grocers in the United States in the period just prior to the entry of the decree increased or decreased?

Mr. HEWITT. I could not say. I imagine there has been a healthy increase.

The CHAIRMAN. In the number of wholesale grocers?

Mr. HEWITT. Yes.

The CHAIRMAN. What about the gross business of the wholesale grocers in the period just prior to the entry of the decree? Was it increasing or decreasing?

Mr. HEWITT. Prior to the entry of the decree, do you mean, Mr. Chairman?

The CHAIRMAN. Yes; prior to the entry of the decree.

Mr. HEWITT. Why, it certainly was not a declining business. I should say it was a healthy and gradually increasing business.

The CHAIRMAN. That is all. Are there any further questions that are suggested?

Mr. S. M. JANNEY (Fredericksburg, Pa.). If you would allow me to suggest there, Mr. Chairman, it would be hard to answer, because at that time the prices were very high, and we always figure our volume of business on the amount of money we carry, not the amount of goods we carry.

Judge HAINER. Mr. Hewitt, at this time there are over 5,000 wholesale grocers in the country, are there not?

Mr. HEWITT. Yes; approximately that.

Judge HAINER. Taking the finding of the Interstate Commerce Commission, it was stated that there were over 5,000.

Mr. HEWITT. Yes.

Judge HAINER. What has been the increase in the number of grocers in the past two or three years over the country?

Mr. HEWITT. Retail grocers?

Judge HAINER. No; wholesale grocers.

Mr. HEWITT. I do not believe there are any records to show that, Judge. I have never seen any records to be able to answer that question.

The CHAIRMAN. Does anyone else have any suggestions, any questions they wish to ask?

Mr. Bree'l, have you any questions you wish to suggest?

Mr. BREED. Mr. Crane has a suggestion.

Mr. B. D. CRANE. Mr. Chairman, a question was asked with regard to the situation comparing the situation as it is now with what it was a few years ago, and I think I can throw a little light on it.

The CHAIRMAN. Do you wish to make a statement, or do you wish to suggest a question to be asked of Mr. Hewitt?

Mr. CRANE. I can throw a little light on that.

The CHAIRMAN. Very well. Will you give your name?

Mr. CRANE. B. D. Crane, Fort Smith, Ark.

STATEMENT OF MR. B. D. CRANE, FORT SMITH, ARK.

Mr. CRANE. Mr. Chairman, I think you asked a question with regard to the situation now as compared with what it was a few years ago. The Robert Morris Institution, in Philadelphia, within the last few days has compiled very exhaustive figures regarding the business situations by groups of businesses throughout the United States and have published them within the last few days. They took the hardware situation; they took the dry goods situation; they took the food situation, and they took the combined situation of those industries up to the moment. And, with respect to the food industry, less than 2 per cent of it has reached a normal state—less than 2 per cent; I think it is 1.4 per cent. Sixty-eight per cent of the food industry of the United States is being conducted at this moment below a normal base.

The general situation of business is 60 per cent upon a normal base, taking hardware, dry goods, and groceries. But the grocery business is 68 per cent below normal, and the general average of all lines of business is 60 per cent below normal at this time.

Judge HAINER. Mr. Crane, that is the reason I asked the question. You understand that there is an almost general complaint all over the country—and I mean by that by the consumers, the housewives—that these prices are still way up. And although the price paid to the growers and the producers is very low, still the price to the consumer continues to prevail far above normal prices. Whether the retailer is to blame or whether the wholesalers are to blame is a question. What is the suggestion that you have to make with regard to that condition that exists?

Mr. CRANE. Well, sir, there is more complaint about food than anything else because you buy food ten times as often as you buy anything else, and therefore food offers more of opportunity for complaint to be made. The Department of Agriculture published figures from time to time, and the figures, as published by the Department of Agriculture, will prove, don't you see, the inaccuracy of the average statement with regard to foods not coming down.

The CHAIRMAN. But, Mr. Crane, in your reference to normal and below normal you mean normal with respect to what? Prices?

Mr. CRANE. Satisfactoriness in business. Whether it is remunerative or whether it is not remunerative; whether you are doing enough business to make your living out of it or whether you are not doing enough business to make a living out of it—whether that profit is satisfactory. And I take it that if 68 per cent of the food business of the United States is being done at this time at beneath the average cost of doing business, it will not pay anything back to the man who has got his money invested in it.

The CHAIRMAN. That normal, then, would be normal with respect to the business question?

Mr. CRANE. Carrying it back to 1913, which was not a time of extreme affluence, but it was reasonably profitable.

I did not mean to inject myself into this, except in so far as to try and answer a question that was asked, Mr. Chairman.

The CHAIRMAN. Yes.

Mr. WHITMARSH. Mr. Chairman, may I make a statement in that connection?

The CHAIRMAN. Will you give your name and your connections?

Mr. WHITMARSH. Theodore F. Whitmarsh, of Francis H. Liggett & Co., New York.

STATEMENT OF MR. THEODORE F. WHITMARSH, OF FRANCIS H. LIGGETT & CO., NEW YORK.

Mr. WHITMARSH. I had to do with the Food Administration activities during the war in the grocery line with M. Hoover, and at that time it was a very astounding thing to find in charting prices each month, as we did from month to month. We took the average retail price and the average wholesale price of foods during the war; and there was a time, when the rapid advance of foods came, that the prices of the wholesalers, the wholesale prices, went higher than

the retail prices, and as the decline comes you will find that the wholesale prices declined lower than the retail prices. If it were given in a chart, say, an inch or 2 inches in the chart of the difference in the line of prices between retail and wholesale, you will always find that in the advances the wholesale line will come up on the retail line sometimes crosses it. I have seen it cross it. And when the decline comes, the wholesale drops lower than the retail, and that comes from a question of distribution. You must understand that you can not buy pineapples in Hawaii and distribute them on Sixty-ninth Street and Fifth Avenue, New York, on the same day.

Now, during this process of distribution through the country there are many months elapsing before stocks are exhausted and before adjustments come; and the farmer, when he learns the price of his goods, and his price comes down, immediately wants to buy the goods on the same parity that his price declines, but it takes months to make that adjustment in the process of distribution. It is simply a matter of time in working that matter out.

Now, of you take the chart at the smash in prices that we had at the end of last year, when the wholesalers dumped overboard their goods and wholesalers all over the United States lost money, last year, you will find that the situation was not very satisfactory. Mr. Hewitt says 2 per cent, but it was minus maybe 5 per cent, or 4 per cent, and some wholesale grocers have lost their capital. I have seen statements in the last four or five months where they are "frozen." The wholesaler dumped immediately, and the retailer could not adjust himself to that point. And in New York City we have the situation of the chain store selling goods below the wholesale price, in competition, to stimulate trade. So that you can not judge by those facts that the wholesalers or the retailers are keeping prices up.

To be fair to them both there must be an adjustment in the process of distribution, that takes time to make; and if you will study the charts that we have had, going back 10 years, you will find that this line between the wholesale and retail prices and producers prices almost crosses at times, and it takes time for that line to gradually become normal again, as prices come to that point.

Mr. BREED. Mr. Whitmarsh, do I understand that the point that you are making is that when the producer's price goes up that in ordinary course then the wholesaler who buys those goods has to advance his price, and then the retailer advances his price?

Mr. WHITMARSH. It is not done that way.

Mr. BREED. And then when prices go down the price goes down in inverse order, and the retailer is the last man to go down?

Mr. WHITMARSH. Well, let me say this: I don't want to take up time on the matter, but I wanted to clear the atmosphere on the question of distribution. I might say, incidentally, that I am chairman of the United States Chamber of Commerce distribution division, and I have been studying this question for several years, and that is the reason that I wanted to make my statement that way.

Take, for instance, a manufacturer—let us take condensed milk. The manufacturer suddenly advances his price 50 cents a case. The jobber does not always advance his price immediately. He sells generally the stock he has got on hand at that price, or near that price, because there is so much competition in the jobbing business that he has to sell until the man has to buy again.

In turn, when the jobber sells the retailer at an advanced price I have seen the retailer still ask the old price until he bought again.

And I want to say one word in justification of the retailer, if I might do so. The retailer of this country is the small country storekeeper. And the country storekeeper of the United States, next to the farmer, is the backbone of this Nation. This Nation was brought up to get away from monopolistic ideas and favor the competitive system of merchandising, and the small grocer in this country, and the small hardware dealer, and the small storekeeper are the backbone of this Nation to-day, for without them towns and small communities could not exist.

Mr. BREED. How many retailers are there in the United States now?

Mr. WHITMARSH. I would not attempt to say at the moment, but I should say there are 300,000.

Mr. BREED. Retail grocers?

Mr. WHITMARSH. Yes; retail grocers. Three hundred thousand retail grocers, would you say?

Mr. BREED. Four hundred thousand.

Mr. WHITMARSH. Between three and four hundred thousand. It is a question. That has not been studied.

But I want to say that during the war also I found, in making investigation as to why these lines crossed as between the retailer and the wholesaler, that the retailer's habit was to price his goods when he got his invoice, and he would say, "These goods cost so much. I will retail them at so much." And he put his price on them, and he did not change that price, as a rule, until he bought again. And that, we found, was the reason for that situation. In other words, the small country merchant to-day is not like the large mail-order house, or large dealer that finds himself burdened with stock which he can reproduce for less money and immediately dumps it overboard in order to turn over and buy it again and meet competition. But the small merchant holds his goods at the last invoice price until he buys again, and then he reinvoices again.

Mr. HOFFMAN. I would like to get that matter clear.

Mr. STIX. Mr. Chairman—

The CHAIRMAN. Well, Mr. Hoffman, I think, has a question to ask, and then after he is through you may ask, Mr. Stix.

Mr. HOFFMAN. I wanted not so much to ask a question as to make something clear to the committee. When you say "dump his stock overboard" you mean to sacrifice it at a reduced price, Mr. Whitmarsh?

Mr. WHITMARSH. Lose money on it, yes; selling at a loss, which is good merchandising, in order to buy again in order to be sure that your stock is on a good basis. That is what we all did as wholesale grocers in the last 9 or 10 months. We simply dumped our stock overboard.

Mr. HOFFMAN. I want to make that statement clear, because during the war I served on several food committees, and we had complaints from certain laymen's organizations that certain articles, such as potatoes, etc., were allowed to become worthless or were dumped in the river to keep up the price, and on investigation it was found almost invariably that it was stuff that was frozen in transit and was not fit to feed to the hogs, and so it had to be destroyed.

Mr. WHITMARSH. May I make one further statement at this point, Mr. Chairman? Mr. Hewitt says that the expense of doing business, in the wholesale grocery business, is 10½ cents on the dollar. Let it go at that. In different parts of the country it is different. Harvard University has issued a complete study of the situation, and you gentlemen can get it there. But when you say 10 per cent, and 2 per cent, which is the average net profit, in that 10 per cent. I want to bring out the question of distribution to you for a moment. There is freight, there is labor, there is cartage—most all of those functions have to be performed by somebody. There is a very small fraction of a per cent that anybody might criticize in the course of the wholesale grocer doing business.

And then with regard to the point of the purchasing power of big monopolistic enterprises. In purchasing a crop or a big lot of goods they can, of course, by speculative conditions raise the price or lower the price at will, while 4,000 wholesale grocers in the United States, all acting independently, can not do that. I am an ex-president of the National Wholesale Grocers' Association; I have been on its executive committee for years, and I never heard a question mentioned among us except the highest ideals and motives for operating conditions, and sticking strictly to what the Sherman Act and the antitrust act meant. And that is one point I want to bring out.

If you get four or five men with a large amount of money enabled to go into a market and buy and control an article, we are just really, gentlemen, going against what we have set up in this country as our standard. We in this country are against monopolistic conditions, and we stand for simply the competitive system of merchandising, and the competitive system of merchandising can only be obtained by having tremendous competition among a large number of men that are not related to each other in any way.

The CHAIRMAN. Mr. Stix.

STATEMENT OF MR. SYLVAN L. STIX, SEEMAN BROS. (INC.), NEW YORK CITY.

Mr. STIX. I want to bring out one fact in regard to what Mr. Whitmarsh has stated. He described very accurately the usual process of inflation and deflation as far as the wholesale business was concerned. I want to bring out the further fact that the usual situation was strengthened, was made more important here in this recent deflation through the fact that during the war this

country was very correctly under a food administration. The food interests of this country helped win the war by voluntarily going under a system of distribution which might be considered against all economic principles, but which fortunately helped tremendously in holding the prices of foods down during the war period so that the people of this country were satisfied. We had to do the crazy stunt of selling goods, at times, for half what we could buy them at, simply because we owned them at the lower figure.

When the war broke out and the Food Administration was installed, many of us had goods that were worth a dollar that we could not replace under \$2. We had goods that we had bought at a dollar which we could not repurchase under \$2.

Mr. SMITH. You mean goods that were worth on the market \$2?

Mr. STIX. Yes; they were worth on the market \$2. In buying them from the producer at the time it would have cost us \$2 if we were going to replace them. Under the Food Administration we were under obligation, and we were glad to cooperate with the Government and to merchandise those goods not on a basis of replacement value but on a basis, of course, at the normal margin of profit that we made in pre-war times, which was probably around 12½ per cent.

Mr. BREED. Gross?

Mr. STIX. Gross.

Mr. WHITMARSH. Don't mix them up. You are talking about New York City. Mr. Hewitt says 10½.

Mr. STIX. I am speaking of New York. I will acknowledge that in other sections of the country the gross profits are less. The expense of doing business in other sections of the country are less. But I will say this, that I don't think the net profit in any section of the country varies very much. I think we are all of us pretty fortunate to get the 2 per cent net, no matter where we do business.

Now, that same condition that I am describing applies to the retailer. He also was under obligation, not to use his own judgment, but he was compelled under the Food Administration act to market his goods based on his cost, and where he did that voluntarily and as a matter of habit frequently in the pre-war days, along the lines that Mr. Whitmarsh described, during the war, whether he liked it or not, he had to do it that way.

Now, it is only natural under the circumstances, considering that he was deprived of his market advances during the war, that when the war was over he felt that he was justified in asking a profit based on his cost when it came to selling his goods that he had bought at the high prices. And whereas the wholesalers, who are perhaps larger merchants, and have a larger vision, realized the danger, although they might have felt inclined to get the larger price and sell the goods based on their cost—after the food restrictions were removed, although the wholesaler realized that the first loss is the least loss and deflated immediately and sold his goods out as quick as possible for what he could get for them, irrespective of his cost, the retailer, for reasons which I think anybody can readily understand, realizing that his business was smaller, that he was dealing with consumers who were not as well posted, who were not in business and did not know values quite so well—felt that he had the opportunity of perhaps getting his cost for his goods, and realizing the pressure that he had been under during the war period naturally tried to get what he could for his goods, and I believe that, to a certain extent, has kept the retailer from deflating as fast as he otherwise might.

I think if he had made the profits he normally could have made during the war—if he had not been controlled—he could have taken his loss after the war was over. I think it is human nature for him to feel that there was something due to him. I think the people of the United States owe that retailer something for what he was deprived of during the war period.

The records of Harvard University show that during the period of the war the retailer made a lower net profit than he did make before the war period. And I think for that reason—

The CHAIRMAN. I think we have gone far enough in that line. This is not really pertinent.

Mr. STIX. I wanted to bring that out, because I saw your idea was to try to understand why this deflation was not taking place more rapidly in the retail lines, and it seemed to me that I understood that situation better than perhaps some people did here in Washington.

Mr. BREED. Mr. Whitmarsh is obliged to go away to-morrow. If he has anything to say with respect to the activities of the wholesale grocer, and with

respect to his attitude on the modification of the consent decree, I think it would be a good scheme to hear him now.

The CHAIRMAN. Well, Mr. Breed, I don't know that we are exactly interested in the activity of the wholesale grocer during the war, especially. I think we are interested in what anyone has to say on the modification of this decree.

Mr. BREED. Well, the activities of the wholesale grocer during the war, as contrasted with the activities of the packers during the war, might furnish a basis as to the question as to whether the Government should treat the wholesale grocers a little different after the war than they are treating the packers after the war.

The CHAIRMAN. Well, it is not a matter of reward, exactly. It is a matter of justice.

Mr. BREED. That is right. That is what I say.

Mr. WHITMARSH. I would not care to go into that, anyway.

The CHAIRMAN. If you have anything to say about that, Mr. Whitmarsh, you may do so.

Mr. WHITMARSH. I would rather not go into the question of what I did during the war under the administration.

The CHAIRMAN. It is a matter of record, I should say.

Mr. WHITMARSH. I would say now that I am violently opposed to the reopening of the decree, as you might know from my speech. I feel really that it is a fundamental question of monopoly as against the competitive system. I think that is the thing that we have got to decide.

This country has been in favor of the competitive system. If you have monopoly in food, which you will have if you have the packers, then you have got to regulate them, and when you commence to regulate monopoly we all get in trouble in the Government. We have had enough regulation of monopoly and regulation of everything else. For heaven's sake let us stand by our Sherman Act and get into the competitive system, and get away from the monopoly which has to be regulated.

Mr. Hewitt was talking about the packers. I would not have the packers in business to-day. It is a monopoly. But we have got them, and we have got to regulate them. Now, I don't want to get something else that we have got to regulate. Let us keep to the competitive system.

Judge HAINER. Does the handling of 5 per cent of the products violate the Sherman law?

Mr. WHITMARSH. I beg your pardon, sir?

Judge HAINER. I say, does handling 5 per cent of the food products violate the Sherman law? Is that a monopoly?

Mr. WHITMARSH. Do you know that they only handle 5 per cent?

Judge HAINER. Well, do they? We are asking you people that question.

Mr. WHITMARSH. I don't know; but I know that with their money and their ability to handle goods they will handle more like 95 per cent when they get through. I don't know what they handle now.

Judge HAINER. That is what the committee would like to know. We are asking you people.

The CHAIRMAN. And what they did handle?

Mr. WHITMARSH. I don't know. I couldn't tell you that. I don't know.

Judge HAINER. Well, that is what the committee would like to know.

Mr. SMITH. Isn't this true, though, that when they take hold they take hold of a particular commodity?

Mr. WHITMARSH. Certainly.

Mr. SMITH. And the 5 per cent is applied to the whole industry, not the particular business that they handle?

Mr. WHITMARSH. Of course, the packers do not handle all the groceries, and, taking out the certain commodities which they handle, the amount of those particular commodities that they handle is more than has been stated here, I am quite sure. Somebody may have told you 5 per cent, but of the commodities that they handled, the special commodities they picked out, I am quite sure they handled more than that.

The CHAIRMAN. Did they pick out the commodities which were the most profitable?

Mr. WHITMARSH. Why, that is natural in a business enterprise, isn't it? They did not pick out sugar to handle, which we all handle at a loss; I know that.

The CHAIRMAN. The canned-goods business is more profitable than the other lines?

Mr. WHITMARSH. Yes; it is considered a fairly profitable line. Sugar we sold on 15 or 20 cents a hundred, or 4 per cent gross, and canned goods would make anywhere from 10 to 15 per cent.

Judge HAINER. You are not in possession of any facts, then, as to the quantity of groceries that were handled by these packers?

Mr. WHITMARSH. Not at all; no, sir.

Judge HAINER. Well, did it occur to you that that is a material matter in an investigation of this sort?

Mr. WHITMARSH. I don't think so. I still dwell on the economic question, on the monopolistic question.

Judge HAINER. You dwell on that entirely?

Mr. WHITMARSH. Yes; I dwell on the monopolistic question rather than the percentage now.

Judge HAINER. Well, that is fear of control and domination.

Mr. WHITMARSH. What happened in the meat business? I can only go on the past records.

The CHAIRMAN. Now, does anyone else here wish to be heard before we convene again on Thursday morning?

Mr. MCKINNEY. Mr. Chairman, could I make one brief statement in regard to my evidence?

The CHAIRMAN. If it won't take you but a moment, you may do so, Mr. McKinney.

Mr. MCKINNEY. No, Mr. Chairman; it will only take me a moment to say what I have to say.

The CHAIRMAN. If what you have to say will take long, we will come back this afternoon; otherwise we will hear you now and adjourn until Thursday.

Mr. MCKINNEY. It will only take me a moment.

FURTHER STATEMENT OF MR. PRESTON MCKINNEY.

Mr. MCKINNEY. It occurred to me that, considering the testimony of Mr. Chase and myself and Mr. Campbell, the commission might have a wrong impression of the relation between money loaned on real estate and plant and money loaned on the commodity being packed. We refer, of course, in the mortgage that has been brought out here, to money loaned on plant and real estate.

Reference was made by Mr. Campbell to loans made by the War Finance Board, which are, I believe he stated, \$750,000—anyway, a large sum. Those loans were not made or based, nor did they have any relation whatsoever to the real estate or plant property. They were based, as I am informed—and it can be easily checked by the commission—on warehouse receipts on the products of the cannery, and the loans were made merely as a help in financing on the product itself, which, as you readily understand, runs into an immense amount of money at this season, because everything is spot cash in the buying of these products.

I just wanted to make clear that there is no relation whatsoever.

The CHAIRMAN. Would the holder of a mortgage on a plant have any greater influence over a person or his wishes than the holder of a loan on which he is doing business? Is there any distinction between those two? Is that what you are trying to make?

Mr. MCKINNEY. Well, he certainly would. The loan is merely made to bridge over a temporary period and is paid back just as fast as the stuff moves.

The CHAIRMAN. I just wanted to get your idea.

Mr. MCKINNEY. Yes; that is my idea, Mr. Chairman. That is the point exactly.

Judge HAINER. The loan would be secured by the entire business, wouldn't it?

Mr. MCKINNEY. No, indeed. Secured by the merchandise. That is the distinction I want to make. There is an absolute distinction between your mortgaging a piece of property that you own. That is mortgaging your invested capital. There is a distinction between that and borrowing money on warehouse receipts on the product of that plant. One is a temporary procedure to bridge over your period of heavy production. The other goes right into the basic money that you have got invested in the business. That is the point I want to make.

Mr. SMITH. One is temporary and the other is permanent, practically?

Mr. MCKINNEY. One will put you out of business if you can not meet it, and the other settles itself.

The CHAIRMAN. We will adjourn until Thursday morning at 10 o'clock, gentlemen.

(Thereupon, at 1.20 o'clock p. m., Tuesday, November 29, 1921, an adjournment was taken until 10 o'clock a. m., Thursday, December 1, 1921.)

THURSDAY, December 1, 1921.

The committee met pursuant to adjournment on Tuesday, November 29, 1921, in room 704, Department of Commerce, at 10 o'clock a. m., Hon. Herman J. Galloway (chairman) presiding.

Judge Bayard T. Hainer not present to-day.

The CHAIRMAN. The committee will be in order. I wish to state for the information of the gentlemen present that a suit has been brought in Chicago by the live-stock commission men enjoining the Secretary of Agriculture and United States attorney in Chicago from an enforcement of the packer control bill as it applies to live-stock commission men. Judge Hainer, who has charge of that work for the Department of Agriculture, had to go to Chicago, where he will be to-day and to-morrow attending a hearing on the preliminary injunction. However, he has stated that he will carefully go over the record immediately upon his return, and that we should proceed with the hearings in his absence.

Mr. BREED. Mr. Chairman, may I ask who is this suit brought by?

The CHAIRMAN. An association representing the live-stock commission men of Chicago.

Mr. Ford, I understand a gentleman has left a statement here.

Mr. FORD. Mr. Chairman and gentlemen of the committee, this is a statement prepared by Mr. Walter J. Tancill, in behalf of the St. Louis Wholesale Grocers' Association. I believe he was scheduled to be heard to-morrow, but he was called back to St. Louis and left with me this statement, which he has signed and which he asked me to read into the record with the permission of the committee. Now, with your permission, I will read it.

The CHAIRMAN. You may proceed.

(The statement referred to is here copied in full in the record, as follows:)

STATEMENT IN BEHALF OF THE ST. LOUIS WHOLESALE GROCERS' ASSOCIATION.

My name is Walter J. Tancill, and I appear before this committee in behalf of the St. Louis Wholesale Grocers' Association.

The association which I represent is composed of about 30 members, being virtually all of the wholesale grocers doing business in the city of St. Louis.

For the enlightenment of the committee, I might state at the outset that the wholesale grocery industry is the third industry in point of size and importance in our city, the chamber of commerce of which has protested against modification.

I was directed by the board of directors of our association to come to Washington to inform your committee as to the attitude of our membership regarding the modification of this consent decree.

The members of our association have viewed with great alarm the rumors that the Government is giving some thought to a recommendation to the court to modify the consent decree so as to permit the meat packers to handle food products wholly unrelated to their meat.

I have listened to the testimony of the witnesses preceding me, both for and against the modification of the decree, with a great deal of interest. I shall not attempt to enter upon any broad or lengthy discussion of the various arguments which have been and will be further advanced in support of the viewpoint of the various parties, as it seems to me that the real and vital issue at stake in this proceeding is whether the Government of the United States desires to foster the growth of independent and competitive business, or whether it intends to depart from the very tradition that permeates our social and political life by officially sanctioning monopoly and the insidious evils which it represents. No matter how we deviate from this backbone of the controversy, regardless of the channels and labyrinth into which we may stray, stripped of all the relative arguments which may be advanced, we inevitably come to the vital question of the wisdom of lodging within the power of a small group of five individuals the right to control the food of a nation.

Our Government itself, long taken as an example of excellence and followed by those who cherish freedom and liberty, is founded on the doctrines of equality of opportunity, equality of treatment, equality in the right to pursue our vocations untrammelled and unhampered. The structure of the Government itself is built on division of responsibility and the restriction of power. Our forefathers in laying the foundation of this structure decided for us against monopoly by the adoption of a republican form of government as opposed to the monarchical. No branch of our Government, whether it be the executive, the legislative, or the judicial, enjoys a power that is not derived from the consent or rather the mandate of the people.

So, in this question of endowing the meat-packing industry with this mighty power of control over the most essential part of our life—the control of the Nation's food—we sense the grave danger to our social, political, and economic fabric. By again opening the avenue whereby the five big meat packers can resume their progress toward the ultimate goal of complete domination and control, we unwontedly, yet decidedly and emphatically, adopt a theory at variance with our professed axioms of democracy in government.

We can not approve and sanction any such radical departure from the doctrines and theories which have developed this great Nation of ours in less than a century to the foremost rank among the nations of the world. We can not believe that our Government will knowingly lend its powerful assistance in the perpetration of such a betrayal of the American people. We can not undertake to stand by and permit without protest the destruction of the initiative and the individuality of the American business man.

The record of the interests who would benefit by the reopening of this decree over a period spanning a generation is one filled with examples of the most ruthless practices in stifling competitive endeavor which have ever been resorted to by a combination in any industry. Their record of illegal and unlawful practices, their repeated violations of both law and commercial ethics, is a striking commentary upon the Government's inability to cope with their industry. These gentlemen have been agile and ingenious enough to escape their just deserts again and again, yet we find a proposal to permit a resumption of the acts which have heretofore been repeatedly condemned and to open to them a wider field and greater license in the pursuit of their objects.

We are pleased to say that we have sufficient confidence in this committee and in the Attorney General to feel that our interests, as well as the interests of the people, will be safeguarded and thank the committee for this opportunity of being permitted to express our views on this vital matter.

WALTER J. TANCILL.

The CHAIRMAN. I regret very much that the gentleman is not here, as there might be some questions the committee would ask him. It is impossible to cross-examine him, however, at this time, and necessarily we will have to take that into consideration in considering his statement.

Mr. Hoffman, do you desire to make a statement at this time?

Mr. SMITH. I think it would be very logical for him to do it at this time, if I may so suggest. Mr. Chairman.

The CHAIRMAN. Mr. Hoffman has expressed a desire to get away.

Mr. SMITH. I am glad that you are willing to give him an opportunity to be heard at this time.

The CHAIRMAN. Mr. Hoffman, you will come around and state your name and business.

STATEMENT OF MR. EDWARD W. HOFFMAN, MILWAUKEE, WIS.

The OFFICIAL REPORTER. Mr. Hoffman, in order to make the record complete will you please state whom you represent?

Mr. HOFFMAN. I represent John Hoffman & Son Co. directly, and more particularly the people of the State of Wisconsin, and all the people of the United States in general.

Mr. Chairman and gentlemen, I desire to read into the record of this hearing a copy of our original letter to the Hon. H. M. Daugherty, dated November 16, in which we protested against a modification or withdrawal of the so-called consent decree.

The CHAIRMAN. You may read it.

Mr. HOFFMAN. The letter is as follows:

NOVEMBER 16, 1921.

Hon. H. M. DAUGHERTY,
Attorney General of the United States,
Department of Justice, Washington, D. C.

SIR: We desire to enter a most vigorous protest against a modification or withdrawal of the so-called consent decree.

Our corporation has been in the business of distributing foodstuffs for almost half a century. The five officers of this company are the sons of its founder and have respectively contributed 15, 20, 27, 38, and 42 years of their lives to the upbuilding of this institution. We make this statement at this time so that you may understand that our argument is based on many years of actual business experience. Furthermore, we realize that in any public question it is an easy matter to have resolutions drawn and passed by bodies which are not thoroughly informed and to have statements presented by individuals who are influenced by personal, selfish motives.

We desire to make this point because we are informed on good authority that one of the men who has been most active in endeavoring to secure a modification of the consent decree has been closely associated with the Big Five packers. In fact, Armour & Co. are reported to hold a mortgage of \$250,000 against the plant in which this party is interested. He, and possibly others like him, have undoubtedly been most industrious in securing resolutions to modify this decree.

To establish our own position we also want to say most emphatically that our company needs no consent decree or any other governmental protection against honest competition. There are probably 50 wholesale grocers in the State of Wisconsin, all competitors of ours, and we probably compete with an additional 50 jobbers who enter our territory from surrounding States. Some of them are large and some small, but even the largest have no advantage over us as to freight rates, preferred railroad service, and the opportunity to serve the retail distributors; nor are any of them so large that they can possibly monopolize a market by securing control of a commodity through unlimited purchasing power.

In other words, the public to-day is protected against profiteering by the fact that foodstuffs are distributed in open competition. On the other hand, the history of monopoly is the same the world over. They either get too much or too little for their goods. When the former they rob the consumer, when the latter they are trying to kill competition.

That, after all, seems to be the big vital question at issue. Shall we continue our present system of distribution which gives the many an opportunity to enjoy the pursuit of life, health, and happiness, or shall we open the way for the few to gain control?

There is no question but that the wholesale grocers of this country have served efficiently and economically. This is proven conclusively by statistics submitted by the Harvard Bureau of Business Research. We are honestly of the belief that there is no better or more economical system of food distribution than that which obtains in the triumvirate of manufacture, jobber, and retailer. We have seen many other systems tried in our 50 years of business experience, and all of them have fallen by the wayside.

We therefore maintain that the present system should be continued and that it should not be jeopardized by allowing the meat packers to reenter the field with the possibility of ultimately controlling so important a factor in our general welfare as the distribution of the Nation's food supply.

Sincerely yours,

JOHN HOFFMAN & SONS CO.,
 By _____, Secretary.

Mr. HOFFMAN. You will note that in this letter we take the position that we do not need any governmental protection against honest competition. We maintain, and while we are not authorized to do so, yet we believe we can speak for all the wholesale grocers of this country in stating that our business has been so systematized, through honest and active competition, that we have brought our cost of doing business down to the lowest possible basis.

There are no clear and distinct figures available to show the meat packers' cost of doing business. I have at various times seen figures purporting to give that information, but they were so complicated that the average intelligent business man could not decipher them. In fact, I might say in that connection that the experts of the Federal Trade Commission evidently were not able to decipher the meat packers' figures.

Figures have been given at this hearing, and there are plenty more which might be secured, showing that the wholesale grocers' cost of doing business runs from 7½ per cent to 10½ per cent, according to geographical location of the various wholesale grocers. There are further figures procurable which show that the average net profits of wholesale grocers, taken over a period of normal years, is less than 2 per cent.

I know of no business which demands more actual time and greater risk and pays such a small percentage of return than the wholesale grocery business. I make this point to establish the fact that competition has forced us to become thoroughly efficient, that is, if we are to maintain our place in the distributing system.

Up to this time the only testimony that has been presented asking for a modification of the consent decree has been given by Vernon Campbell, representing the California Cooperative Cannery, who are commonly known in California as "Armour plants." His statements have been absolutely repudiated by interests representing producers and cannerymen of California. But he made one statement which should be repudiated by the wholesale grocers whom he attacked in his statement. He undertook to tell this commission, if I understood him correctly, that the wholesale grocers of this country coerced the cannerymen into refusing to ask for a modification of this decree. Such a statement on the face of it is ridiculous, but with your permission I am going to take this opportunity to answer it.

Our company, for instance, did not know what action was being taken by the cannerymen of this country, in most cases at the instigation of this same Vernon Campbell, until, on October 11, when we received from the Marshall Canning Co., of Marshalltown, Iowa, copy of a letter written by them to Charles E. Tulleys, secretary-treasurer, Western Cannerymen's Association, in reference to a resolution which had been passed by that organization relative to the consent decree, and because of which resolution the Marshall Canning Co. resigned from the Western Cannerymen's Association.

In reference to that resolution it seems that Mr. Campbell had appeared before a meeting, which I understand was composed of less than a majority of their executive committee, and urged them, in fact was said to be responsible for the drawing up of a resolution urging a modification of the consent decree. It might be interesting to this commission to know that that resolution was later repudiated by the organization as a whole in open convention, and another resolution furnished to the Attorney General which objected to any modification of the consent decree.

I beg to be permitted to read into the record, as a matter of information, the letter of the Marshall Canning Co. to the secretary-treasurer of the Western Cannerymen's Association:

MARSHALL CANNING CO.,
Marshalltown, Iowa, October 11, 1921.

MR. CHARLES E. TULLEYS,
Secretary-Treasurer Western Cannerymen's Association,
Chillicothe, Ohio.

DEAR SIR: This morning we received a copy of a resolution passed by the association at a meeting called in Chicago, Monday, October 3.

The essence of this resolution is that the Western Cannerymen's Association is favorable to reinstating the packers in the canned-food business, with the belief that it will work to the cannerymen's advantage, because the wholesale grocers are not buying canned products as in former years, and that by getting the packers back into the game it will accrue to the cannerymen's interest on account of the increased volume of canned goods which will go into consumption.

You are working on a false premise. The consumers are buying all they can buy and the jobbers are supplying the retail trade with all they can sell. For every case of canned goods the packers would sell to the retail trade the jobber would sell one case less. The packer could not and would not increase ultimate consumption one iota.

Please withdraw our name from the membership of the Western Cannerymen's Association, as we do not subscribe to this resolution and refuse to be a party to aiding or abetting in any way legislation which is designed to take the wholesale-grocery business out of the hands of approximately 4,000 jobbers and place it in the hands of less than a dozen packers.

Take your first "Whereas." To me it is but a jumble of empty words. You can not prove what you have asserted. Thinking men know that the whole

trouble has been created by a lack of demand from the consumer and the existence of abnormal conditions, financial and otherwise, which have been brought about by the war period.

The jobber is to a considerable degree a merchandise banker. He not only assembles canned goods for his trade, but a thousand and one other items. If you take from him his canned-goods business, which you feel the packer can handle and distribute more economically on account of his facilities for distributing meat products, then why not take from the jobber all his other items and let the packer distribute them also. This will give about six men absolute control of the entire food business of this country, as against the 4,000 or more now efficiently handling it with but a moderate profit. Think it over. Is it better to have six men with a monopoly or 4,000 in legitimate competition with each other?

All resolutions are selfish and all business is selfish. Now, from a selfish standpoint, would you rather have 4,000 opportunities to do business or 6? Let us not fool ourselves, for in the final analysis it will be either one or the other.

We maintain and believe that the live up-to-date individual retailer working with an honest-to-goodness progressive jobber and in turn the jobber with a reliable, dependable packer or producer gives a line of distribution which can not be excelled. At any rate the Marshall Canning Co. is going to play the string out on that basis.

To be frank and plain with you, your preamble and resolution savor very much, at least to me, of an effort to wish the blame for the canners' share of the present unfortunate conditions onto the jobber. You can't get by with this program, because he is not to blame any more than we are. He is a victim of circumstances, as is every other factor in the business world.

I might also ask one question. Should the packers succeed in crippling the wholesale grocers by their competition, what is to prevent them from branching out into the canning business and likewise crippling the canners? If they are successful in marketing canned goods in competition with the wholesale grocers, does it not seem logical to assume that they will enter the producing end of the business and become a thorn in the side of the canning industry?

In conclusion, let me remind you that the jobbers in the main stood up to the rack one year ago and took their medicine as to declines on their future purchases like men. There are unfair jobbers in the wholesale grocery business and there are unfair canners in the canning business, and there probably always will be; but take the successful concerns in either line, big or little, over a period of a few years and you will find they are the square ones, and that ordinary honesty and fair play do win.

We are advising all our trade, and it covers most of the United States, that we have withdrawn from your association, and that we are against this resolution and will do all in our power to defeat its purpose.

Yours very truly,

MARSHALL CANNING Co.,
R. W. MCCREERY, *President.*

Mr. Frank Gerber, of Fremont Canning Co., Fremont, Mich., was a member of the executive committee of the Western Canners Association who voted for the original resolution asking for a modification of the consent decree. Under date of October 22 he sent a general letter to his jobbers and brokers explaining his position in the matter, in which he intimated that he was not so much in favor of a modification of the consent decree as he was in having the general situation discussed through a presentation of such resolution.

I present for your information and for the record a copy of a letter which we wrote to Mr. Gerber relative to his action, said letter bearing date November 1. It is interesting to note that under date of November 16 the Fremont Canning Co. sent out a memorandum to jobbers and brokers in which they advised of the reversal of the action taken by the Western Canners' Association in their convention, and stating "the convention unanimously went on record as opposed to a modification of the packers' consent decree." I want to read that letter we addressed to Mr. Gerber into the record.

MILWAUKEE, WIS., November 1, 1921.

MR. FRANK GERBER,
Fremont Canning Co., Fremont, Mich.

DEAR MR. GERBER: We have before us your general letter of October 22 addressed to "Jobbers and Brokers," which refers to your position in the so-

called packer-consent decree. The point at issue is one of such vital importance to your industry and to ours that we would consider ourselves remiss in our duties if we did not discuss the question with you.

In paragraph 2 of the resolution passed by the Western Cannery Association, October 3, 1921, for which you as a member of the committee must be held partially responsible, all the woes, trials, tribulations, and sorrows of the canners are laid at the door of the consent decree. Is the consent decree responsible for the fact that practically every business in the country has suffered tremendous losses in the last 12 months? It wasn't the consent decree that brought on a world-wide condition, and if the packers had been in the canned-goods game when the big wind knocked the props out from under the high prices, they wouldn't be any more anxious to meddle with to-day's market than the jobbers are who lost thousands of dollars in canned goods.

The answer is given in a nutshell by R. W. McCreery, president of the Marshall Canning Co., Marshalltown, Iowa, in a letter written to Mr. Tulleys, secretary of the Western Cannery Association. Here is what he says:

"Take your first 'Whereas.' To me it is but a jumble of empty words. You can not prove what you have asserted. Thinking men know that the whole trouble has been created by a lack of demand from the consumer and the existence of abnormal conditions, financial and otherwise, which have been brought about by the war period.

"Your second, third, and fourth 'Whereas' is covered by the resolution itself, which recites 'that this association indorse the action which it is understood the Department of Justice contemplated taking looking to the modification or withdrawal of said decree to the end that canned-foods distribution may again proceed with unrestricted competition and in conformity with American ideals of business and progress.'

"Unrestricted competition! Do you mean to infer that there is no competition among the 4,000 grocery jobbers of this country? If any member of your committee has any such idea we invite you to come into the wholesale grocery business and you will find all the competition you ever hoped to see in a lifetime.

"American ideals of business!' The very foundation of American business is based on justice and equal opportunity. The wholesale grocers of this country did not oppose the packers dealing in foodstuffs simply because it brought competition into the field. We objected, and rightfully, too, to the fact that they were favored as to freight rates and preferential service. There must be about 4,000 wholesale grocers in these United States and we know of no case on record where any one of them has ever found it necessary to ask governmental protection against a competitor. Why? Because we are all competing under equal opportunities founded on 'American ideals of business.'

As far as we are personally concerned we are frank to say that we do not much fear any "packer" competition. In the almost 50 years of our business life we have built up a reputation as distributors of fine groceries. Our experience has taught us that in every community there are plenty of people who are anxious to buy quality goods and as long as there are canners like your good self who know how to pack fine goods and who take pride in their product, we will be able to secure and distribute plenty of canned goods at a profit that will at least help to keep the wolf from the old front door.

But beyond this personal point we want to say very honestly and most sincerely that for the ultimate good of grower, canner, grocer, and most of all for the poor consumer, that we would truly regret to see the meat packers resume their activities in the distribution of food products other than meats. Any thinking man must realize that the Big Five, with untold millions at their command, will not be content to act simply as distributors. They are primarily manufacturers and if they are permitted to enter the distributing end of the business, they will steadily expand into manufacturing and production. It surely is easier for one small group of men to control and monopolize a market than it is for an industry made up of 4,000 individual merchants. The history of monopoly the world over is that the poor consumer pays the bill, and that means you and me and the other fellow, whether we be producer, canner, grocer, or consumer.

It is to be regretted that the packers' propaganda should have influenced a responsible packer like yourself. The California Cannery League, claiming to represent more than 70 per cent of the commercial canned fruit and vegetable pack of California, in opposing modification of the decree made this statement:

"It was found when the meat packers were buyers of California canned fruit that in an effort to own the product at a lower price than their competitors, they favored those lots in which quality was skimped. The natural inference would be that cannery men do not realize the worthiness of their occupation—"

And, Mr. Chairman, I might say here that there are some such.

"—or the duty they owe to their own craft would gladly welcome an avenue of distribution which was not too critical of the quality offered. For this very reason many of the reputable cannery men never were sellers to the meat packers and probably never would be if the consent decree were modified.

"We think enough of you as a packer of quality goods to believe of you that in your desire to assist in a distributing problem of to-day you have overlooked the great harm that may come through your action to-morrow, and we say to you in all friendliness that we believe a reconsideration of your action will ultimately result in true promotion of the welfare of your industry as well as that of all other agencies which may be concerned.

"Sincerely yours,

"JOHN HOFFMANN & SONS Co."

Now, at the same time we sent a very courteous letter to the other cannery men with whom we do business, inclosing copy of the letter which we wrote to Mr. Gerber and asking them their attitude on the consent decree. The great majority of them immediately replied that they absolutely objected to any modification, and that they had so notified the Department of Justice. I cite, for instance, the following:

Warren Packing Co., Portland, Oreg.; Walter M. Field & Co., San Francisco; Golden State Asparagus Co., San Francisco; U. H. Dudley & Co., New York; Hamilton & Son Canning Co., New London, Wis.; Pratt-Low Preserving Co., Santa Clara, Calif.; Hawaiian Pineapple Co., San Francisco; California Packing Corporation, San Francisco; Herbel Packing Co., San Jose, Calif.; F. E. Booth Co., San Francisco; G. W. Hume Co., San Francisco, Calif.; Beutell Pickling & Canning Co., Bay City, Mich.; Columbus Canning Co., Columbus, Wis.; Mark'san Canning Co., Markisan, Wis.; Joseph Brakeley (Inc.), Freehold, N. J.; Fruit Growers' Canning Co., Sturgeon Bay, Wis.; S. E. Comstock Co., Newark, N. Y.

New letters and telegrams from these canned-goods people objecting to any modification of the consent decree are undoubtedly on file in the office of the Attorney General.

The CHAIRMAN. I recall some of them. I can not say as to all, but I can remember a number of them.

Mr. HOFFMAN. They all stated that they were sending letters, so I take it for granted they did so. In addition to the above, I have personally spoken to many other cannery men, especially those located in my State of Wisconsin, and in almost every instance I have found them absolutely opposed to any modification of the consent decree.

Gentlemen, along this same line it is interesting to note that Mr. Voigt, the president of the Wisconsin Pea Cannery Association, was reported to have wired the Attorney General, on his own initiative, claiming to represent the executive committee of the Wisconsin Pea Cannery Association, and asking for a modification of the consent decree. That matter was called to our attention October 27 by a copy of a letter which was written by the Markisan Canning Co., of Markisan, Wis., to the secretary of the Wisconsin Pea Cannery Association, in which, as a member of the executive committee, they repudiated Mr. Voigt's action and advised withdrawal of the telegram until action could be taken by the membership as a whole when it assembled in annual convention in Milwaukee November 8-10. At that meeting Mr. Voigt's action was not corroborated by the membership, and no action was taken by them as a body asking for a modification of the consent decree.

These facts are cited to you simply to show that the great majority of the cannery men of this country are opposed to any modification, and submitted as evidence to this commission that action relative to the decree being modified has been fostered by cannery men themselves and not by coercion of the wholesale grocers.

I just want to repeat again, so that my position may be made perfectly clear, that I am not here as a wholesale grocer to fight competition. I desire mainly to champion my place in the business world, and to refute any unjust accusations which are made against my industry. This case is not a fight between the wholesale grocers and the meat packers of this country. The consent

decree was entered into between the meat packers and the Department of Justice representing the people of the United States. As far as has been made known the original defendants, the meat packers themselves, have not asked for any modification of the decree. I am convinced after giving this matter much thought and study that the great majority of the people of the United States, the consumers, who deserve first consideration in this case, are absolutely and unalterably opposed to any modification of the decree.

The CHAIRMAN. Mr. Hall, any questions?

Mr. HALL. Mr. Hoffman, you have stated that Mr. Campbell is closely allied with the big meat packers. Have you a record of any other transactions besides this mortgage, which you can lay before this committee to substantiate that statement?

Mr. HOFFMAN. There is only one other point which now confirms my opinion, or which naturally would confirm the opinion of any man who was at this hearing, and that is that in the testimony on Monday a representative from California made the statement that when he had any business to transact—and I can not remember the statement correctly, but I make it as I remember it—whenever he had any business to transact with the—what was the name of the company?

The CHAIRMAN. The California Cooperative Cannery.

Mr. HOFFMAN. Yes; with the California Cooperative Cannery, he generally talked across the table with Armour's representative.

Mr. HALL. While the meat packers were engaged in distributing unrelated lines do you know what percentage they handled of the whole products of the country in those lines?

Mr. HOFFMAN. I do not; but I think those figures are made perfectly clear in the report of the Federal Trade Commission.

Mr. HALL. You do not know of any one line particularly which they might have handled?

Mr. HOFFMAN. The only thing I remember now is the fact that Armour advertised himself at that time as the greatest rice merchant in the world. I believe he so called himself.

Mr. HALL. Do you know what percentage of rice was handled by him or by them?

Mr. HOFFMAN. I do not.

Mr. HALL. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Hoffman, the reason, I assume, why you object to the packers resuming the handling of these commodities is that you fear they will monopolize them later on?

Mr. HOFFMAN. Yes.

The CHAIRMAN. And upon what is that fear based?

Mr. HOFFMAN. Upon the history of the packers during all these years.

The CHAIRMAN. Their history with reference to what?

Mr. HOFFMAN. To monopoly.

The CHAIRMAN. Monopoly in what lines?

Mr. HOFFMAN. Monopoly in the meat line.

The CHAIRMAN. You do not know whether they ever had a monopoly in these unrelated lines, do you?

Mr. HOFFMAN. I do not.

The CHAIRMAN. Do you know of any unfair acts in competition that they did with reference to these unrelated lines?

Mr. HOFFMAN. I have no personal knowledge except the very full report of the Federal Trade Commission.

The CHAIRMAN. What preferences or what advantages that you consider unfair did they have in the wholesale grocery business over the wholesale grocer?

Mr. HOFFMAN. To my mind the great evil of the packers, or of any organization that controls tremendous wealth, all reverts to the old system of monopoly, the history of which is written, page after page, in the report of the Federal Trade Commission; that is their tremendous purchasing power and their ability to control markets at the source. As a wholesale grocer in honest competition with any dealer, whether it be meat packer or other wholesale grocer, there is no fear from the selling end, because our business has been brought down to such a basis that we can compete with almost anybody. I know of no competition that bothers us from the selling end, at least in which we can make a living out of our business. But capital of such size as to become a monopoly

can control markets, and where they do that they absolutely put anybody else out of business.

The CHAIRMAN. Would you have any objection to the packers being permitted the handling of unrelated lines so long as they not be permitted to buy them outright but only to handle them on a commission basis?

Mr. HOFFMAN. Absolutely. It was shown in the testimony here on Monday by the canners and growers of California that the minute you did that you took away from them the opportunity to finance their pack.

The CHAIRMAN. What objection would you have to the packers handling export business alone?

Mr. HOFFMAN. From the testimony I believe it is shown they are now handling that. I think Mr. Vernon Campbell said he sold 85 per cent of his products that way.

The CHAIRMAN. American corporations of the meat packers are not permitted to handle that business.

Mr. HOFFMAN. Why should they handle it? If I may ask a question of you.

The CHAIRMAN. Is there any objection to their handling it?

Mr. HOFFMAN. Surely. They would go into the markets and control the business with their large purchasing power.

The CHAIRMAN. Do you think the handling of export business by the meat packer would control the markets the same as the handling for domestic use?

Mr. HOFFMAN. Not all the markets, but certain markets.

The CHAIRMAN. Certain markets?

Mr. HOFFMAN. Yes, sir.

The CHAIRMAN. That is all I care to ask. Mr. Hall, any further questions?

Mr. HALL. I wish to ask a question of you.

Mr. HOFFMAN. May I add just a statement there?

The CHAIRMAN. Certainly.

Mr. HOFFMAN. I think you would find this also, Mr. Chairman, that it would certainly tend to increase prices. You have your foreign situation, your export business, taken care of now by these foreign companies, together with many exporting agencies in New York, New Orleans, San Francisco, and other places who are exporting these goods. Now, then, I may have a wrong theory of economics, but I believe it is wrong for us to export foodstuffs out of this country in any quantity except in those years when there are surplus crops, because the minute you do that the old law of supply and demand sets in, and what is left in this country is brought to a basis where the poor consumer has to pay a premium for it. And that is something in my estimation I would like to see averted.

The CHAIRMAN. Do the wholesale grocers export anything?

Mr. HOFFMAN. I understand there are some in New York and New Orleans that do, and possibly in San Francisco.

The CHAIRMAN. Are there other firms engaged in the export business alone?

Mr. HOFFMAN. Oh, yes.

The CHAIRMAN. You may proceed, Mr. Hall.

Mr. HALL. In reference to the letters which you sent out, did you also communicate with any growers?

Mr. HOFFMAN. I can not say offhand, but I should imagine so, because we do business with the Prune and Apricot Growers' Association and other growers' associations, and if I remember rightly I took a list from our books of the people we do business with. Those were the only ones I could address, because the others naturally would not be interested.

The CHAIRMAN. Did you send letters to anyone who did not reply to you as opposed to modification?

Mr. HOFFMAN. I found this situation—I found among some of the smaller canners a situation like this: They were not interested in the consent decree because they did not know anything about it. That is, they knew there was such a thing as a consent decree, but they had given it no further thought. I remember one case in particular where one Wisconsin pea canner made the statement, "We have not given this matter any thought, and we will rest on whatever decision is made by our association in convention."

The CHAIRMAN. Has anyone any questions they wish to suggest?

Mr. SMITH. There is one thing I would like to ask Mr. Hoffman.

The CHAIRMAN. All right.

Mr. SMITH. About what length of time had the meat packers been engaged in handling the unrelated commodities?

Mr. HOFFMAN. Let me see—

Mr. SMITH. Isn't it true that they had quite recently begun it and were just beginning to extend their operations?

Mr. HOFFMAN. I do not know when they started, but I know that they had begun to grow along in 1916 or 1917, if I remember rightly; that is when it began to get to a situation where we thought they were gaining strength in going into the buying market. That is when we became interested in the situation.

Mr. SMITH. When the meat packers bought in large quantities what effect did that have in the price to the ultimate consumer?

Mr. HOFFMAN. Why, naturally it immediately boosted the price.

Mr. SMITH. To the ultimate consumer?

Mr. HOFFMAN. Absolutely.

Mr. SMITH. That is all I wish to ask.

Mr. STEVENS. I wanted to ask Mr. Hoffman if he knows what is the shrinkage in price of canned-goods production last year.

Mr. HOFFMAN. I have no figures on that, Mr. Stevens.

Mr. STEVENS. Do you know where we can find them?

Mr. HOFFMAN. Possibly Dr. Duncan, the statistician, would have those figures; and, if so, he would be very glad to give them to you, I am sure.

Mr. STEVENS. That is all I wish to ask.

The CHAIRMAN. That is all, Mr. Hoffman, and we thank you very much. We will now hear Mr. Hawk.

STATEMENT OF MR. EGBERT HAWK, WHOLESALE GROCER, BLOOMINGTON, ILL.

The CHAIRMAN. State the name of your firm.

Mr. HAWK. Hawks (Inc.).

The CHAIRMAN. Do you represent any other organizations or persons or firms or corporations at this hearing?

Mr. HAWK. That will be developed in my statement, with your permission, Mr. Chairman.

The CHAIRMAN. You may proceed.

Mr. HAWK. Mr. Chairman and gentlemen, it is my privilege to appear before you representing my own company, Hawks (Inc.), wholesale grocers, of Bloomington, Ill., and as president of the Illinois State Wholesale Grocers' Association.

It is my privilege to speak for the 74 members* of that association who are in the wholesale grocery business in Illinois outside of the city of Chicago. We have no members within Cook County.

The Illinois Wholesale Grocers' Association, its 74 members, represent employees and executives probably numbering 75,000 people. The average size of a family, according to statistics—though out in Illinois we have families that run a little above the average, Mr. Chairman—according to the average size of a family, the wholesale-grocer interests in Illinois outside of Chicago represent, perhaps, 35,000 people who are dependent upon that business for their livelihood. And this does not take into consideration stockholders—I mean stockholders who are not active in the business—and some other connections.

I realize, Mr. Chairman, in this hearing that the departments interested, in the greatest attitude of friendliness to all who may appear here, desire, primarily, if possible, to learn the truth concerning the subject which is before you. And I take it at this hearing, and according to the way it is being conducted, the paramount question in your minds to-day is what determination by your department or departments will accomplish the most good for the most people in the country.

So, lastly, Mr. Chairman, with your permission, I am appearing before you as only one of the American public who is in business. I realize, Mr. Chairman, that there has appeared before you only one of that class whom we as wholesale grocers and distributors designate and refer to as our friends, the canners or packers of seasonal products—only one who has asked that the court decree be modified. I may not, perhaps, give the correct title of this decree which is sought by him to be modified, but I think the committee is cognizant of the reference I make.

The CHAIRMAN. We understand what you refer to.

Mr. HAWK. And also later on, in references that may be made to that decree, you will understand what I mean. As I understand it the packers themselves have made no request for modification of this decree, although, as I understand it, they are of the parties perhaps most interested. And I am glad that that is so, for the packers, as I understand it, voluntarily consented to the entry of the decree as a compromise in order to secure the abandonment, perhaps, of criminal prosecution for violation of the Sherman antitrust law. And now, as I see it, they should not complain of their own act.

Mr. Chairman, if they were charged at that time with violation of the Sherman antitrust law, is it not natural to suppose that their attempts along that line might be repeated? We know their ability to monopolize, to become producers, canners, wholesalers, retailers; we know that with their vast buying power, control of markets and special privileges. Mr. Chairman, of privately owned cars and special rates, they are in a position that, as I see it, is not for the public interest.

If the packers were here present as parties to this hearing, Mr. Chairman and gentlemen of the committee, I have in my files and I had expected to present to your body letters which I shall not now present, as I feel that the ground has been very fully covered by Mr. Hoffmann, the witness who was on the stand just preceding me. I feel that your department has on record, perhaps, innumerable telegrams and letters from the largest and the most influential canners in the country to the small neighborhood processor, all of whom, so far as my experience has gone, seem in their correspondence almost without exception to take a different ground from that of Mr. Campbell, of California, who has presented the subject from the standpoint of the evil, as he states, to his own company and connection.

And the very large number of canners of seasonal products seem to feel, from my correspondence, gentlemen, that not only is there no necessity of a modification of the decree, but that any modification would not only be inadvisable but would work a hardship to several million people who are now engaged in the production as well as in the distribution of food products other than meats.

I am glad, again, that the packers—and you gentlemen of the committee will feel I am getting very joyful over this if I keep on with this glad stuff—I say I am glad that the packers have not asked that this decree be modified, or, Mr. Chairman, I might find it necessary or advisable to come to you asking, not that justice be done, but that injustice be not done.

Some one has said that what has been will be, and that history is but forgotten years striking backward; in which case knowing, as all of us do know, that monopolistic control is opposed to true Americanism, if they were present here asking for modification I should then refer your department to the figures of the Federal Trade Commission to see what has gone before.

And if the packers were here applying for this decree to be modified, which they so cheerfully suggested and accepted, I should ask leave to tell you some of my personal experiences. Many of us here in this room recall the time when a number of small cities and towns of any size in this country had their own packing plants, and they were prospering. They had a plant where live stock was killed and dressed and sold. Now, Mr. Chairman, Bloomington, Ill., is a town of perhaps 35,000 or 40,000 people. It is a home town. It is situated in the heart of the Corn Belt, and while Mr. Hoffmann comes from a town that used to be famous for one thing; you all know one purpose that corn used to be put to—

Mr. HOFFMAN. Mr. Chairman, I ask that that reference to Milwaukee be stricken out.

Mr. HAWK. And I apologize, as the gentleman objects.

Mr. HOFFMAN. That was only the seventh industry, and we do not now notice its disappearance.

Mr. HAWK. Perhaps not as much as other portions of the country. But, as I started to say, we are in the midst of a stock-raising country. Mr. Chairman, a number of years ago a friend of mine, feeling that because of the location of Bloomington in the heart of the producing country—I say a number of years ago, but that is not so many, because I am not so old as I look, Mr. Chairman—I say, this friend of mine, feeling that Bloomington was situated near the source of production, that a meat-packing plant there would be desirable and profitable and serviceable, started such a company. As soon as the company was started—and you will remember that this was before any talk about control of the industry, or of the Sherman antitrust law, or anything of

that sort—as soon as the company reached some proportions, that moment the Chicago packers entered the market at Bloomington. They paid more for hogs and cattle than was being offered in other markets. And they paid more than the stuff was worth. Furthermore, those packers quoted the finished product below any prices that were made in the surrounding territory or in other territories and way below cost of production.

Now, gentlemen of the committee, this continued until my friend saw a great light and discontinued his packing business and wound up its affairs. At once live-stock prices at Bloomington declined and prices of finished products advanced.

Therefore I say, gentlemen, what has been will be. History is but a forgotten year striking backward.

We from the Middle West feel that we are close to the people out there. Naturally we have pride in our geographical position. I have had occasion to cover the State of Illinois several times during the last year, both on business and for political reasons, and I say to you men of this committee that our public feels that it is infinitely better for the public to have a distributive machinery for the food products of the country, made up of 4,000 distributors, rather than a distributive monopolistic group of five individual firms in charge of the entire food supply of the country.

I realize that it is improper, but it seems to me, and I make this suggestion, that even from the canners' viewpoint, purely selfishly from their viewpoint, that it means better business for the canners to have 4,000 opportunities to do business than to have to do business with perhaps only five individual firms.

I am wondering if the previous witness, who ascribed certain economic conditions to the effect of this consent decree, is like some of our farmers out at home—and our farmers back home, men, are the finest people in the world, but they are just like other human being, some of us, and perhaps they do little analytic thinking, when they contemplate some of the changed conditions. They sometimes regard coincidence as cause, by which I mean I believe that it was a coincidence that the meat packers, when they voluntarily gave up the privilege of merchandising, other than meat and kindred items, that at that very moment almost the culminating clouds of the aftermath of war exploded. You know the conditions. We were all side-stepping.

Now, the suspension of some of those business customs perhaps caused a temporary suspension of the purchasing power of some of the wholesale grocers. And this condition may have resulted in some loss to some canners.

Now, Mr. Campbell, as I understood his testimony, seemingly thought of this, that the cause of all this trouble is due to the fact that certain parties were not in the market as purchasers.

Now, I should like to offer this suggestion. As I have stated before, I come from the heart of the Corn Belt, Mr. Chairman, and I challenge anyone to state that the decline in canned food has been any greater than the decline in price of corn and wheat, which, as I understand it, can be sold anywhere at any time to anybody, and I challenge the statement that the canners' loss approaches anywhere near the loss of the grain farmer in the decline of prices of his production.

Now, further, gentlemen, a statement has been made that the fruit and vegetable producers have suffered losses. Now, out there in the State of Illinois, cattle and hog raising and feeding are among our chief industries. Whether your records in the department show it or not, you have unofficial knowledge of terrific declines in prices of cattle and hogs, and the loss to the farmers who raise stock in Illinois alone perhaps is greater, or as great, as the losses incurred by the canners of seasonable items, and, as I take it, the packers, gentlemen, were not restricted by the consent decree from helping, if they so desired, the raisers of the cattle and hogs to better market conditions. Therefore, Mr. Campbell may again be mistaken in his ideas of their effect upon canned food markets.

From my knowledge as a wholesale grocer, if there has been temporarily a slight decrease in the purchase of canned food by the jobber, I say to you that it is due to economic conditions and not to methods of distribution or channels of distribution. Consumers, gentlemen, are buying all that they can buy, and the jobbers are supplying the trade with all that they can sell, and a variation in the distributive channels would not increase consumption one single case.

I shall not burden your committee, Mr. Chairman, with a statement of the functions of the wholesale grocers in detail. You know them. I do want to

speak, with your permission, of one or two functions that appeal to me. And particularly with respect to the country wholesale grocer.

Now, remember, Mr. Hoffmann comes to you from a city. I come to you from the country, and from the midst of an agricultural region, and one of the duties of the wholesale grocer in that region is to be a merchandise banker, to give proper service to our customers over our territory. We can not go into a market such as Chicago or New York or Milwaukee or other large cities, however, and pick up items of which we may be short. In order to give proper service we are compelled to carry complete stocks in as small a market as Bloomington. Therefore we become merchandise bankers. From that very fact our business and the way it is conducted in connection with the canners enables them to finance their business. Again, we are merchandise bankers.

In addition to that, it is our privilege and part of our function to help finance the retailer. Now, you understand what I mean by that; when I make that statement, Mr. Chairman, it is not a question of loaning the retailer money, it is a question of extension of merchandise credit, and I feel personally, Mr. Chairman, that during the reconstruction days of 1920 and 1921 this function of the wholesale grocer alone has been perhaps one of the big saving influences.

We are in a position to make quick delivery of goods. I know of a case of a fire in a little town where a number of people were dependent for their food on one store, and the fire wiped it out. But there was a new stock of merchandise and groceries in that town in 24 hours. Why? Because the wholesale grocer had already assembled from all over the world all the items that go to make up our daily living, with the exception of the spiritual element, and that man who had that fire, in that neighborhood, and that is just one little detail, could not have had as quick a service from any other source, in my judgment.

Now, Mr. Chairman, there is an organization, international in scope, of which I am a member, and the name of that organization is Rotary, and the motto of that organization is "He profits most who serves best." I take it, gentlemen, that it is becoming axiomatic, in a sense—and I do not use that term "service" in the narrow, restricted sense of profits or items of that sort; I use it in the broad sense, which we all grasp, or should grasp—I think it is becoming axiomatic in the sense that by service only can one justify one's self, one's business, and perhaps one's reason for being. We believe, gentlemen, and I believe honestly that the wholesale grocer furnishes that service which approaches most nearly the needs of our public.

It has been said, gentlemen, that a monopoly has no heart, and if the packers were appearing in person in this hearing—you will notice I did not say I was glad there—I should say that the one decision to be made, perhaps, by your department, if it has that power to make, is whether or not the wholesale grocer is to be eliminated. To be eliminated by privilege, gentlemen, for, with the history of the by-gone years written, I state to you that if the packers themselves were appearing in this case for a modification of this decree, and their prayers were granted, I believe, and I honestly believe, that it would mean my elimination as a wholesale grocer, my elimination from the distributive chain of distribution of food supplies. That does not mean much, unless there are others who believe as I do, that I am one of the best lines of distribution, the most economic, the line that I can give the best of service to the public.

You perhaps, gentlemen, do not realize some of the unmentionable functions of the little wholesale grocer in the country district. Our customers are in personal touch with us. It is more than simply a question of bargain and sale, gentlemen. They come to us with their joys and their pleasures, and they come to us with their sorrows; they come to us with their business problems; they come to us with their religious problems, and perhaps in a large number, to help determine their political affiliations, and we, to the best of our ability, endeavor to advise them, gentlemen, and to help them to continue to develop into prosperous, loyal Americans.

And now, gentlemen, as an individual it seems to me that the one thing that Americans cherish above all else is our system of industrial competition, gentlemen, with equal opportunity to all and with privileges to none, so that the most efficient may prosper. This, as I take it, means human progress. And we Americans believe also in the square-deal plan, so that the great American public, of which you and I are a part, may be safeguarded in every possible way from monopolistic tendencies, and I say to you that anyone, or any small number

of firms who enjoy privilege to-day, whether that be privilege of comparatively unlimited capital, privilege in transportation, possesses that resource enabling him to gain monopolistic control, to the detriment, and perhaps the extinction not only of the distributors now operating in the open competitive fields, but at the expense of the public at large—listen gentlemen—both the producer and consumer, and I, feeling as I do that the very existence of the independent operator and distributor in fact is at stake, realizing fully that one of the functions of government is to endeavor to see that the greatest good shall be done the greatest number of people in this paramount issue, say that the question for this department—I say it again—is the question of the true bearing upon the subject, and I realize that in determining this case the Attorney General's only interest shall be to protect the public welfare, and that when the real facts are presented to him he can not fail but to see the justice of the claim of so many American business men, and that in determining this case the responsibility shall rest largely with the Attorney General.

Thank you.

The CHAIRMAN. Mr. Hall, have you any questions?

Mr. HALL. No.

The CHAIRMAN. Mr. Hawk, what do you believe is the main advantage of the packers over the wholesale grocers?

Mr. HAWK. Is or would be, Mr. Chairman?

The CHAIRMAN. Well, was before the entry of the decree?

Mr. HAWK. Well, "was"—the ability of centralization of large amounts of capital in a few hands, reported privileges in railroad rates, which we were not able to receive, and very large purchasing power, I presume would sum it up.

The CHAIRMAN. What do you believe would be their advantage in the future if they were permitted to resume these unrelated lines?

Mr. HAWK. Well, I should answer it the same way, Mr. Chairman.

The CHAIRMAN. Could you give us any statistics as to how much, or what percentages of the unrelated lines the packers handled prior to the entry of this decree?

Mr. HAWK. Do you mean in percentage, Mr. Chairman?

The CHAIRMAN. Yes; percentage of the total.

Mr. HAWK. May I ask you a question?

The CHAIRMAN. Surely.

Mr. HAWK. What do you mean, a percentage of the business of the packers' business, or the percentage of the grocers' business?

The CHAIRMAN. No. What proportion of the entire grocery business of the country did the packers, either collectively or separately, handle prior to the entry of this decree?

Mr. HAWK. I haven't those figures.

The CHAIRMAN. Do you know of any unfair acts in competition of the packers prior to the entry of this decree?

Mr. HAWK. I told you one, Mr. Chairman, and there are others that could be mentioned.

The CHAIRMAN. Capital and transportation?

Mr. HAWK. Yes; chiefly; and I also told you of the incident at Bloomington with our little packing company.

The CHAIRMAN. That is with reference to meat, however.

Mr. HAWK. Yes. Fairly indicative, however, we think.

The CHAIRMAN. Have you a copy of the letter which you sent to the canners, Mr. Hawk?

Mr. HAWK. The letters which I sent to the canners?

The CHAIRMAN. Yes.

Mr. HAWK. I do not have one with me. I have one in my file at the hotel.

The CHAIRMAN. Did you send the same letter to all the canners with whom you dealt?

Mr. HAWK. No, not to all of them; not the same letter. They were varied according to my acquaintanceship with different canners. In effect, they were the same.

The CHAIRMAN. Would you have any objection to submitting a copy of a sample letter that you sent to the canners?

Mr. HAWK. I will be very glad to do so, Mr. Chairman.

The CHAIRMAN. You will send it to the reporter at some time so that it will go into the record?

MR. HAWK. I am leaving at 1 o'clock, but I will see that it is gotten into the record.

(Following is a copy of letter presented by Mr. Hawk at the request of the chairman:)

OCTOBER 25, 1921.

DEAR MR. DICKINSON: We refer to the resolution of October 3 of the Western Cannery Association.

Representing our firm, Hawks (Inc.), of Bloomington, Ill., I should like to know whether the resolution of the Western Cannery Association expresses your attitude on the question of packers' decree.

We believe you will find the wholesale grocers have not stopped the purchase of canned food. We have bought and are buying all the public will consume.

May we suggest to you that the "packers" are not distributors, and should the consent decree be varied they probably will pack a large number of items.

If you do not favor the resolution of the Western Cannery Association, we sincerely trust that you will express your views directly to the Attorney General.

Cordially yours,

E. B. HAWK, *President*.

MR. RICHARD DICKINSON,

Care of Dickinson & Co., Eureka, Ill.

THE CHAIRMAN. That is all I care to ask. Does anyone else have any questions they wish to suggest?

MR. BREED. Mr. Hawk, when you said that the wholesale grocer helped to finance the canner or producer, and also the retailer, did you mean that that involved the advancement of any money to either?

MR. HAWK. I explained that to the chairman. You perhaps did not catch it, Mr. Breed. I said that it had no bearing on that angle at all. That due to the present method of dealing with canners through the quick transference of funds for purchasing of supplies and in extension of merchandise credits to the retailer.

MR. BREED. Then the credit was the financing that you referred to?

MR. HAWK. Yes.

MR. BREED. With respect to the canners and producers would that credit be anything more than the making of contracts in advance of the pack?

MR. HAWK. No; that was the extent of it, except the quick transference of funds on shipments of goods.

MR. BREED. Well, you mean quick payments?

MR. HAWK. Yes.

MR. BREED. Upon deliveries?

MR. HAWK. Yes. Or before delivery, in a few cases.

MR. BREED. Well, I understood Mr. McKinney, from California, in testifying to say that they utilized the purchase contracts made by the wholesalers in advance of the packing season to obtain credit from their banks.

MR. HAWK. Well, I am not interested in the canning industry, Mr. Breed, but that is my understanding of it.

MR. BREED. Well, it is the custom of your house to make purchases of canned goods in advance of the pack?

MR. HAWK. Yes, sir.

MR. BREED. And, so far as you know, it is merely the credit and reliability of your house on that contract that enables the canner to borrow money if he needs it to finance his own packing season?

MR. HAWK. I should say so; yes.

MR. BREED. And, in your own judgment, would this benefit the small canner more than the large canner with capital?

MR. HAWK. Naturally.

MR. BREED. Then that method of doing business would tend to assist and maintain the small canner and producer to remain in business?

MR. HAWK. Yes, sir.

MR. BREED. As to the retailer, does your financing extend otherwise than giving him credit upon his purchases from you?

MR. HAWK. I limited my answer, as stated to the chairman, that it was limited to the extent of a merchandise credit.

MR. BREED. And the retailer buys almost daily from the wholesaler, does he not—or weekly, at least?

MR. HAWK. Yes; daily, and sometimes several times a day.

MR. BREED. You do not attempt to go into the retail business?

Mr. HAWK. No.

Mr. BREED. Would you say that the wholesaler during the past 50 years had stuck to his distinct line of distribution pretty generally throughout the country?

Mr. HAWK. Well, you flatter me. My experience does not go back quite that far, Mr. Breed, but for the past 23 years—for 23 years I should say yes.

Mr. BREED. You are more than 23 years old, though?

Mr. HAWK. Yes; but my experience does not go back quite 50 years.

Mr. BREED. However, you did speak quite a bit of history, and I assumed perhaps you might know something of history.

The CHAIRMAN. Mr. Hawk, as a matter of fact, the wholesale grocer does handle a pretty widely diversified line of business, doesn't he?

Mr. HAWK. I should say not. I do not understand you. You mean a diversified number of items?

The CHAIRMAN. Items and articles.

Mr. HAWK. I could not speak for the general matter, except down State. You will remember that I stated that, of necessity, because of our geographical position, for the accommodation of our trade we had to carry stocks, because we were not in a position to go out and pick them up in a city market, such as in Chicago or New York or Milwaukee. We carry only groceries, as so understood.

The CHAIRMAN. Do you get into the hardware line to any extent?

Mr. HAWK. No.

The CHAIRMAN. Do you get into the meat line to any extent?

Mr. HAWK. Well, canned meat.

Mr. BREED. About how many items does your wholesale grocery house carry on its books and in its catalogue and offer for sale?

Mr. HAWK. How many items?

Mr. BREED. Yes.

Mr. HAWK. I do not get you. Do you mean subdivisions? There are so many grades.

Mr. BREED. Kinds of goods.

Mr. HAWK. Large lines?

Mr. BREED. Kinds of goods.

Mr. HAWK. I should say perhaps three.

Mr. BREED. Foods?

Mr. HAWK. I beg your pardon?

Mr. BREED. Kinds of foods?

Mr. HAWK. Well, I should say three, perhaps.

Mr. BREED. Three?

Mr. HAWK. Yes.

Mr. BREED. What are they?

Mr. HAWK. If I get your distinction, well, I should say bottled goods would be one class, canned food another—perhaps you would group those—and then there is another class of sundries, such as coffees and teas and spices, and then a general line of cereals. Now, whether that would be three lines or one, I did not get your question.

Mr. BREED. I do not mean lines. I mean how many different items would you say that you carry in stock—a thousand or three thousand different items?

Mr. HAWK. Oh, I see. Well, I couldn't answer that, because there are so many shadings in grade, in size of package. My answer to that question would have to be an approximation only.

Mr. BREED. Do you issue a catalogue?

Mr. HAWK. No.

Mr. BREED. Or a price list?

Mr. HAWK. No; excepting to our own salesmen.

Mr. BREED. Well, how many items do you carry in that? How many would you say, making a rough estimate?

Mr. HAWK. Well, I don't know. Maybe 2,500 or 3,000 items. I should say possibly—well, I should say all of 2,500 items, Mr. Breed.

Mr. BREED. The commission asked you if you had any figures as to the per cent of unrelated lines that the packers had gone into prior to 1920. Would you have any such data personally?

Mr. HAWK. No; I would have no reason to have it, Mr. Breed.

Mr. BREED. The source of that data would necessarily be the packers' books themselves, would it not?

Mr. HAWK. The packers' books, unless there had been evidence submitted in some Federal hearing of which I am not advised.

Mr. STEVENS. Mr. Hawk, do you meet with any considerable amount of losses through failures or uncollectible bills?

Mr. HAWK. Do you mean our credit losses?

Mr. STEVENS. Yes. Do you meet with any considerable amount of losses on account of your merchandise bookings through failures or uncollectible bills?

Mr. HAWK. Are they large, do you mean?

Mr. STEVENS. Yes.

Mr. HAWK. No. I hardly get your question. That is a relative question, in my mind. We create a reserve of a quarter of 1 per cent on our sales to cover those. That varies.

The CHAIRMAN. Gross sales?

Mr. HAWK. No; I shouldn't say a quarter of 1 per cent, because that varies from year to year. I should say from perhaps a twelfth to a quarter.

Mr. STEVENS. And that covers it all?

Mr. HAWK. It has up to this year. I don't know about this year. I can not speak from experience this year.

Mr. STEVENS. What is the gross profit in your region, Mr. Hawk?

Mr. HAWK. I didn't get that.

Mr. STEVENS. I say, what is the gross profit of the wholesale business in your locality? Annual gross profits?

Mr. HAWK. Well, I would have no way of answering that because I don't know all the profits in the locality. I know that in 1920, and perhaps 1921, it would not be difficult to answer that question. In the language of the fellow that went to the circus, "There ain't no sech animal." Mr. Hoffman spoke of the cost of doing business, and estimated the net of perhaps 2 per cent on sales, as I understood you, Mr. Hoffman?

Mr. HOFFMAN. Less than 2 per cent.

Mr. HAWK. Less than 2 per cent?

Mr. HOFFMAN. That is, in normal years.

Mr. HAWK. Well, I think Mr. Hoffman's evidence showed that.

The CHAIRMAN. Is there anything further? That will be all, thank you, Mr. Hawk.

Mr. SMITH. Mr. Chairman, Mr. Janney, of Fredericksburg, Va., could give you a very brief statement on the effect of monopoly in his State, that I think would be valuable.

The CHAIRMAN. There is just a question that I wanted to ask before I put him on. I want to find out about a witness for this afternoon. Mr. Roach, will you be here this afternoon?

Mr. ROACH. Yes, sir.

The CHAIRMAN. We will then put on another gentleman now, and we will put you on the first thing this afternoon.

Mr. ROACH. Well, what time will that be?

The CHAIRMAN. About half past one, I think.

Now, Mr. Janney, will you take the stand?

STATEMENT OF MR. S. M. JANNEY, WHOLESALE GROCER, FREDERICKSBURG, VA.

The CHAIRMAN. What business are you engaged in, Mr. Janney?

Mr. JANNEY. Wholesale grocer.

The CHAIRMAN. What is the name of your firm?

Mr. JANNEY. Janney-Marshall Co.

The CHAIRMAN. You may proceed, Mr. Janney.

Mr. JANNEY. Mr. Chairman, my statement will be very brief.

To my mind the most serious consequence of the packers reentering the grocery field is that they would eventually destroy the business of the thousands of independent wholesale grocers throughout the country and thus close the door of opportunity to the many thousands of young men who would eventually engage in this business. Our country furnishes any number of such examples. Take my own State of Virginia. I can remember when there were a number of small independent tobacco manufacturers in Richmond, Lynchburg, Petersburg, Danville, and Martinsville. There are none to-day. No man with small capital and ability ever considers entering this field of endeavor. The old independent factory buildings, in many instances, stand

as mute reminders to the young men of Virginia that this door of opportunity is forever closed to them.

This country is built and has grown great on the bed-rock principle of equal opportunity to all, and when the time comes, if it has not already come, when capital can so combine as to prevent the young man with limited capital but large ability to forge ahead in any business endeavor he may select as best fitted to his talents, then we say this country is in danger of disintegration. No man or set of men are going to sit supinely by and see every avenue of opportunity closed for the development of their God-given talents. If the meat packers come back into the grocery business, the day when men of brains and small resources can make a living out of the grocery business will have been passed.

I am opposed to the packer entering the grocery field, because it has been my observation and, indeed, my experience, that a large organization backed by tremendous capital does not mean more efficient service and cheaper prices to the consumer; but, on the other hand, rather tends to advance prices to the consumer and lowers prices to the producer. Last year the sun-cured leaf tobacco of my section was purchased around 6 to 10 cents per pound. The same tobacco when manufactured was sold to the merchant at 80 cents per pound and in turn sold to the farmer at \$1 a pound. The Virginia Branch Cigarettes when made by Allen & Ginter, of Richmond, sold for 5 cents per package. This package of cigarettes now controlled by the trust is sold at 10 cents per package.

That is all I have to say, Mr. Chairman.

The CHAIRMAN. Do you have any questions, Mr. Hall?

Mr. HALL. No.

Mr. HOFFMAN. Mr. Chairman, may I ask the gentleman a question?

The CHAIRMAN. Yes.

Mr. HOFFMAN. In his statement, if I understood him correctly, he said "is sold to the farmer at \$1 a pound." Do you mean to the farmer consumer?

Mr. JANNEY. Yes.

Mr. HOFFMAN. At \$1 a pound?

Mr. JANNEY. Yes.

The CHAIRMAN. Mr. Janney, have you any figures on the business of the packers—their percentages of the total?

Mr. JANNEY. Indeed I have not; no, sir.

The CHAIRMAN. What is your fear of the packers resuming the wholesale grocery line based upon?

Mr. JANNEY. Based upon their purchasing power and ability to enter into the market and control the markets and advance prices on that account. And their packer-car distribution, the fact that they own their own cars.

The CHAIRMAN. Has anyone else any questions to ask? If not, that is all. Thank you very much, Mr. Janney.

We shall now adjourn, gentlemen, as it is nearly 12 o'clock, until 1.30.

(Whereupon, at 11.50 o'clock a. m., a recess was taken until 1.30 p. m. of the same day, December 1, 1921.)

AFTER RECESS.

The committee resumed at 1.30 o'clock p. m., pursuant to recess.

The CHAIRMAN. The committee will resume. I understand it is now desired that Mr. Roach should be heard in order that he may get away. The committee will hear Mr. Roach.

State your name, please.

STATEMENT OF MR. W. R. ROACH, PRESIDENT OF W. R. ROACH CO., CANNERS OF FRUITS AND VEGETABLES, GRAND RAPIDS, MICH.

Mr. ROACH. W. R. Roach.

The CHAIRMAN. And where do you live?

Mr. ROACH. Grand Rapids, Mich.

The CHAIRMAN. What business are you engaged in?

Mr. ROACH. I am president of W. R. Roach Co., a Michigan corporation.

The CHAIRMAN. What is their business?

Mr. ROACH. The canning of Michigan fruits and vegetables.

The CHAIRMAN. What other organizations, if any, do you represent at this hearing?

Mr. ROACH. I represent 4,000 growers—farmers and fruit growers—that are growing crops for us.

The CHAIRMAN. Are they organized in any way or not?

Mr. ROACH. No organization whatever.

The CHAIRMAN. Just proceed in your own way, Mr. Roach.

Mr. ROACH. I have not got a prepared statement, gentlemen, but I will tell you in my own language, which I hope you may understand, something about our business.

The CHAIRMAN. We will be very glad to have it in your own way.

Mr. ROACH. We are packers of Michigan fruits and vegetables. As you know, Michigan is one of the great States interested in the production of fruits and vegetables in a large way. We are going into our twenty-second year in business. We have got 5 plants in Michigan, large canneries. We have got 36 growing and receiving stations. We put a product of from 15,000 to 20,000 acres in tin cans annually. We have got no fight on with the meat packers, the wholesale grocer, or any other organization—

The CHAIRMAN (interposing). May I interrupt you; what was your pack for last year?

Mr. ROACH. I could not tell you at the present moment.

The CHAIRMAN. For last year, not this year; for 1920, I mean?

Mr. ROACH. I could not tell you that without looking it up. Our pack under normal conditions runs from 800,000 to 1,000,000 cases a year.

The CHAIRMAN. That is what I wanted.

Mr. ROACH. We distribute our products from St. Paul to New Orleans and from Boston to San Francisco, principally under our own brands and labels. We have got no fight on with the wholesale grocer who distributes canned fruits under his own brands and labels. We have felt that from the activities of the large meat packers in their own lines and in other lines that they have been taking up, and our line, that it would not be for the interest of our canneries, our business, and our growers to have the consent decree modified.

The large packers are in the canned food business, you know, in Michigan and in other States. We feel that if they were allowed to continue in the business of unrelated food products, as they were during the war, eventually our business would be swept off the boards, and we would be either compelled to sell out our business or to discontinue business altogether. Our growers feel the same way. In the locality where we operate we have increased the value of farm lands, fruit lands, anywhere from 100 to 500 per cent. We have increased the fertility of the soil to a very large extent. We do a general canning business. We usually close down about this time of year and start up about the 10th of June. Our products are fruits and vegetables.

At Frankfort there is quite a large plant owned by Armour & Co.; and at other points in Michigan some of the large meat packers have plants where they do canning, and their competition has not always been the best. It is our honest opinion if they come back into the business, if they are allowed to come back into the business, that sooner or later we will be forced out of the business, and therefore we want to ask this committee to allow the consent decree to stand as it is.

Now, gentlemen of the committee, if you have any questions you want to ask me I am ready to try to answer them.

The CHAIRMAN. Mr. Hall, any questions?

Mr. HALL. I believe not at this time.

The CHAIRMAN. Mr. Roach, you say their competition has not been the best. If you can we would like to have some instances of objectionable features of their competition.

Mr. ROACH. In many instances in West Michigan the products of the farmer, when the market was strong, and when they were in the saddle—

• Mr. BREED (interposing). When who was in the saddle?

Mr. ROACH. When the meat packers, Armour & Co. in this particular instance. They have a plant at Frankfort, about 40 miles from us. They have gone into the orchards of the fruit growers and have bid up fruit to a price where we absolutely could not afford to buy. At other times they have depressed the market when we had our contracts made with our growers, and we have been compelled to take a heavy loss on our products after they had gone into tin cans.

The CHAIRMAN. Just how would they depress the market, if you know?

Mr. ROACH. In price.

The CHAIRMAN. Of the finished product?

Mr. ROACH. Both of the finished product and of the ripe fruit of the farmer.

The CHAIRMAN. By their act of cutting the price on the ripe fruit would it enable them to cut the market price?

Mr. ROACH. Sure. They were able to get their product cheaper. We were under contract and we had to pay a specified price to our growers, and there would be an abundance of fruit, we will say. In this line of business an overload is just as dangerous as an underload.

The CHAIRMAN. And they would go and buy the uncontracted for portion of the crop?

Mr. ROACH. The contracted and uncontracted crop; the contracted part of the crop sometimes when some small canner could not take the stuff.

The CHAIRMAN. And at a reduced price?

Mr. ROACH. Yes, sir.

The CHAIRMAN. And thereby they would be able to sell cheaper than you would, do you mean?

Mr. ROACH. Yes, sir; thereby creating an unstable condition in the market. At other times I have known the five large packers, as they are styled, to buy up as far as possible a very large percentage of the red sour cherries grown and produced from the small canners, and I have known them to take that product, when it was in tin cans, and distribute it out in this section and in that section, 25 cases and 50 cases and 100 cases in a lot, at from 50 cents to \$1.50 a dozen less than they paid for them, so that the other canners, like myself, could not come into the market and do business with his customers without suffering a loss. In that way they would control the business. Then after they had gotten control of nearly all the cherries, or of a major portion of them, they would put the price back where it belonged.

The CHAIRMAN. Do you know what percentage of canned goods—for instance, of cherries—they handled at the time you speak of?

Mr. ROACH. I think in 1919 they got over 50 per cent of them, and in 1920, when we had a very abundant crop, I think they got about 65 per cent of them.

The CHAIRMAN. How were those percentages arrived at? What is the source of your information? Are there any statistics showing that?

Mr. ROACH. I think there is.

The CHAIRMAN. Where are they available?

Mr. ROACH. I think they are available from the New York State canners and Michigan canners.

The CHAIRMAN. Associations, do you mean?

Mr. ROACH. Yes.

The CHAIRMAN. Now, Mr. Roach, do you know what percentage of any of these lines Armour & Co. themselves canned?

Mr. ROACH. No; I do not.

The CHAIRMAN. Had they gone into the canning industry to any extent in your section of the country?

Mr. ROACH. Well, they had a very large plant at Frankfort, about 40 miles north of our Scottville plant. They reached out in all directions.

The CHAIRMAN. Is it as large as your plant?

Mr. ROACH. It is larger than any fruit plant that we have.

The CHAIRMAN. What do they can at that plant?

Mr. ROACH. They can fruits.

The CHAIRMAN. What is the name of that plant?

Mr. ROACH. Armour & Co. And they have their own refrigerator cars there, and fruit is not only drawn in from the farmer but shipped in from many directions, something we can not avail ourselves of.

The CHAIRMAN. Mr. Hall, any questions?

Mr. HALL. This 50 per cent or 60 per cent that you speak of is in the State of Michigan?

Mr. ROACH. Yes; and at large.

Mr. HALL. That is, in your State only?

Mr. ROACH. No; that is in our State and New York State, where red sour cherries are mostly grown.

The CHAIRMAN. Does that cover the entire crop in the United States?

Mr. ROACH. I think that covers the most of it. The greater portion of red sour cherries are grown in New York State and in Michigan.

The CHAIRMAN. So your statistics were intended to cover the entire production in the United States of red sour cherries?

Mr. ROACH. Yes, sir. In 1919 the crop was about normal. One of the Big Five packers came into the city of Detroit, where we have some very valuable trade, and they sold 200 cases of No. 10 cherries to Lee & Gady, at a price of a dollar a dozen below what we could afford to sell them at. And they delivered one-half of 1 per cent, while we delivered 50 per cent of our contract.

The CHAIRMAN. That is, they delivered one-half of 1 per cent of the amount they had sold?

Mr. ROACH. Yes, sir; of the 200 cases.

The CHAIRMAN. Do you know whether they were selling them for less than they paid for them?

Mr. ROACH. I do not know. They were supposed to be packed in New York State. I think it was Cudahy & Co., and, I think, at Fredonia.

Mr. HALL. Have you any idea of the sentiment of the growers on this subject?

Mr. ROACH. The growers in west Michigan are against the unstable condition the larger packers imposed upon them by their method of dealing with them. You know the canned-food business is quite a large business on the whole. The recent survey of canned foods, I think, was around \$850,000,000 to \$950,000,000 in 1920 or 1921.

Mr. SEARS. It was \$838,000,000.

Mr. ROACH. All right. That is quite a large business. The canning business has, under myself and Mr. Sears here, been underfinanced. In order to carry on our business, we have to go to our customers and secure their business in advance. We have to anticipate their wants in quite a large measure; we have to arrange for a supply of canned foods to carry them through the year and with which to supply their customers. In many instances a large portion of the pack is sold in advance of the actual packing of the fruit, sold both to the retail grocer and the wholesale grocer. If it were not for the fact that we are able to do that, and if it were not for the fact that we have the assistance of the jobber, the help that he renders us, with our low capitalization we would be unable to run to any great extent. I go to the banks I do business with—and we do not sell any commercial paper, but we do business with the First and Old Detroit National Bank, the Old National Bank of Grand Rapids, and the Chicago Trust Co.—I make up a list of my requirements of money, and of my sales, and I present the statement to the banks, and get what credit I need to meet my requirements. Our business is the growing of raw products for canneries and the manufacture of canned foods.

The CHAIRMAN. Mr. Roach, are you interested in any way in any wholesale grocery business?

Mr. ROACH. No, sir; I am not interested in any wholesale grocery company in the United States. I have not a penny invested in any of them, and never have had; nor in any retail grocery. And no one is interested with me. I am the principal stockholder in my corporation.

The CHAIRMAN. And no wholesale grocer is interested in your company?

Mr. ROACH. Not a penny's worth.

The CHAIRMAN. Have you any contracts with any wholesale grocers?

Mr. ROACH. Not at the present moment. And I am paying my own expense in coming down here to testify.

The CHAIRMAN. Certainly.

Mr. ROACH. And I was not asked by any wholesale grocer to come down here to testify.

The CHAIRMAN. Have you been using the wholesale grocers to distribute your products?

Mr. ROACH. Yes, sir.

The CHAIRMAN. And you feel that their interests are your interests?

Mr. ROACH. Yes, sir; absolutely so. I feel that they have a more economical way of distributing food products, according to my past dealings with them. And I think they are more fair and that they can serve the public and the consumer better than can the large meat packer in the matter of these canned foods; better than the large meat packers who are all located to a large extent in a very small space of territory.

The CHAIRMAN. You are fearful if the packers resume the handling of these lines they will put the wholesale grocers out of business?

Mr. ROACH. Yes, sir.

The CHAIRMAN. And that they will enter into this business and injure the canning business, is that your idea?

Mr. ROACH. They are already in the canning business. They were in it this past season.

Mr. HALL. You spoke of unstable conditions for the grower as created by the packer. What did you refer to?

Mr. ROACH. In that particular instance I mentioned.

Mr. HALL. As to the cherries?

Mr. ROACH. Yes, sir. What would you think if you bought 200 cases of cherries amounting to about \$2,000 from them and they would give you delivery of one-half of 1 per cent? What would you think if you were a wholesale grocer doing business?

The CHAEMAN. Could not you require delivery under the contract?

Mr. ROACH. Well, I do not know whether he could or not. He might have.

The CHAIRMAN. But he did not.

Mr. ROACH. I have got just a little clipping here from one of the Grand Rapids papers, under date of November 11, that I would like to read.

The CHAIRMAN. You may read it.

Mr. ROACH. We often have a normal crop. Then again we often have a short crop, and sometimes we have an overcrop; and an overload is as dangerous as an underload. It is headed:

“HARTFORD CANNER WINS SUIT, CLAIMS POOR CROP.

“PAW PAW, November 11.—A case of considerable interest to local canners was tried in circuit court this week. In this case Wilson & Co., Chicago packers, brought suit against S. M. Carpp, Hartford, for damages resulting from the failure of Mr. Carpp to fill his contract during the season of 1919, when a shortage of fruit made it impossible for canners to deliver the goods. The jury brought in a verdict of ‘no cause for action.’”

Mr. BREED. Would it be proper for me to ask Mr. Roach a few questions now, Mr. Chairman?

The CHAIRMAN. Go ahead, and if anything is asked that we do not think pertinent we will suggest it.

Mr. BREED. Mr. Roach, you did not quite finish detailing your method of doing business with your banks. I understood you to say that you had sold your canned goods to your customers early in the season and before the goods were packed, ordinarily. Is that a fact?

Mr. ROACH. Our selling campaign as a rule starts in about the middle of January. At that time we have arranged for our requirements of seed, which amounts to about a quarter of a million dollars a year the last few years, that we have to supply the grower with. And we make our contracts with the grower beginning about now, and we work along up until the selling campaign is ended, just about when the seed goes into the ground, beginning about the middle of April—some years a little earlier and some years a little later, according to the season. When we get pretty well advanced with our sales we go to our banks and lay out our sales to them, what we have done, and tell them what money we need. We show them our contracts, how our goods are sold, and whom sold to—

Mr. BREED (interposing). Your contracts are made with whom?

Mr. ROACH. With wholesale grocers.

Mr. BREED. For sales of your canned goods or fruits.

Mr. ROACH. Our products.

Mr. BREED. In advance of the packing season?

Mr. ROACH. Yes, sir. They give us what money is necessary to manufacture these goods.

Mr. BREED. Based upon what?

Mr. ROACH. Based upon sales.

Mr. BREED. Upon their idea of the credit standing of the wholesale grocers to whom you have sold your goods in advance?

Mr. ROACH. Yes, sir.

Mr. BREED. Do I understand that the canners of Michigan ordinarily assist the growers by purchasing seed for the growers and giving them the seed?

Mr. ROACH. That is absolutely necessary. The growers are not financially able to buy their own seed. We arrange for the seed about a year in advance. We have already arranged for quite a considerable quantity of seed to be grown this coming year.

Mr. BREED. Now, then, when you get this seed you only furnish it to growers who have entered into contracts with you to deliver their fruits to you, is that right?

Mr. ROACH. Only to the growers with whom we have made contracts.

Mr. BREED. Do you consider that a benefit to any wide number of growers or farmers?

Mr. ROACH. The farmer could not finance himself to the extent of buying that seed. We have to sell that seed as a rule to the grower for about 50 per cent of what we pay for it.

Mr. BREED. How is that?

Mr. ROACH. The cost of seed for the last few years has been extremely high—and I am speaking more particularly of pea seed now. I will speak of sweet-corn seed and snap-bean seed, and other seeds a little later on if you wish. Pea seed is sold under contract around \$10 to \$11 per 100 pounds, or \$6 to \$6.50 a bushel. It takes 4 bushels of pea seed to plant an acre. In order to produce a crop, it is necessary to use that much seed on an acre. Four times six and one-half would be \$26 an acre. The farmer would not think he would be able to put in \$26 an acre for seed and take his chances of getting a crop. Therefore we have to reduce the price to around \$2.50 and \$3 a bushel for pea seed to the farmer.

Mr. BREED. When you make your contracts with the farmer do you agree upon any price with him covering the purchase of his product?

Mr. ROACH. Sure, we do.

Mr. BREED. So you are able to have a definite understanding with the farmer as to the sum, when you make your contract in advance of the packing season and deliver him his seed, of what he will get for his crop?

Mr. ROACH. Certainly. If we did not do that we could not contract with the farmer.

Mr. BREED. And the farmer, on the other hand, could not go ahead and plant his crop and produce it.

Mr. ROACH. We could not enter into such an unstable contract as that with a farmer. That would be doing business on a commission basis.

Mr. BREED. If you were to do business on a commission basis I understand you to say the farmer would not have money to finance himself.

Mr. ROACH. The farmer would not have money to finance himself. Just let me read you one small paragraph from a contract we make with the wholesale grocers. No; I guess I have not got a contract here. I thought I had one. But we contract with the wholesale grocer on a prorata basis. For instance, a wholesale grocer buys 1,000 cases of product that is to be grown out of the ground. We agree with him to have our plants in order. We agree with him to have our cans and equipment and everything that enters into the manufacture of canned food products. We agree to have all these things in readiness. We agree to have the necessary acreage and the seed planted at the proper time. We agree that the sale shall not exceed the production of our plantings and our operations for five years. And—

Mr. BREED (interposing). In other words, so that you can not speculate.

Mr. ROACH. Just one moment. We agree that our planting shall not exceed the capacity of our plants. If it did it would spoil the quality of the product he wants. Our books are open any time to any customer we have got on that basis. That is a fair contract.

Mr. BREED. You have called attention to the fact that your business relating to a fruit product which depends in turn upon the weather and general conditions, sometimes results in underproduction and sometimes in overproduction.

Mr. ROACH. Yes, sir.

Mr. BREED. Therefore, your contract with the wholesale grocer is an elastic contract, is it?

Mr. ROACH. No, sir.

Mr. BREED. To some extent, is it not?

Mr. ROACH. The only elasticity of our contract with the wholesale grocer is that in case of an underproduction he agrees with us to take his prorata share of the pack.

Mr. BREED. When you say "prorata share of the pack" that means his prorata proportion of what your growers would produce under a normal pack for the volume of your factory production?

Mr. ROACH. That is practically it. In other words, if we sold a customer 1,000 cases of any product and we found at the end of the pack that our produc

tion for that year was only 50 per cent of normal production for five years, we would give him 500 cases.

Mr. BREED. So you would give him 50 per cent of the contract?

Mr. ROACH. Yes; and he takes it and is satisfied.

Mr. BREED. Assume a case where there is a very large crop, is that one of the instances where the meat packer would be able to injure the canning business?

Mr. ROACH. Absolutely.

Mr. BREED. The canning business as done by local canners, I mean.

Mr. ROACH. Sure; absolutely so.

Mr. BREED. Explain that again.

Mr. ROACH. For instance, if your pack instead of being 100 per cent of normal, figuring on the basis of 100 per cent, if it was 150 per cent you would either sell your pack at a loss or sell it on the market or carry it until such time as you could market it, and you have to carry it anyhow until you can market it.

Mr. BREED. In other words, you are under contract both ways—with the growers on the one hand and the wholesalers on the other?

Mr. ROACH. Yes, sir. We have to take the entire crop that the farmer grows.

Mr. BREED. And if there is an overproduction and the packers enter the market or buy any portion of this overproduction it puts it within their power to break the market and thus cause a loss to you and to the wholesale grocer who has bought your product in advance.

Mr. ROACH. That is it; and hurts the grower as well, because when such a condition exists it would be quite apparent that the grower would not get a reasonable price for his product. The farmer would not get a reasonable price for his product the following year.

Mr. BREED. Would you characterize that as a speculative way of doing business?

Mr. ROACH. Absolutely so.

Mr. BREED. By the packer?

Mr. ROACH. Absolutely so.

Mr. BREED. Does the packer pursue the same methods or does he pursue a more speculative method in the purchase and sale of canned fruits?

Mr. ROACH. During the war, and I say during the war, the large meat packer contracted to a very large extent the same as the wholesale grocer did, but when there was a surplus he went and bought goods at a very much reduced price. In the city of Grand Rapids some large meat packers came into the market and sold canned peas, which is one of the largest products we pack, for \$1 a case less than it cost to produce them.

The CHAIRMAN. Is that less than it cost the packer to produce them?

Mr. ROACH. Yes, sir; less than it cost the packer to produce them.

The CHAIRMAN. Did the packer can them?

Mr. ROACH. I do not know whether he canned them or not.

A VOICE. You mean at less than it cost the canner to produce them?

Mr. ROACH. Yes; at less than the cost of manufacture.

The CHAIRMAN. Is that manufactured cost based upon your experience?

Mr. ROACH. No, sir.

The CHAIRMAN. You do not know what the packer's cost was? He might have produced them himself at less cost.

Mr. ROACH. He might, but I don't believe he did. During the war the canners to a very large extent were hauled over here to Washington by the Federal Trade Commission and sat down to a large table like this, and we compared our costs of canned food products and they ran about even.

Mr. BREED. One further question with respect to the use by packers of refrigerator cars. Did I understand you to say that in dealing with fresh fruits the packer was enabled to use refrigerator cars to bring fresh fruits to his canning factories?

Mr. ROACH. That is what Armour & Co. have done in Michigan.

Mr. BREED. Refrigerator cars were used to bring fresh fruits to their factory there?

Mr. ROACH. Yes, sir; from Sturgeon Bay, Wis., and from Travers City district.

Mr. BREED. Where would they get the refrigerator cars?

Mr. ROACH. They were their own cars.

Mr. BREED. Have you any refrigerator cars?

Mr. ROACH. No, sir.

Mr. BREED. Have any of the canners in Michigan any refrigerator cars of their own?

Mr. ROACH. No, sir.

Mr. BREED. Can not they get refrigerator cars from the railroads?

Mr. ROACH. Well, I presume they could. I presume they could at some times.

Mr. BREED. Why didn't they?

Mr. ROACH. Well, sometimes they have, but as a rule it has been unprofitable. They could not afford to stand the expense.

Mr. BREED. In other words, your position is that the ownership of these refrigerator cars by the meat packers themselves enables them to utilize them in whatever way is most advantageous to their business?

Mr. ROACH. It would seem that way to me as an outsider. But I am not in the refrigerator-car business, and I can not speak with authority.

Mr. BREED. There has been a question brought out by Judge Hainer with respect to the cost of canned goods or goods of this character between the years 1913 or, I will say, 1914 and 1921?

Mr. ROACH. Yes.

Mr. BREED. Have you any data on that?

Mr. ROACH. Well, I have got a fair amount of knowledge on it. We paid the farmer, figuring on peas, in 1913, if my memory serves me correctly, and I think it does, \$40 a ton. We paid, in 1921, \$55 a ton. We sold him his seed for the same price in 1913 that we sold it to him for in 1921, and we took a seed loss of \$3.50 to \$4 a bushel on every bushel he planted in 1921. Another thing I want to mention at this time is this, in growing a crop out of the ground there is always more or less uncertainty. We have many farmers that contract with us—and good farmers, too—to grow crops, and from one cause and another they have no harvest, or not enough harvest to pay for the seed. Therefore we have to take a second loss. We are never able to collect anything for the seed.

Mr. BREED. Have you any other figures with regard to comparative sums paid to producers in 1913 and in 1921?

Mr. ROACH. Yes, sir; I have. I can recall nearly all our figures.

Mr. FORD. Will you please state them?

Mr. ROACH. We pack about 3,000 acres of Lima beans in Michigan annually, and we paid the farmer in 1913 2 cents a pound.

Mr. BREED. Who is we?

Mr. ROACH. W. R. Roach & Co. In 1921 we paid the farmer from 5½ to 6 cents a pound.

Mr. FORD. How about other vegetables?

Mr. ROACH. We paid for growing sweet corn around \$8 a ton in 1913, and in 1914 we paid \$15 to \$18 and \$20 for the different varieties we used in the conduct of our business.

Mr. FORD. How about tomatoes?

Mr. ROACH. We do not pack tomatoes, but the going price in 1913 was around \$7 to \$7.50.

Mr. BREED. To the farmer?

Mr. ROACH. Yes, sir. Last year it was \$13.50 to \$15.

Mr. FORD. What was that for?

Mr. ROACH. For a ton, 2,000 pounds.

Mr. FORD. How about beets and spinach?

Mr. ROACH. We paid \$7 a ton for beets and spinach in 1913, and in 1921 we paid \$13.60 a ton.

Mr. FORD. Mr. Roach, Mr. Campbell has testified that the growers and producers of fruits out in California were receiving less for their fruit in 1921 than in 1913. Have you any figures on fruits?

Mr. ROACH. We do not do business in California. We pack about 100,000 cases of small fruits annually—strawberries, red raspberries, black raspberries, cherries. We paid 60 cents a case for strawberries in 1913, and we furnished the case. In 1921 we paid \$1.75 and \$2 a case, and we furnished the case of 16 quarts. On red raspberries we paid \$1 a case of 16 quarts in 1913, and in 1921 we paid \$2.75. We paid for black raspberries in 1913 about 75 cents a case and in 1921 we paid \$2.50 to \$2.75 a case. On red sour cherries I might mention right here that we paid our farmers—

Mr. FORD. Those are farmers in Michigan, are they not?

Mr. ROACH. Yes, sir. We paid our farmers in Hart, that little town, a quarter of a million dollars for their red sour cherry crop in 1920.

Mr. FORD. What were the comparative prices of cherries?

Mr. ROACH. It was from 3 cents to 4 cents a pound in 1913 and in 1921 we paid them 8 cents to 10 cents a pound for every pound of cherries we got.

Mr. FORD. Do you pack any plums and pears?

Mr. ROACH. Yes, sir.

Mr. FORD. What were the comparative prices for them?

Mr. ROACH. For peaches we paid \$2.25 and \$2.50 in 1920—

The CHAIRMAN (interposing). Mr. Ford, do not you think we have gone into that far enough?

Mr. FORD. I think it ought to be brought out because Mr. Campbell has claimed, due to conditions brought about by the wholesale grocers, the farmer is getting less now than he was getting before. I think Mr. Roach can give us that information.

The CHAIRMAN. Mr. Roach has gone into it pretty fully already.

Mr. FORD. I would like to get this information, if I may.

Mr. BREED. I would suggest that you just permit Mr. Ford to summarize the matter, then.

Mr. FORD. I would like to ask about the cost of cans and labor and freight in 1913 as compared to 1921, if I may?

Mr. ROACH. In 1913 the price for all cans, for the information of you gentlemen who are perhaps not as familiar with cans and the canning business as I am—the price of tin cans in 1913 was, I think, \$10.50 per thousand. In 1916 the price was \$11.50 per thousand. In 1921 it was just a trifle over \$25 a thousand.

Mr. FORD. What was the difference in the cost of freight?

Mr. ROACH. Our freight rates to our Michigan points in 1913 were from 10½ cents to 12 cents per hundred pounds from Chicago to Michigan points.

Mr. FORD. What was it in 1921?

Mr. ROACH. About 30 cents on all products in and out of Chicago.

Mr. FORD. What was the difference in the cost of manufacture, for labor?

Mr. ROACH. In 1921 about 100 per cent more than in 1913.

Mr. FORD. What were the figures, do you know?

Mr. ROACH. In 1913, if my memory serves me correctly, and I think it does, and I think our books will substantiate my statement, we paid 15 cents to 17½ cents an hour for common labor and 20 cents to 22 cents for skilled labor. There were only a few men at 22½ cents. Of course that does not include superintendents or heads of departments in our field organization. In 1921 we paid from 25 cents to 35 cents to 45 cents, and even 60 cents an hour. To women, in 1913, we paid 10 cents an hour, and last year we paid them from 25 cents to 35 cents an hour, and a few were paid 40 cents an hour, a few of the most skilled workers.

Mr. FORD. I believe that is all.

The CHAIRMAN. Senator Smith, any questions?

Mr. SMITH. No.

The CHAIRMAN. Just one or two questions: You said that by making contracts with wholesale grocers you are enabled to procure loans from the banks?

Mr. ROACH. Yes, sir.

The CHAIRMAN. Do you think that if you made contracts with the meat packers that the banks would loan money on such contracts?

Mr. ROACH. I presume they would; yes, sir.

The CHAIRMAN. What objection would you have, Mr. Roach, to the meat packers going into this business on a commission basis purely and not go into the canning end of it?

Mr. ROACH. In Michigan, as I have said, the products as grown out of the ground there are largely fruits and vegetables. If you have any knowledge of the commission business where fruits and vegetables are grown in a large way, the way they are in Michigan, you will find a very unstable condition exists, and it would practically put the grower out of business as well as the canner, because when the product left his control, why, he would not know what he was going to get for it.

The CHAIRMAN. That is, the grower would not know?

Mr. ROACH. Sure.

The CHAIRMAN. Mr. Roach, what objection, if any, would you have to the packer being permitted to handle these lines; that is, not manufacture them, but handle them and deal in them for export only?

Mr. ROACH. Well, now, we have been doing an export business ourselves. Previous to the breaking out of the war we had quite a trade, and it is just

beginning to come back again in some slow way. As a canner we are able to take care of our own export business, and we are seeking that business, hunting it. I am going down to talk to Mr. Hoover's department on that this afternoon. I have a letter from him requesting me to come down to see him on it.

The CHAIRMAN. What injury, if any, do you think the meat packers entering into the export business alone would inflict upon the canners?

Mr. ROACH. Well now, people like ourselves that are doing an export business, we have not got the facilities to have men on the ground. Our capital is limited, and we are a small corporation, undercapitalized, and eventually what little export business we have would be swept off the face of the earth.

The CHAIRMAN. Because of their larger organization?

Mr. ROACH. Yes, sir; and because of their personal contact abroad.

Mr. BREED. If the packers entered into the export business alone, would it be reasonable to assume that in times of excess crops, of large crops, they would be able, through their large money power, to buy this large excess of crops and sell same at prices much below what you could sell them for export?

Mr. ROACH. I think that would be reasonable.

Mr. BREED. Do you think the effect of the packers buying for export late in the season at reduced prices would be injurious upon prices of the same commodities in this country?

Mr. ROACH. Absolutely so. You can take 10 cars of any one commodity in canned foods and break the price all over the United States. And the wholesale grocer not only suffers, but the canner suffers and the grower suffers in his next year's production.

Mr. BREED. That is all.

The CHAIRMAN. I want to thank you, Mr. Roach, for coming here.

Mr. ROACH. Not at all. I want to thank you gentlemen for this opportunity to appear before you.

The CHAIRMAN. Next we will hear Mr. Dailey.

Mr. DAILEY. Mr. Walter Sears says he must leave at 4 o'clock. I would like to get away myself, but will gladly give way to my coworker.

The CHAIRMAN. The committee will hear Mr. Sears.

STATEMENT OF MR. WALTER J. SEARS, PRESIDENT AND GENERAL MANAGER OF SEARS & NICHOLS CANNING CO., CHILLICOTHE, OHIO, AND REPRESENTING THE WESTERN CANNERS' ASSOCIATION.

The CHAIRMAN. State your name, please.

Mr. SEARS. My name is W. J. Sears.

The CHAIRMAN. Whom do you represent?

Mr. SEARS. I am president and general manager of the Sears & Nichols Canning Co., with headquarters at Chillicothe, Ohio.

The CHAIRMAN. Do you represent any other organizations besides your own corporation?

Mr. SEARS. I am representing to-day the Western Canners' Association.

The CHAIRMAN. In what capacity? As a delegate, selected to come here and represent them?

Mr. SEARS. Yes, sir; selected by President Clark. I have a letter from him authorizing me to represent his association.

The CHAIRMAN. It may go in the record.

Mr. SEARS. The letter is as follows:

WESTERN CANNERS' ASSOCIATION,
Beaver Dam, Wis., November 26, 1921.

Mr. WALTER J. SEARS,
Washington, D. C.

DEAR SIR: You are hereby authorized to represent the Western Canners' Association at the hearing and conference to be held before the Department of Justice relative to the so-called "consent decree," affecting the meat packers. Will you kindly present the resolution recently passed by the association at Chicago and urge on behalf of this association that the decree be not modified?

You are further authorized and instructed to secure the presence of as many canners as are able to attend to assist you in presenting this very important matter.

As president, I feel that the member of our association covering the Middle West, should present strongly to the Department of Justice our unqualified opposition to any modification of the decree.

I am very sorry indeed that I am unable to be present, but feel that you will carry out my wishes, as well as the wishes of our entire membership.

Yours truly,

ROY F. CLARK, *President.*

The CHAIRMAN. You may proceed in your own way, Mr. Sears.

Mr. SEARS. I wish to read into the record a letter which I addressed to the Hon. H. M. Daugherty on October 15, 1921:

CHILLICOTHE, OHIO, October 15, 1921.

Hon. H. M. DAUGHERTY,
Attorney General, Washington, D. C.

DEAR SIR: In reference to the proposal that there shall be a reopening of the consent decree, under which the meat packers of Chicago agreed to eliminate the production and distribution of canned foods through their enterprises, we wish to advise you that our company after careful consideration has reached the decision that said consent decree ought not to be disturbed, and that the meat packers should not be permitted to produce or distribute canned foods for the following reasons:

(1) The present economic channels of production and distribution are sound, necessary, and efficient. To weaken them or to divert their energies would result in lessened production and more expensive distribution, since what is now being well done by a large number of factors would be done by a small number of factors, at a risk of the breakdown of the human power of organization and management.

(2) Prior to the consent decree the meat packers were slowly but surely developing a dominating control and direction of the sources of food supply and distribution. If they again entered this field, the temptation would be to so develop it by their unlimited resources of capital, as ultimately to dominate the markets, both as to the green produce and the finished product. We grant that the industrial experience of the past quarter of a century has demonstrated the efficiency of large-scale operations, and that these operations may be permitted without harm to the public—but the same experience has demonstrated also that there must be a reasonable limit to such operations, if the public is to be saved from exactions which grow out of self-interest founded upon monopolistic control.

(3) The economic solvency and efficiency of a large number of factors engaged in the production and distribution of food is of far greater importance to the well-being of the Nation than the possible advantage that might arise from the concentration of capital and organization even if such concentration proved efficient. This is true because the production of food products is directly responsible to the immediate demands for such food. It would be difficult for a single organization, however efficient it might be, to properly appreciate or comprehend the needs of the people in respect to their essential food supplies. The proper rationing of the Nation will come when correct information is secured—

(1) As to the quantity of food required annually.

(2) As to the productive capacity of our farms, orchards, and waters.

Such information is now approximated by the large number of canners and wholesale grocers scattered throughout the country, in close and intimate touch with the demands of the people.

Yours very truly,

THE SEARS & NICHOLS CANNING CO.,
Per WALTER J. SEARS.

That letter states briefly but I think sufficiently the reasons which have prompted us to take the position we have taken.

Mr. Chairman, since coming here my attention has been called to certain statements made by Mr. Vernon Campbell with respect to the action of the Western Canners' Association—that is, taken at a meeting held on October 3.

The CHAIRMAN. That was the first meeting?

Mr. SEARS. Yes, sir; that was the first meeting. That was a special meeting called by the president to consider several matters of general character, as I understand, and primarily, as I understand, at the time to arrange the program for the semiannual meeting to be held later on in November.

I want to say that I considered that meeting of such little importance that I did not attend it. As a matter of fact, only 18 members of the association did attend the meeting out of a membership of some 200. When I learned of the action that had been taken in respect to the consent decree, a resolution having been passed, which has already been called to your attention, I made some investigation and found that that meeting was void and illegal, void because it was illegal, because proper notice had not been given to the members as to the purpose of the meeting and because a quorum for the transaction of business was not present. The rules require that a majority of the membership constitute a quorum for the transaction of business.

The CHAIRMAN. I think I can save time by asking you some questions as we go along.

Mr. SEARS. All right.

The CHAIRMAN. Had a call been issued for the membership or for some body of directors or executive committee or something of that sort to meet?

Mr. SEARS. No, sir; the entire membership was notified of that meeting by telegraph.

The CHAIRMAN. And so notified to attend?

Mr. SEARS. Yes, sir.

Mr. BREED. Was the object of the meeting stated in the call?

Mr. SEARS. No, sir. The call simply stated the meeting was to be held to consider important business or important matters.

Now, Mr. Chairman and gentlemen of the committee, it seems that when those men had gathered at that special meeting this matter in respect to the consent decree was brought up for consideration, and a resolution was prepared and passed. I felt sure at the time that it did not represent the sentiment of the members of the association, and I gave notice that I would ask for a reconsideration of the action taken at that meeting. President Clark finally ruled, after a careful investigation and examination of the by-laws of the association, that the action was illegal and declared it void. His decision was sustained and approved by the meeting of the association held in Chicago on the 13th or 14th of November, that meeting being the regular semiannual gathering of the association.

Mr. BREED. How many members were present?

Mr. SEARS. Practically the entire membership.

The CHAIRMAN. You may continue your statement.

Mr. SEARS. Now, my notion about the action taken at the meeting is this: For a number of years there have been certain matters in controversy concerning sales contracts largely between the canners and the wholesale grocers. Repeated efforts had been made to adjust the differences that existed, not always with success. Those matters had always been a source of irritation between the canners and the wholesale grocers.

In addition to that long-standing ground of complaint on the part of the canners there had accumulated the ill effects growing out of the economic depression that began a year ago last June, at the time the wholesale grocers all took down with sugaritis, and which reflected seriously upon the canners. During that period there had not been a generous buying of any goods on the part of the wholesale grocers, not that generous buying that existed prior to the economic depression, and if I can analyze the state of mind of the canners who met in Chicago on October 3, it was that they felt they had some serious grievances against the wholesale grocers, and that the action which they finally took in regard to the consent decree might lead to a better understanding; also that seemed to me to be a rather unusual way to reach the happy condition which we desired.

At any rate, this is a fact, that all the men who were at that meeting, and who finally attended the meeting held on November 13 and 14, agreed to the rescinding of the resolution that had been passed. In other words, they had come to a sober second thought, and they concluded that the grievances which they had been nursing had nothing to do with the relationship that might have existed between the meat packers and the canners; that their grievances grew out of the economic conditions that had arisen in 1920. And, of course, it is the only intelligent answer to say that those grievances have nothing to do with the merits of the question being debated here.

It has also been stated, I understand, by Mr. Campbell that the'r—well, first, it has been stated that the wholesale grocers were present in large numbers at this meeting. There were a number of wholesale grocers at the meeting that

was held there, and they were there largely because they had been asked to meet in the conference with the canners.

The CHAIRMAN. Who asked them?

Mr. SEARS. I think the canners.

The CHAIRMAN. As an organization?

Mr. SEARS. Yes, sir; asked the National Wholesale Grocers' Association.

Mr. BREED. President Clark, of the Western Canners' Association, asked them to be present?

Mr. SEARS. Yes, sir; President Clark, of the Western Canners' Association, had asked President Hersher, of the National Wholesale Grocers' Association. And I want to say that such conferences are not unusual. For many years such conferences have been held annually between representatives of these associations to consider trade difficulties and grievances. It was not unusual, therefore, and had no special reference to the consent decree matter, as I look at it, that the conference was held.

It has also been stated that there was not proper discussion of the resolution which was finally passed unanimously. The record will show that President Clark, then in the chair, repeatedly asked if there was any discussion by the members when this resolution was presented and up, and that none of the members offered to discuss it. Finally Mr. Leitsch gave a short address in favor of the resolution, and when it was put to a vote it was passed unanimously.

Any questions, gentlemen?

The CHAIRMAN. Yes; Mr. Sears, what all do you pack?

Mr. SEARS. We pack a pretty complete line of vegetables.

The CHAIRMAN. Do you pack any fruits?

Mr. SEARS. No, sir.

The CHAIRMAN. What is the approximate capacity of your plants?

Mr. SEARS. About two million cases a year.

The CHAIRMAN. And how many farmers have you who produce goods for you, approximately, I mean.

Mr. SEARS. I should say 7,000 or 8,000.

The CHAIRMAN. What is the approximate acreage involved?

Mr. SEARS. Twenty-five thousand acres.

The CHAIRMAN. With reference to the meeting in Chicago, you were not present at the first meeting?

Mr. SEARS. No; I was not.

The CHAIRMAN. But you were present at the second meeting?

Mr. SEARS. Yes, sir.

The CHAIRMAN. Were there any conferences held between the wholesale grocers and the canners prior to the introduction of the resolution concerning this packer decree?

Mr. SEARS. Yes, sir; there was.

The CHAIRMAN. And those were in executive session?

Mr. SEARS. Yes, sir; well, I say in executive session; no canner and no wholesale grocer would have been unwelcome, and there were no doubt persons present who were not members of the committee.

The CHAIRMAN. Was there any arrangement made whereby the wholesale grocers made certain concessions that were understood before the resolution concerning the packer decree was introduced?

Mr. SEARS. The packer decree was not discussed in this executive session.

The CHAIRMAN. It was not?

Mr. SEARS. No, sir.

The CHAIRMAN. Did the wholesale grocers make any concessions as to purchases, etc., before the resolution was introduced in the meeting?

Mr. SEARS. I do not think that what was done by them should be considered in the light of concessions.

The CHAIRMAN. Well, was there any understanding arrived at in any way as to what they would do?

Mr. SEARS. The committee arrived at a statement in respect to the economic conditions which had prevailed during the past year, and after such declarations on the part of both the wholesale grocers and the canners in regard to future sales contract, the buying of canned foods upon future contracts and a few other matters of that character.

The CHAIRMAN. Are those statements of record anywhere?

Mr. SEARS. Yes, sir.

The CHAIRMAN. Could a copy of those statements go into the record, or have you any objection; and if you have, state them.

Mr. SEARS. I do not think I have any objection. They have been published in all the trade papers.

The CHAIRMAN. I do not happen to have those and that is why I am asking for them.

Mr. SEARS. Of course. President Clark and President Hersher might be properly consulted as to that, but I can see no objection myself.

The CHAIRMAN. Are either of those gentlemen here?

Mr. SEARS. President Hersher is here.

Mr. HERSHER. It is all right for them to go into the record, but they are already in the record, I think.

The CHAIRMAN. Who put them in?

Mr. BREED. I think Mr. Campbell put them in.

The CHAIRMAN. Mr. Campbell, did you put any resolution into the record covering an understanding arrived at between the wholesale grocers and the canners?

Mr. CAMPBELL. I put nothing of that kind into the record.

The CHAIRMAN. Mr. Hersher, have you any objection to it?

Mr. HERSHER. I should be glad to furnish you complete proceedings of the conference of the committee when I get on the stand. I will be glad to furnish them.

The CHAIRMAN. Then, Mr. Sears, Mr. Hersher may put them in when he gets on the stand.

Mr. HERSHER. I have no objection as to when they are put in, either.

The CHAIRMAN. You will put them in when you get on the stand, will you, Mr. Hersher?

Mr. HERSHER. Yes, sir.

The CHAIRMAN. Mr. Sears, your fear is that if the meat packers are permitted to go back into the business of handling these unrelated lines they will have a monopoly of them, is that your idea?

Mr. SEARS. Yes, sir; indications of a monopoly. An absolute monopoly is not necessary to control at the source the food supply.

The CHAIRMAN. That they will control the food supply?

Mr. SEARS. Yes; control by means of large capital at the original source of the food supply in the hands of a few men. I think that would be a very dangerous thing.

The CHAIRMAN. And you fear they would be able to gain such control by reason of the capital they have. What other reasons, if any?

Mr. SEARS. By reason of their capital and organization.

The CHAIRMAN. Do you think they will control the wholesale grocery business or the lines of the wholesale grocery business in which they may enter?

Mr. SEARS. If they had a full right to buy and sell any product, they would have a directing and controlling influence upon the value of those products.

Mr. BREED. Do you mean value or prices?

Mr. SEARS. Prices; yes, sir; in my opinion.

The CHAIRMAN. Do you know what proportion of the total wholesale grocery business of the country the packers handled prior to the prohibition of this decree?

Mr. SEARS. Only from what I have seen in the report of the Federal Trade Commission.

The CHAIRMAN. What unfair practices in competition, if any, do you think the packers were guilty of in these lines?

Mr. SEARS. Well, I say that the only source of information I have is that report.

The CHAIRMAN. What would be your objection to the packers going into the export business alone in these lines, not being permitted to manufacture or handle for domestic use?

Mr. SEARS. Well, the question is purely academic, from my standpoint.

The CHAIRMAN. Surely.

Mr. SEARS. We do not export any goods, and are not making any attempt to do so. If they had an unlimited market in foreign fields they could bring about practically the same results they are by developing that market, as if their market was confined to domestic business.

The CHAIRMAN. Your company, Mr. Sears, distributes through the wholesale grocers?

Mr. SEARS. Yes, sir.

The CHAIRMAN. Did you ever distribute through the packers?

Mr. SEARS. No, sir; we never sold them any goods.

The CHAIRMAN. Do you know whether the western canners distributed through the packers to any extent prior to the decree?

Mr. SEARS. I know of a number of canners who did; yes, sir.

The CHAIRMAN. And what is their source of distribution now?

Mr. SEARS. The wholesale grocers or the jobbing distributors.

The CHAIRMAN. Are you interested in any wholesale grocery company?

Mr. SEARS. No, sir.

The CHAIRMAN. Is any wholesale grocer company interested in your cannery, Mr. Sears?

Mr. SEARS. No, sir.

The CHAIRMAN. Have you contracts with wholesale grocers?

Mr. SEARS. Well, we are selling them day by day; yes, sir.

The CHAIRMAN. Your source of distribution is and has been the wholesale grocers?

Mr. SEARS. Yes, sir.

The CHAIRMAN. Do you think of anything, Mr. Hall, that you wish to ask?

Mr. HALL. The canners that you speak of that had these contracts with the packers, do you know whether those contracts were favorable in any way? Were they all right as to prices, etc.? In other words, was any advantage taken of them in the matter of prices?

Mr. SEARS. I really do not know. I can give you my own experience, sir.

The CHAIRMAN. We would be glad to have it.

Mr. SEARS. During the time that the meat packers were distributing canned foods, and when I was sales manager of my company, I had many telephone calls from their buyers seeking to purchase some of our products. And always our prices were too high and we never could deal. In other words, they seemed to be looking for a cheap-grade of canned foods. We make an effort to pack what might be called a high-grade product, and we can not always meet the competition of a product that is packed indifferently—without much regard to quality. The whole basis of our operation is based upon producing quality. We pay the farmers on that basis. We pay them very much more for the select, high-grade quality farm produce than we do for the ordinary quality.

The CHAIRMAN. Does any one else have any questions they wish to suggest?

Mr. BREED. I would like to ask a few questions, and will start backward this time: You were asked what other methods of distribution were open to the canners of the Western Canners' Association, who previously used the packer. Can you state how long the packer had been distributing canned foods? Using its own distributive system and cars.

Mr. SEARS. I think he began in 1916.

Mr. BREED. Well, prior to that time, who did these self-same western canners use?

Mr. SEARS. The wholesale grocers.

Mr. BREED. Are there not other methods of distribution, besides the wholesale grocer, open to any canner, such as the chain stores, mail-order houses, etc.?

Mr. SEARS. Yes, sir.

Mr. BREED. Are those not just as well-recognized methods of distribution as distribution through the wholesale grocer?

Mr. SEARS. Yes, sir.

Mr. BREED. Don't many western canners sell to chain stores and to mail-order houses?

Mr. SEARS. Yes, sir.

Mr. BREED. You were asked what effect, in your opinion, it would have if this decree were modified—allowing the packers to go into the export business—and, as I understand the question, not allowing them to go into the domestic unrelated food business. In your opinion, would that immediately create a competition between the packers, who would be selling in the foreign market, and the entire American market?

Mr. SEARS. It would not immediately, in my opinion.

Mr. BREED. The packers would then be buying for export; would they not?

Mr. SEARS. As I understand; yes.

Mr. BREED. They would be glad to buy all that they could buy that they could sell at a profit in foreign countries, would they not?

Mr. SEARS. Yes.

Mr. BREED. In your opinion, would that have any effect upon the price of the same commodities to the American consumer?

Mr. SEARS. It would all depend on the volume of the business. If the volume was considerable.

Mr. BREED. Well, what effect would it have?

Mr. SEARS. That demand would take up the normal margin here which is developed and produced each year, which is not large under normal conditions.

Mr. BREED. Well, what effect in your opinion would it have upon the price to the consumer of the goods that are sold here in America?

Mr. SEARS. It would advance the price if the volume was considerable.

Mr. BREED. Assuming that the pack was short and the meat packers were buying for export, what effect, in your opinion, would that have upon the price paid by the American consumer?

Mr. SEARS. That would necessarily advance the price.

Mr. BREED. Would it advance it greater than it would if the pack was large and there was an excess?

Mr. SEARS. Oh, yes.

Mr. BREED. Do you think it would have any material effect upon prices to the consumer if the crop was short?

Mr. SEARS. Oh, yes; no question about that.

The CHAIRMAN. May I ask a question? Wouldn't all of that, Mr. Sears, the effect upon the price to the consumer here, depend very largely upon what the packer could get for the goods in foreign countries?

Mr. SEARS. Well, it would be a matter of providing the necessary supply.

The CHAIRMAN. In other words, if they could not get a high price in foreign countries that would enable them to pay more than the domestic canner could pay, it would not have an effect of increasing the price here, would it?

Mr. SEARS. Very likely—of course none of us can do Mr. Armour's thinking—but very likely he would buy as fast as he sold these goods. He certainly would cover his sales by purchases, and as he came into the market the volume which he purchased would have a direct bearing upon the market value and the market conditions. Now, he might buy these products under a future contract prior to the packing of the product, you understand.

Mr. BREED. You were asked what effect, in your judgment, it would have upon the trade if the packer were allowed to deal in these products on a commission basis. I would like to ask you if, in your opinion, the packer were allowed to do business on that basis would it force the wholesale grocer on the same basis or tend to prompt him to do so?

Mr. SEARS. Of course I do not quite understand what you mean by doing business on a commission basis.

The CHAIRMAN. Not buy or sell the stuff outright, but handle for a percentage.

Mr. SEARS. Purely a brokerage business?

The CHAIRMAN. Yes, sir.

Mr. SEARS. The goods would not be invoiced to the packer?

The CHAIRMAN. No.

Mr. BREED. This relates to both domestic as well as export trade.

Mr. SEARS. Well, that would mean, if I understand the situation now, that the canner would be selling to the retail grocer through the packer?

The CHAIRMAN. Yes; that is practically it.

Mr. SEARS. Well, I can not conceive how that would be done efficiently or economically.

The CHAIRMAN. Well, why?

Mr. SEARS. There is no retail grocer in position to buy the necessary quantity.

The CHAIRMAN. Well, the packers could distribute it in sufficient lots to accommodate the retail grocer. What objection would there be to that?

Mr. SEARS. Then, do you mean that the packer would actually put the goods into storage in his warehouses and then distribute them?

The CHAIRMAN. Yes.

Mr. SEARS. If you did that, then, of course, the packer becomes a wholesale distributor. If the canner had to ship his goods or deliver his goods directly from his cannery to some retail grocer, executing an order made by the packer, that would be purely a brokerage business, and that would not be satisfactory, because there are not many retail grocers who are able to buy a car of canned foods and pay for them.

Mr. SMITH. He would have to ship in broken lots.

The CHAIRMAN. I am afraid we are not clear upon that. Should the packer never buy the goods himself and never own them, but the canner own them and the packer distribute them for him, and his only compensation would be a

commission upon the purchase price of the goods, what objection would there be to that?

Mr. SEARS. Well, Mr. Galloway, who would make the collections of the invoices covering the shipments?

The CHAIRMAN. The packers, and return it to the canners.

Mr. SMITH. As agents for the canners.

Mr. SEARS. As agents for the canners?

The CHAIRMAN. Yes, sir; and their commission would cover all costs of such services.

Mr. SMITH. And the canner would then take the risk of the sale, the packer not guaranteeing the price?

The CHAIRMAN. Well, assume it that the canner would take the risk of the sale, as one situation, and as another situation assume that the packer's commission would be sufficient for him to take the risk of the sale. Now, take either one of those. What would be the objection to both of them, or either of them?

Mr. BREED. As I understand the question now, it is as to how Mr. Sears—

The CHAIRMAN. I think the witness understands the question. Now, let him answer without confusing it more.

Mr. SEARS. Well, I think, Mr. Chairman, that would not be a satisfactory method of distribution.

The CHAIRMAN. Well, now, just why? That is what we are interested in, Mr. Sears.

Mr. SEARS. First and chiefly because the credit standing of the retail grocers is such that it would be necessary to develop some system of collection on the payment of these products.

The CHAIRMAN. In other words, the canner does not feel that he would want to take the risk of the collection of these accounts?

Mr. SEARS. Absolutely.

The CHAIRMAN. All right.

Mr. SEARS. The chief function of the wholesale grocer right now and has been is the storing of these products and distributing in small lots to the retail grocers and getting the money for them, as I presume they all try to, but paying the producer immediately for the goods as they are shipped by the canner.

The CHAIRMAN. Now, let us assume, Mr. Sears, that the packer assumes that burden, and his commission pays him for that service, as well as 'the actual service of distribution. Now, what would be the objection to that, from the standpoint of the canner?

Mr. SEARS. Well, that particular method would not affect the canner one way or another if he got his money within a reasonable time.

The CHAIRMAN. Well, what would be the objection from any other standpoint, Mr. Sears?

Mr. SEARS. But the same objection would lie against that method as would lie against their present method, or the method which they followed prior to the consent decree. They were then selling the product to retail grocers in small lots, and making, as I understand, weekly collection for the amounts delivered. I can see no advantage in what you now term doing business on a commission basis. A much more satisfactory method, it seems to me, would be the old custom of selling the retail grocer what he is able to pay for each week.

The CHAIRMAN. Well, do you think, Mr. Sears, that that would result in a monopoly of these lines by the meat packers, the same as the other, or not?

Mr. SEARS. Well, there wouldn't be any difference. The volume of his distribution would be just as great in the one case as in the other.

The CHAIRMAN. Yes; that is what I was trying to get at. That is all I care to ask.

Mr. SEARS. In both cases he is assuming the risk of the cost of the goods and of the distribution.

Mr. BREED. Who is "he"?

Mr. SEARS. The meat packer, as I understand the questions that have been put to me.

The CHAIRMAN. Are there any other questions?

Mr. BREED. Would you like it very well as a canner if the packers did not buy your goods in advance and give you orders, but merely bought when you had finished completing your pack, and sold on a commission?

Mr. SEARS. No; that would not be satisfactory to the canner.

Mr. BREED. Why wouldn't it?

Mr. SEARS. Because of reasons which Mr. Roach here has already advanced. The average canner is capitalized, and it is necessary for him to make a quick turnover of his operations.

Mr. BREED. Well, could you do business on that basis, Mr. Sears?

Mr. SEARS. If I had unlimited capital; yes. Otherwise, no.

The CHAIRMAN. If the packer agreed to take your goods and distribute your goods, could you borrow money on that the same as you could on a wholesale grocer's contract?

Mr. BREED. But that would not be doing business on a commission basis, Mr. Chairman.

The CHAIRMAN. Well, I will change the question, then. If the packer had agreed with you to take your goods on a commission basis, and sell them, could you borrow money on that, do you feel, the same as you could on a wholesale grocer's contract?

Mr. SEARS. If there was a guaranty that the goods would all be taken out and distributed in a certain time; yes. Otherwise, no.

Mr. BREED. That is, at a definite price?

Mr. SEARS. At a definite price.

Mr. BREED. Is that what is known as a sale on commission?

Mr. SEARS. No.

Mr. BREED. That is a purchase of goods, is it not?

Mr. SEARS. Yes.

Mr. BREED. And it is not a sale on commission at all?

Mr. SEARS. No.

Mr. BREED. A sale on commission is a sale where the party who takes it assumes no obligation to pay until the goods are sold to somebody else, and then he receives his commission; is that correct?

Mr. SEARS. That is correct, as I understand it.

The CHAIRMAN. In other words, you find the purchaser for the producer?

Mr. DAILY. We find the purchaser for the producer.

The CHAIRMAN. And find the producer for the purchaser?

Mr. DAILY. Find the producer for the purchaser.

The CHAIRMAN. And take a percentage for your services?

Mr. DAILY. Yes, sir.

The CHAIRMAN. Does the system under which the meat packers operated in these unrelated lines utilize the services of the food brokers?

Mr. DAILY. They do, or they did, rather.

The CHAIRMAN. To what extent?

Mr. DAILY. A very large extent.

The CHAIRMAN. Then the entry or reentry of the packers into this business would not necessarily mean the elimination of the food broker?

Mr. DAILY. Not immediately, but eventually.

The CHAIRMAN. That is in the event that they should obtain a monopoly of this business?

Mr. DAILY. Yes, sir.

The CHAIRMAN. And your fear of monopoly is based upon the same reasons that the other gentlemen have heretofore expressed here?

Mr. DAILY. Well, I have heard but a few of them. In other words, he is paid for his services with a small percentage figured on the net amount of the invoice.

Mr. BREED. Then your answers have been based upon the fact that you assume that the packers will do just what the wholesale grocers would do?

Mr. SEARS. Yes.

Mr. BREED. Namely, buy, assume responsibility for the purchase, and receive a commission for their purchase; is that correct?

Mr. SEARS. Yes.

Mr. BREED. I don't think that that is what the commission have in mind, nor is that what Mr. Campbell suggested as a modification of this decree.

The CHAIRMAN. Let us not get into an argument about it; let us go ahead.

Mr. BREED. I think that is quite clear. Now, I would like to ask you just one or two more questions, going backward again. Do you know whether Mr. Campbell was present at the meeting of the western canners on October 18, when 18 of them passed on this question?

Mr. SEARS. Yes; he was present.

Mr. BREED. He was?

Mr. SEARS. Yes; he was present.

Mr. BREED. Can you state whether or no the resolution of the western canners shows that the meeting had been assisted by Mr. Campbell, and some verbiage indicating that he had prepared the resolution?

Mr. SEARS. Oh, this first meeting you are referring to?

Mr. BREED. Yes.

Mr. SEARS. I don't know about that. You gave the day of the last meeting.

Mr. BREED. No; I said October.

Mr. SEARS. Well, that was October 3.

Mr. BREED. October 3?

Mr. SEARS. Yes. I don't know whether Mr. Campbell was there or not.

Mr. BREED. Have you never seen the resolutions of your association?

Mr. SEARS. Oh, yes.

Mr. BREED. Doesn't it recite in its preamble that Mr. Campbell was present and assisted?

Mr. SEARS. Oh, yes; that is so; yes; it does. Yes; I recall that men who were there stated that he was present.

Mr. BREED. And assisted in drafting the resolution; is that correct?

Mr. SEARS. Yes, sir; so I understand.

Mr. BREED. Was Mr. Campbell present at the second meeting?

Mr. SEARS. Yes, sir.

Mr. BREED. When the association unanimously repudiated the first resolution?

Mr. SEARS. Yes, sir.

Mr. BREED. Did he make any speech in opposition to the resolution?

Mr. SEARS. Yes, sir; he did.

The CHAIRMAN. Before it was passed?

Mr. SEARS. After it was passed.

Mr. BREED. He made a speech after it was passed?

Mr. SEARS. Yes, sir.

The CHAIRMAN. Did he make any before?

Mr. SEARS. No, sir.

Mr. BREED. That is a very timely time.

The CHAIRMAN. Was any request made that he be permitted to make one before?

Mr. SEARS. Yes, sir.

The CHAIRMAN. Was it permitted?

Mr. SEARS. No, sir.

The CHAIRMAN. Did any wholesale grocer make any speech in favor of that?

Mr. SEARS. No, sir.

The CHAIRMAN. Was there any request that they be permitted to make any?

Mr. SEARS. No, sir.

Mr. BREED. Now, with respect to this conference report, Mr. Sears—

Mr. SEARS. I think I should state here that a member of the association objected to Mr. Campbell speaking upon the resolution, because he, Mr. Campbell, was not a member of the association.

The CHAIRMAN. Does it take unanimous consent for a nonmember to make—

Mr. SEARS (interposing). The chair so ruled that day—yes; Mr. Chairman.

The CHAIRMAN. I see.

Mr. SEARS. After the resolution had been acted upon, Mr. Campbell was then invited to speak, and did speak.

Mr. BREED. Now, was there any reconsideration had of the motion, or was there a motion made to reconsider?

Mr. SEARS. No; it was not necessary. The decision of the Chair was approved.

Mr. BREED. Now, you have referred to a conference committee between the wholesale grocers and the canners. These conferences occur frequently, do they?

Mr. SEARS. Yes, sir.

Mr. BREED. For the discussion of trade conditions

Mr. SEARS. Yes, sir.

Mr. BREED. You say that one of the questions discussed had to do with the sales contract?

Mr. SEARS. Yes, sir; future sales contract.

Mr. BREED. Future sales contract?

Mr. SEARS. Yes.

Mr. BREED. Has that been a subject of discussion for many years between the wholesale grocers and the canners?

Mr. SEARS. It has.

Mr. BREED. Is this a form of contract that has generally been approved by the two organizations, and adopted by individual canners in their dealings?

Mr. SEARS. Yes, sir.

Mr. BREED. What has been the main subject of discussion between the canners and the wholesalers with respect to that future contract?

Mr. SEARS. Whether or not the canners should enter into a contract to deliver 100 per cent of the purchase, or pro rata part of the purchase.

Mr. BREED. Isn't it a fact, Mr. Sears, that that question has been up for 15 years?

Mr. SEARS. Oh, yes; longer than that.

Mr. BREED. And isn't it a fact that both sides recognize it as a question of very great difficulty to settle?

Mr. SEARS. Yes, sir.

Mr. BREED. Is it a fact that the differences between the crops of one year and another year is what makes it a difficult question?

Mr. SEARS. Yes, sir.

Mr. BREED. If you knew you were going to get a crop in 1922 exactly the same as you had in 1921, there would be no difficulty, would there, in your entering into a contract, because you would know exactly the amount of fruit you were going to have to pack? Is that correct?

Mr. SEARS. Yes, sir.

The CHAIRMAN. We couldn't try a lawsuit if we had to after this with our leading questions.

Mr. BREED. I am trying to save a little time. These are questions of history, not of law.

During the past year did I understand you to say, Mr. Sears, the wholesale grocers had not bought as freely—that is, entered into future contracts as freely?

Mr. SEARS. That is true.

Mr. BREED. Is that correct?

Mr. SEARS. Yes; that is correct.

Mr. BREED. And was that a subject of your conference committee?

Mr. SEARS. It was.

Mr. BREED. And how is it explained?

Mr. SEARS. The wholesale grocers who were present stated that the depression had limited their capital and they were not able to place in storage the large quantity of goods which they had been in the habit of doing in the past.

Mr. BREED. In other words, the failure to enter into these contracts was due to economic and financial reasons?

Mr. SEARS. Yes, sir.

Mr. BREED. And did the wholesale grocers express to your canners' committee the fact that they did not intend to abandon the idea of entering into future contracts—contracts for future purchases in subsequent years?

Mr. SEARS. They did.

Mr. BREED. Was that what you wanted?

Mr. SEARS. It was.

The CHAIRMAN. Did they abandon the 100 per cent feature, too?

Mr. SEARS. That matter has not been fully decided.

The CHAIRMAN. What is the present status of it?

Mr. SEARS. It is to be referred to their associations for action.

The CHAIRMAN. The national association or the southern association, which?

Mr. SEARS. Well, both, I hope.

The CHAIRMAN. Both associations?

Mr. SEARS. Yes. A future contract not only provides the basis for conservative financing but it is a great regulator of the amount of the goods that ought to be produced each year.

The CHAIRMAN. Had the future contract been in use immediately prior to this meeting in Chicago?

Mr. SEARS. Oh, it has been in use for years.

The CHAIRMAN. Was there any threat to abandon it on the part of the wholesale grocers, that you know of?

Mr. SEARS. No threat on the part of the association; no, sir; but individual grocers had refused to purchase future canned foods this past year and had stated that they did not intend to purchase under that basis again.

Mr. BREED. That is all.

Mr. SMITH. May I ask one or two questions, Mr. Chairman?

The CHAIRMAN. Surely, Senator.

Mr. SMITH. What number were present at the first meeting when your association acted?

Mr. SEARS. Eighteen.

Mr. SMITH. What number were present at the second meeting? Practically what number?

Mr. SEARS. Practically the entire membership was present at the second meeting.

Mr. SMITH. That was about 200?

Mr. SEARS. Yes, sir.

Mr. SMITH. What did the Chair rule about the action at the first meeting?

Mr. SEARS. He ruled that the action taken was void, because it was illegal in respect to the by-laws.

Mr. SMITH. What was the vote on the expression of objection by the canners to a modification of the decree?

Mr. SEARS. Unanimous.

Mr. SMITH. Now, with reference to the commission business. At what season of the year do you begin to make your contracts for your raw material with the growers?

Mr. SEARS. In January.

Mr. SMITH. Do you begin making them advances at that time?

Mr. SEARS. Frequently we do; yes, sir.

Mr. SMITH. Along during what period do you make the advances to them?

Mr. SEARS. During the spring season, when they are working their farms and getting ready to grow the crop.

Mr. SMITH. What do you rely upon to finance yourselves? What does the average canner rely upon to help finance himself, to help make those large advances before he gets his final return for his goods? To what extent do you rely upon the fact that you have disposed of them to wholesale grocers whose credit is good?

Mr. SEARS. Well, the sale of the entire previous pack is the basis of the future pack.

Mr. SMITH. Without that, to what extent would the canners find it difficult to make their advances and get their production?

Mr. SEARS. They couldn't go on.

Mr. SMITH. Then suppose you simply had an agency to sell them for you on commission, and had not made any sale at all, what situation would the canners be in?

Mr. SEARS. A very deplorable situation?

Mr. SMITH. I have got no other questions, Mr. Chairman.

Mr. FORD. Mr. Sears, do you pack crop to any extent?

Mr. SEARS. No, sir; we do not.

The CHAIRMAN. That is all, Mr. Sears. Thank you very much.

Mr. ROACH. Might I take up a little bit of your time?

The CHAIRMAN. Certainly.

Mr. ROACH. I have got a little article here in the Scottville paper that I want to call your attention to.

The CHAIRMAN. Scottville, Mich.?

Mr. ROACH. Yes; Scottville, Mich.; the Mason County Enterprise, under date of Wednesday, November 23, 1921. This article is by Mr. McPhail, of Ludington, Mich. The article is headed: "McPhail speaks good word for factory." Mr. McPhail is a banker in western Michigan. His letter is dated Ludington, Mich., November 19, 1921, addressed, "Editor Mason County Enterprise."

I want to tell you I have never borrowed a penny of money from Mr. McPhail. His article is as follows:

"I have read with interest the article in your last issue by Assessor Reader, containing as it does information of interest to every taxpayer, set forth in a concise and understandable way. When he stated that a study of the tax roll will disclose the fact that Scottville is in a healthy financial condition it is only necessary to take the figures and statements made by your assessor and compare them with the much less favorable showing of other such towns in your class as to size and general conditions, and we are obliged to realize the

truth of his statement; and the fact that the citizens of Scottville can congratulate themselves that they have been able to do so much and get along so well and keep their tax rate below 4 per cent.

"I believe your assessors, by calling attention to taxes paid by the Roach Canning Co., so that Scottville and surrounding country may have their attention called to this fine institution that means so much, and the loss of which would be so keenly felt, is doing much to serve the public. This company pays nearly 7 per cent of the total tax assessed against the city; but it can not be gainsaid that the loss of this tax would be small in comparison to other losses which the city and country surrounding would suffer by the closing of this factory.

"I do not think the people have taken seriously the disquieting rumors that have been circulated about the possibility of this factory closing or being removed elsewhere. Nothing is more certain than its being closed or removed if it can not over a term of years be operated at a profit. It is not usual for a corporation to take the public into its confidence and show up their loss and gain sheet. All must admit the possibility. Factories of all kinds have been closed; railroads have been torn up; and this always occurs when expenses exceed income.

"I believe the farmers of Mason County, by their attitude, can either make or break; and while it would be unreasonable to expect any farmer to raise a factory crop when he could do better raising hogs or hay, they should, if they conserve their best interests, try and cooperate with the factory. If they cultivate a friendly feeling for this institution, considering their problems and propositions with an open mind, and trying to help in every way they can without positive loss to themselves, we will, I am sure, have this factory with us during all the years.

"Every acre of land for miles around the center of Mason County would shrink in value, affecting the value of the city property, mercantile establishments, bank stocks, and everything of value surrounding it, should this fine industry close its doors.

"C. W. McPHAIL."

That shows you how the citizens of Michigan feel toward its cannery. Now, we paid \$1,200 last year for school taxes. Mr. McPhail, in his article, refers to a statement in the paper during the preceding week. Now, our taxes for schools for the village of Scottville, a village of about 800, was about \$1,200.

Mr. BREED. How does this bear on this proceeding, Mr. Roach?

Mr. ROACH. Well, if there was no cannery up there, what would happen to the children of Scottville? What would happen to the value of the farm lands? What would happen to the prosperity of the homes of that locality? Now, that is how it bears on this.

Mr. SMITH. Mr. Wilson, of New Orleans, has to leave to-night, Mr. Chairman, and he has a very short written statement. He would like to have a chance during the evening, if possible, to go on.

The CHAIRMAN. Now, gentlemen, before we go any further I want to figure out our program here. The order in which they are entitled to appear to-day is as follows: Mr. Daily; then the representative of the H. O. Cereal Co.; then Mr. La France; and then anyone else representing the National Crop Packers' Association; and then Mr. Beckmann. Now, those are the people who appear to-day. And following that the time is open, but we haven't anywhere near time enough.

Mr. SMITH. I understand, Mr. Chairman, that it could not be done, of course, except by general consent, or he could hand in his statement.

The CHAIRMAN. Mr. Daily, you have to go away this evening, I understand?

Mr. DAILY. I am very busy, and I have some appointments and I really squeezed this time in.

The CHAIRMAN. I will ask the representative of the H. O. Cereal Co. if it will be possible for him to be here to-morrow or not? We would like very much to accommodate you, but there are some of these people who can not stay until to-morrow.

(The representative of the H. O. Cereal Co. agreed to make his statement on Friday, December 2.)

The CHAIRMAN. Mr. Clark is entitled to be heard first in the morning, because he agreed to stay off to-day. And we will hear the representative of the H. O. Cereal Co. immediately after Mr. Clark.

Mr. BREED. We were entitled to, but will give it up, providing that Mr. Beckmann may go on. Mr. Beckmann notified me a while ago that he had to

leave on the 5 o'clock train; he has been here three days, and he has a short statement which he would like to make. He tells me that he represents—what is it, Mr. Beckmann?

Mr. BECKMANN. The National Chain Store Grocers Association of the United States.

The CHAIRMAN. We will hear Mr. Daily now. After that we will hear Mr. La France, or the representative of the crop people, and then we will hear Mr. Beckmann. Senator, we will try to get to Mr. Wilson, too, this evening.

Mr. SMITH. He will take only about five minutes.

STATEMENT OF MR. H. A. N. DAILY, NATIONAL FOOD BROKERS' ASSOCIATION, PHILADELPHIA, PA.

The CHAIRMAN. Will you give your name, Mr. Daily?

Mr. DAILY. My name is H. A. N. Daily.

The CHAIRMAN. And will you please state your business?

Mr. DAILY. I am in business as food broker in Philadelphia. I am here in the interest of the National Food Brokers' Association. I have prepared a statement which I would like to read into the record.

The CHAIRMAN. Are you their official representative, Mr. Daily?

Mr. DAILY. There was a letter sent to your office notifying you that I had been delegated by the executive committee to appear in their interests, and I am a member of that executive committee myself.

The CHAIRMAN. Well, you need not submit anything; we just want to get it into the record. How large is your organization?

Mr. DAILY. I would prefer to read this statement, Mr. Chairman, and then you will find your question is answered in that.

The CHAIRMAN. All right; go ahead. I just wanted to be sure that it would go in.

Mr. DAILY. This communication is addressed to "The honorable joint committee appointed by the Secretaries of Agriculture and Commerce and the Attorney General to conduct hearings with reference to proposed modification of the consent decree entered in the so-called "packers' case." [Reading:]

"GENTLEMEN: In accordance with your letter dated November 3, the National Food Brokers' Association have appointed me to appear before you and orally present their views in the above matter.

"The National Food Brokers' Association (formerly the National Canned Food and Dried Fruit Brokers' Association)"—

The title of the association was changed at the last annual convention—"includes in its membership brokers located in every market in the United States."

Now, as to the exact total of the membership I am not at the moment prepared to state. I did not have a copy of the secretary's report when I prepared this paper. I say his 1920 report, and at that time there were something like 600 brokerage firms and about 100 branch offices in the association. It is my impression that the membership was increased to a total of maybe approximating 100 additional during the year 1920, so that I would say roughly the membership consists of about 700 brokerage firms and about 100 branch offices in addition. [Reading:]

"Its membership handles all or nearly all the canned foods and dried fruits packed in the United States and its possessions. In addition thereto they also handle many other food commodities, probably every food commodity involved in the discussion of above matter. All of these commodities are handled on a brokerage basis."

A real brokerage basis. [Reading:]

"Brokers receive a compensation only when sales of merchandise are effected; the remuneration is a small one, being usually a small percentage of the amount of invoice.

"The brokerage system or method of merchandising food products has stood the test of time and is acknowledged to be the most economic link in the chain of food distribution. During the early days of the Food Administration an investigation demonstrated the absolutely essential position occupied by our membership in food distribution.

"Our intimate knowledge and acquaintance with the history, development, and necessities of food distribution in the United States qualify us to render an opinion in the matter under discussion.

"On November 1 the executive committee of this association, after consultation with members and directors throughout the country, unanimously adopted the following resolution:

"Moved that we, as the executive committee of the National Food Brokers' Association, do hereby express our emphatic opposition to any change or modification of the so-called "consent decree" entered against the meat packers. In so doing we feel we reflect the opinion of a majority of our members."

This resolution directly represented the opinion of the president, 8 vice presidents, and 29 out of 36 active State directors heard from at that time."

And I might say that in making up this statement I overlooked the fact that also in addition it included the three members of the executive committee who are not State directors. Our executive committee consists of the last three previous presidents of the association. [Reading:]

"The large number of letters received not only from individual brokers but from local brokers' associations from every section of the country since the adoption of the above resolution, many times over justifies the action taken by our executive committee. No room is left to doubt the nature of the opinion of the brokers in this important matter. Almost to a man they are unutterably opposed to any modification of the consent decree."

And this is what I consider to be the meat of our proposition [reading]:

"Our opposition is based on the ground that any modification of the consent decree would be contrary to public policy, and would be encouraging monopolistic tendencies which might eventually throttle the food industry. Public policy—that is, the good of the people as a whole—demands that the food industry shall be allowed to continue under free and untrammelled competition."

"Taking the canned-foods branch of our industry as an example, not only because of its relative importance among commodities but very particularly because the meat packers have specialized in the handling of canned foods, we contend that the canned-food industry has been developed by independent canners until it now numbers many thousands of canners who operate in free competition. This product has for years been economically, widely, and efficiently distributed by the wholesale grocers."

"We consider that there is great danger under a system which would bring the production and distribution of canned foods into and within the power of a limited number of corporations. The admission of the meat packers, with their unlimited control of capital and credit, into the canned-food industry constitutes a menace which must be recognized by everyone not possessed by some immediate selfish purpose."

"In your esteemed letter of November 3, addressed to the president of our association, it was stated that a request had been made to the Attorney General by certain growers and canners of fruits and vegetables requesting that the Attorney General urge and favor a modification of the decree so as to permit the packers to handle unrelated lines, especial wholesale grocery lines."

"It becomes my duty to emphasize the unreliability of any such suggestions, in so far as they attempt to create an impression that they represent the opinion of a majority of the canners of the United States. Recent action taken by various associations of canners must be accepted as reflecting a more nearly accurate report of the true position of the canners on this important question."

"In addition to conventions above referred to, we wish to particularly call attention to the position occupied by the industry in California."

"An overwhelming majority of the fruit and vegetable growers and packers of California have gone on record against any modification in the decree. This was made clear by resolutions passed by the Prune & Apricot Growers' Association, the Citrus Fruit Association, the Canners' League of California, and others with membership dominating the entire industry in California."

"We therefore earnestly request that in the light of subsequent developments any petition having for its purpose the modification of the said decree be immediately and permanently disregarded."

"Great care should be exercised to scrutinize microscopically the title, ownership, and encumbrances of any original or subsequent petitioner in favor of the modification of the consent decree. Obviously, a plant or firm owned or controlled by, or mortgaged to either one of the Big Five should not be accepted as a disinterested witness."

"One hundred million cases would probably represent the sum total of the largest pack of all kinds of canned fruits, fish, and vegetables, as well as milk, ever packed in the United States. These figures represent production prior to 1921."

I would like to correct that statement, to make the figure approximately 160,000,000 cases. I was wrong on that. There was an increased production in the war years. [Reading:]

"In 1921 the marketing and disposal of the large surplus carried over by the United States Government, the meat packers, and the general economic conditions, created a serious lack of production of canned foods.

"Armour & Co. are reported to have increased their canned food sales from \$6,500,000 in 1916 to about \$16,000,000 in 1917.

"The report of the Federal Trade Commission on the meat-packing industry indicated that the combined sales of meats and all other commodities made by the Big Five in 1918 totaled an amount over \$3,000,000,000.

"Does it require any profound argument to convince any sane man that it is risking the happiness and welfare of over 100,000,000 people to permit a growing industry, whose present production and output has not yet reached anything like its possibilities, to be dominated and controlled as it eventually will be by the reentrance of the Big Five into the grocery lines.

"Much has been said concerning fair play, violation of American principles, etc., the argument being that to interfere with the packers in this matter is un-American. We respectfully contend, and may I add insist, that the laws of this country and the Supreme Court decisions have decided that monopolies have no place in the scheme of American commerce.

"True Americanism includes not only the adherence to meaningless play upon words but also, and more properly, consists in the adherence to and a respectful submission to the laws of our country.

"It is your duty and privilege to protect the people against even the possibility, of a monopolistic development.

"One of our members, writing from a section of the country where the raising of cattle is a paramount industry, writes as follows (those acquainted with conditions in the cattle country can judge of the effectiveness of the following argument; the writer admits a complete lack of knowledge of conditions obtaining in the cattle industry); the quotation is as follows:

"The demand for such contemplated modification appears to have originated among certain growers or distributors of fruits or vegetables in California, on the plea that the withdrawal of the packers from the field resulted in a restricted outlet, reduced prices, and consequent demoralization generally of the industry. Such reasoning ignores entirely the economic depression, nationwide and world-wide in its application and effect. The utter fallacy of such an argument becomes patent when the plight of the cattle and live-stock raiser is brought to view. If the gracious paternalism of the packers would have saved the fruit and vegetable industry of California, why did they permit the cattle and live-stock raisers, on whom their own business and welfare primarily depends, to go down in wreck and ruin? To advance such an argument in the face of well-known general conditions presupposes a gullibility on the part of the public and your department which readily lends itself to analysis as an insult."

"A careful consideration of this entire subject and the opinion of our members concerning it demands that we submit to you as the opinion of practically every member of our association, that the present system of merchandising food products is so economical and satisfactory, and productive of such completely satisfactory results, and the dangers from an interruption of same by the admission of the meat packers into the handling of grocery lines so obvious, that we urge you to refrain from wrecking the present methods of distribution. We feel that the possibility of four or five concerns controlling the food supply of over 100,000,000 people is a situation too dreadful to contemplate.

"We feel that any modification in the consent decree would seriously imperil all present factors in food distribution without giving in return any important benefit to the ultimate consumer.

"We feel that the entrance of the Big Five into the distribution of grocery products would, if carried to its logical conclusion, eventually destroy the present desirable competitive scheme of distribution.

"We fear that the meat packers with their vast resources would be in a position to build up a combination so gigantic and powerful as to be in position to handle without any other control than their own will the entire distribution of food commodities.

"We feel that it is unnecessary, for the purposes of this argument, to discuss the question of special privileges enjoyed by the meat packers when they were previously handling grocery products. Obviously, the same or similar

privileges would be used, claimed, or sought again. Sufficient, do we claim, are the arguments which we have attempted to present.

"We petition, therefore, that your recommendation to the Attorney General will be against any modification in the consent decree.

"We take this occasion to thank you for the opportunity of presenting our views in this important matter.

"NATIONAL FOOD BROKERS' ASSOCIATION,
"By H. A. N. DAILY."

There are a number of letters and telegrams here that it might be just as well for me to read into the record. I did not intend doing so, but I see that it has been done here. And if I might skip through these without going into them too minutely it might be of some assistance.

Prior to my coming down here I felt that the question was a large one; I felt that there were others in our associations probably better qualified to handle this subject than myself. I had occasion to ask one of our esteemed members of the Pacific coast for an opinion as to how this question should be handled. He is a man whose judgment I admire, whom I regard highly, and than whom none stands higher in our association—I refer to Charles H. Clarke, of Seattle. I put the request through our secretary's office and in reply received from Mr. Clarke a wire dated Seattle, the 28th of November:

"This wire in response request from Hobbs. My idea this question entirely one of public policy. Canned-food industry developed by independent canners until now many thousands of canners operate in free competition. Product has been distributed for years by wholesale grocers economically and efficiently, and now many thousand wholesale grocers operate in free competition, distributing products to retailers, large and small. Difference between cost production and cost same product to consumer consists of three elements—first, fair return to canner for productive effort; second, fair return to distributor for services rendered in providing wide and efficient distribution; third element is found in all communistic and Bolshevik literature called speculation. Element of speculation far greater and more dangerous under system bringing production and distribution into hands of and within power of limited number of corporations having almost unlimited control of capital and credit than speculative element would or can be under a system involving thousands of independent producers and thousands of independent distributors. There can be no loss of economy in large number of independent producers, as canneries must be located near fresh product, and no loss of economy in large number of distributors, as they are localized in cities of 15,000 inhabitants and over throughout entire country. Best can do by wire.

"C. H. CLARKE."

Prior to the meeting of our executive committee in Chicago on November 3 our secretary, Mr. James M. Hobbs, addressed the following communication to our directors. And our directors are listed here—I don't know how many States there are—Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin. He addressed this letter to the directors [reading]:

"Will you please write me at once, using the wire if written reply will not reach me Monday morning, the 31st, your opinion of the proposed modification by the Department of Justice of the consent decree, a modification which will permit the Big Five meat packers to reenter the wholesale grocery business in the distribution of canned foods, dried fruits, etc. You are no doubt familiar with the subject—" etc.

We received a great many replies. I think I said in my report that there were 29 out of 33 who reported, and I am not going to make an attempt to take up your time by reading all of these letters; I am not going to read all of the letters, but there may be a few through here that I would like to mention.

Here is one from the president of the canners' league, but he is not a member or a director. I will take these in the order in which they appear, because they are not all in response to that letter which I read. There are some of them from local brokers who reported or wrote after the passage of the executive committee's resolution.

This is a letter addressed to our secretary by the Associated Grocery Brokers of San Francisco. It is dated November 5, 1921 [reading]:

Mr. JAMES M. HOBBS, *Secretary*
National Food Brokers' Association, Chicago, Ill.

DEAR SIR: At a special meeting of The Associated Grocery Brokers of San Francisco, called on Friday, the 4th instant to discuss the application of certain interests for a modification of the so-called consent decree in the case of the United States v. Swift & Co. et al., a committee was appointed to draft a letter to the Attorney General at Washington, expressing the sentiments of the association in opposition to any modification of the terms of this agreement between the packers and the United States Government. In accordance with instructions received this committee wired you in the name of the association, as per the inclosed confirmation, and, also in accordance with instructions received at that meeting I send you herewith a copy of a letter addressed to the Attorney General.

The Associated Grocery Brokers of San Francisco stand ready to lend any assistance in their power in any legitimate effort to prevent the modification of the consent decree, aimed, as in the present case, against the interests of producer, manufacturer, and consumer.

ASSOCIATED GROCERY BROKERS OF SAN FRANCISCO.
 By WILLIAM OLNEY, *Secretary*.

This is a copy of a telegram of the same date, addressed to Mr. Hobbs, secretary National Food Brokers' Association [reading]:

"At a meeting yesterday resolution opposing modification consent decree packers was unanimously adopted. We believe the packers should disassociate themselves from all unrelated lines, particularly groceries fresh canned, dried fruits, and vegetables; also other like articles, for reason that distribution of commodities shown above is best served through the channels of wholesale grocers, of which there are approximately 5,000 in this country, better than distributed by a monopoly.

"ASSOCIATED GROCERY BROKERS."

(The following is a copy of the draft of letter referred to:)

"SAN FRANCISCO, CALIF., November 5, 1921.

"ATTORNEY GENERAL,

"Washington, D. C.

"Subject: Consent decree in the case of the United States v. Swift & Co. et al.

"DEAR SIR: It has been brought to the attention of this association that certain interests alleging to represent the fruit and vegetable growers in the State of California have petitioned for modification of a certain decree, known as the packers' consent decree.

"It has been made clear by resolutions duly passed by the Prune and Apricot Growers' Association, the Citrus Fruit Association, the Cannerymen's League of California, and others, with membership dominating the fruit and vegetable industry of California, that such modification of said decree is not desired, but it is in fact opposed by an overwhelming majority of the fruit and vegetable growers and packers of this State.

"Prior to date of said decree the packing interests had attained such position in the manufacture and distribution of foods other than meat products as to demonstrate that the activity then in evidence if continued would within a few years permit the packer to dominate the food product business to such an extent as to virtually create monopolistic control of the food supply of the Nation.

"It is our belief that the best interests of producer and consumer alike is served through existing distributors consisting of many thousand highly competitive wholesale grocers.

"Any condition under which, through the elimination of competition, monopolistic control of the food is possible, constitutes a peril alike to producer, distributor, and consumer.

"At a meeting of this association held on Friday, November 4, resolutions opposing any modification of said decree were unanimously adopted and it was the sense of the meeting that a letter expressing this opposition be sent to the Attorney General of the United States."

Here is a letter from one of the most prominent brokers in New York City, Mr. Walter J. Townsend. He addresses his letter to the secretary, Mr. Hobbs, and the letter is dated October 29, 1921, from New York, as follows [reading]:

"I have yours of the 26th, and I am strongly of the opinion that there should be no modification by the Department of Justice of the consent decree. If one or two bars are taken down now the packers will soon want the whole gate opened up and then the bull will be out for fair to the detriment of all the old established canners as well as distributing grocers.

"Yours very truly,

"W. J. TOWNSEND."

Here is a letter from Peoria, Ill., signed by Ross P. Seaton, of Seaton & Co. If you do not mind, in order to save time, I will only read a part of these letters.

The CHAIRMAN. You may read an extract from them, or if you prefer, Mr. Daily, you may submit them and they will be copied into the record. Just as you prefer now.

Mr. DAILY. Well, I will read an extract from some of these letters, as I see them.

The CHAIRMAN. All right.

Mr. DAILY. Mr. Seaton expressed his opposition, because they would force the wholesale grocer out of business through special privileges of transportation and control of supplies, and because eventually they would not need any brokers.

Here is a wire from Wichita, Kans., as follows [reading:]

JAMES H. HOBBS,

*Secretary National Food Broker Association,
Hearst Building, Chicago, Ill.:*

Replying your letter 26th, any action permitting meat packers reenter wholesale grocery business would most certainly result in largely curtailing jobbers' volume of business; also in severe competition for canners, as meat packers would undoubtedly enter canning business on large scale, therefore eventually available business for brokers would be greatly reduced. Certainly hope executive committee will go on record as opposing modification in any way. Believe no question overwhelming majority our members would vote accordingly.

THOS. B. GRIFFITH.

He is a director from Kansas.

Mr. A. F. Backer, who is a member of the firm of W. A. Gordon & Co., of New Orleans, writes the following letter on October 28, 1921 [reading]:

"DEAR MR. HOBBS: Replying to your letter of the 26th, asking my opinion as to the modification of the Department of Justice of the consent decree:

"I feel that this decree should not be modified to enable the Big Five to again enter the grocery business. They now virtually monopolize the fresh-meat industry, and I feel that if they were permitted to resume their operations in canned and other foods, it would not be very long before they would monopolize this field also. While big business is to be encouraged, monopoly should be discouraged.

"Although there may be other reasons to justify our association opposing a modification of this decree, I feel that the possibility of four or five concerns controlling the food supply over a hundred million people is a condition that should not be tolerated.

"Yours very truly,

"A. F. BACKER."

Here is a wire from Butte, Mont., signed by F. S. Decker, jr., addressed to the secretary and dated October 29, 1921, as follows [reading]:

"This refers your letter 26th. It is my opinion and the opinion of all brokers and wholesale grocers and food distributors in this State of Montana that any modification of the packers' decree would seriously imperil all present factors in food distribution without any measure whatsoever benefiting the ultimate consumer. I am firmly convinced that the action of the Southern Wholesale Grocers' Association is timely and reflects a very high character of wisdom. Absolute control is economically undesirable, and especially so of food products. Any modification of packers' decree is but a step in the direction of that control. I am absolutely opposed to any modification whatsoever.

"F. S. DECKER, Jr."

Here is a telegram from Dallas, Tex., dated October 31, 1921, from Mart E. Beling, as follows [reading]:

"My opinion, and am sure I voice opinion of all brokers in Texas, is that over 4,000 wholesale grocers are most capable of distributing food products more economically than the Big Five who would eventually destroy competition and in that way control prices as they now do in their natural industry. They must not be given opportunity to kill competition.

"MART P. BELING."

This letter is from Charleston, W. Va., signed by T. G. Dabney, of H. L. Terrie & Co. It is addressed to the secretary, dated October 27, 1921, as follows [reading]:

"Replying to yours of the 26th, I am unalterably opposed to any modification by the Department of Justice of the consent decree as applied to the Big Five meat packers.

"To my mind it means not only the ultimate elimination of the present system of food distribution—manufacturer to jobber, to retailer, to consumer—which time has unquestionably proven to be the most economical one, but would eventually enable the meat packers with their vast resources to build up a combination so gigantic and powerful that they could prey upon the American people at will in the distribution of food commodities. Personally, I am of the opinion that the terms of the decree in question should be enforced to the last letter.

"Very truly yours,

"THOS. G. DABNEY."

Mr. Chairman, these are samples of letters that I have from various points, As I told you, I did not think that I was going to read any of the letters, and this is a file of the correspondence on this whole matter, including circulars, and one thing and another.

The Boston Merchandise Brokers' Association went on record, according to this letter dated Boston, November 12, to Mr. Hobbs, our secretary, as follows [reading]:

"This association voted to send wire to Attorney General Daugherty and letters to our Senators and Congressmen, which I have done per copy inclosed.

"These copies simply for your information and following out suggestion of national executive committee.

"I doubt whether anything can stop it, but perhaps concerted action may do so.

"Yours,

"W. A. MANN."

The CHAIRMAN. Signed by whom?

Mr. DAILY. W. A. Mann. Mr. Mann is secretary and treasurer of the Boston Merchandise Brokers' Association.

The Associated Brokers of St. Louis, in a letter dated November 8, addressed to our secretary, and signed by the Associated Brokers of St. Louis, Charles H. Flack, president, Max M. Bodenheimer, secretary, stated as follows [reading]:

"At a meeting of the Associated Brokers of St. Louis held October 27, 1921, the following preamble and resolutions were adopted:

"Whereas, We believe the interest of the public are best served and protected under the present decree of the Government relating to the control of the business of the packing houses: Therefore be it

"Resolved, That we are opposed to any modification of the decree thereby permitting the packing houses to reenter the wholesale grocery business; and be it further

"Resolved, That we extend our aid to prevent any change in the present decree and that we will make every effort toward inducing our packers and principals to coincide with our views."

The Oklahoma City Wholesale Merchandise Brokers' Association, of Oklahoma City, Okla., on November 5, 1921, issued a circular letter, signed by W. T. Love, president, and D. E. Walke, secretary, as follows [reading]:

"GENTLEMEN: For your information, a meeting of the Oklahoma City Wholesale Merchandise Brokers' Association was held on November 3, and a resolution passed in regard to the so-called packers' consent decree.

"The following is copy of this resolution and letter mailed to the Department of Justice, Washington, D. C. Attention Meat Packers' case:

"In our capacity as manufacturers' agents and as members of the Oklahoma City Wholesale Merchandise Brokers' Association we express the hope that the Department of Justice, Washington, D. C., will not permit any modification means that the meat packers resume the sale of such items that are now prohibited under the packers' consent decree, that we are irrevocably opposed to the suggestion.

"If the meat packers be permitted to resume their activities, we feel that the final result will be that the growers and cannors will eventually be at the mercy of a few meat packers, who through their methods would soon control production as well as sale, to the ultimate injury of grower, canner, grocer, broker, and consumer."

I had already told you that our vice president had notified us.

Here is a letter from Alabama, Mobile, dated October 28, 1921, from "Butler," of Butler & Smith, brokers, as follows [reading]:

"In reply to your letter of October 26 to the directors, we hasten to reply that we are absolutely against the Government permitting packers to go back into the wholesale grocery business.

"Very truly yours,

"BUTLER."

From Little Rock, Ark., Mr. Willis W. Johnson, of the firm of Bosley & Johnson, under date of October 28, 1921, wrote the following letter to our secretary [reading]:

"Our association is not in favor of any modification by the Department of Justice which will permit the Big Five meat packers to reenter the wholesale grocery business in the distribution of canned foods, dried fruits, etc.

"Can't help but believe if the packers get back in the game again it will eventually whittle down the earnings of the brokers."

The Colorado Merchandise Brokers' Association of Denver, Colo., on October 28, 1921, wrote the following letter to our secretary [reading]:

"At a meeting of the Colorado Merchandise Brokers' Association, to-day, the secretary was instructed to send you a telegram with reference to the consent decree as reference to permitting the Big Five meat packers to reenter the wholesale grocery business.

"We trust this covers the subject.

Very truly yours,

"COLORADO MERCHANDISE BROKERS' ASSOCIATION,
"By RALPH H. BROWN,
"President."

And the wire reads:

"At a meeting to-day of members this association they expressed themselves as opposed to any modification in the consent decree.

"COLORADO MERCHANDISE BROKERS' ASSOCIATION."

A wire from our Florida director, Geo. W. Thames, jr., dated October 28, from Jacksonville is as follows [reading]:

"At meeting of executive committee Tuesday please say to them that I am absolutely opposed to any modification which will permit packers to reenter whole grocery business am sure I express sentiment of all our members here.

"GEO. W. THAMES, JR."

A letter from J. M. Britt, who is a member of the firm of J. M. Britt & Co., who is our director in Georgia, was received, dated October 28, 1921, by our secretary. And writing as a director he says [reading]:

"Replying to your circular of the 26th, beg to advise that the brokers and wholesale grocers in this section of the country are opposed to any modification to the present arrangements of the packers being eliminated from wholesale grocery business.

"Our jobbers in this section are working very hard to prevent any change being made."

This letter is from Evansville, Ind., signed by L. A. Parker, dated October 27. Mr. Parker is our director from Indiana. He said [reading]:

"We acknowledge receipt of yours of the 21st with reference to the proposed modification by the Department of Justice of the consent decree which will permit the Big Five meat packers to reenter the wholesale grocery business.

"We believe, after careful investigation, that it is the opinion of the food brokers, wholesale grocers, and cannors that this would be detrimental to the industry." Referring to the modification of the decree.

From Louisville, Ky., Mr. Stephenson, of Stephenson & Co., on October 28, writes [reading]:

"Your letter relative to the broker's decree. I have consulted 7 out of the 10 Kentucky membership, and all of them emphatically oppose the brokers reentering the grocery business, because it is impossible to restrict them or divest them of their tramp, pool, and in transit car advantages.

"They further feel that eventually packers would find a way to operate at a less expense or try same by operating their own canneries or plants, eliminating brokers.

"Our safety lies in members engaged in the business."

A letter from Detroit, Mich., dated October 27, from Mr. Floyd E. Bowen, of BowenHassett Co.—Mr. Bowen is our director in Michigan—is as follows:

"Replying to your circular letter of October 26, addressed to the directors of the association, of which I am a Michigan director, will state that I am certainly not in favor of any modification by the Department of Justice whereby they would allow the Big Five meat packers to reenter the wholesale grocery business in the distribution of canned foods, dried fruit, etc.

"I am positively against their competing with the wholesale grocery trade."

Here is a letter from St. Paul, Minn., dated October 27, addressed to our secretary, as follows [reading]:

"In reply to your circular, received this morning, regarding my opinion as to proposed modification by the Department of Justice permitting the meat packers to go into the grocery business.

"Personally, I am opposed to this and feel that I am correctly voicing the sentiments of all the brokers in this community. There has been quite a lot of discussion here about it, and all concerned seem to be of the same opinion.

"Yours very truly,

"E. B. HOLBERT."

A letter from Ward Goodloe, of War Goodloe & Co., St. Louis, Mo., October 28, 1921, is as follows [reading]:

"We have your favor of October 26 to the directors requesting their opinion on the proposed modification by the Department of Justice of the consent decree.

"We are opposed to the modification of the consent decree.

"We strongly urge the National Food Brokers Association to take a firm and aggressive position against the modification.

"Why untie the 'Gulliver'?"

And a telegram from Omaha, Nebr., October 31, as follows [reading]:

"JAMES M. HORBS:

"We consider proposed modification by the Department of Justice which would permit meat packers reentering wholesale grocery business would be detrimental the general industry handling canned food products and therefore strongly opposed to the proposed action.

CARTAN & JEFFREY Co."

Here is a letter from a New York City broker, in which he opposes the modification of the consent decree. It is dated October 28 and addressed to our secretary, as follows [reading]:

"Answering your letter of the 26th, in our opinion it would be detrimental to the entire grocery trade to have the Big Five meat packers reenter the wholesale grocery business because they would come in direct competition with the wholesale grocers, who are organized to do a grocery business, and in addition to this with their financial position they can control the output of the canning industry in any one section and distribute it through their branch houses, which would eliminate the wholesale grocer, the broker, and often crush competition.

"Truly yours,

"GEORGE NOWLAND."

A letter from Charlotte, N. C., dated October 28, from William E. Rothery Co., as follows [reading]:

"In the absence from the city of our Mr. Rothery we are unable to answer yours of the 26th, except to say that he has often expressed very forcibly his opinion that any modification that will permit the Big Five to reenter the wholesale grocery business would be disastrous to the canners, wholesale grocers, and the public."

Here is one from Fargo, N. Dak., under date of October 28, from our State director, Mr. Freeman's firm, as follows:

"We hasten to reply to yours of the 26th and wish to go on record as being absolutely opposed to the modification of the so-called consent decree, because wholesale grocers furnish ample facilities for the distribution of foods, canned fruits and vegetables. With the packer again in the game, there is always a tendency toward monopoly, which is costly to the consumer and would in time almost eliminate the independent canner and jobber.

"We do not believe in the centralized control of our food market, and this is exactly what would happen if the packers are again permitted to enter the grocery business.

"Yours truly,

"GEO. R. FREEMAN & SON (Inc.).

"By H. F. DAUM."

I thank you for your indulgence, Mr. Chairman and gentlemen. I am not going to take up any more of your time on this.

The CHAIRMAN. Mr. Daily, just briefly state the function of brokers. I want it for the record.

Mr. DAILY. Well, Mr. Chairman, the name "broker" is frequently misused, and I am very glad you asked me the question. The food broker, as we understand him, is the man who brings the producer and the distributor together, doing so on a brokerage or percentage basis. In other words, he is paid for his services, with a small percentage, figured on the net amount of the invoice.

The CHAIRMAN. In other words, you find the purchaser for the producer?

Mr. DAILY. We find the purchaser for the producer.

The CHAIRMAN. And find the producer for the purchaser?

Mr. DAILY. Find the producer for the purchaser.

The CHAIRMAN. And take a percentage for your services?

Mr. DAILY. Yes, sir.

The CHAIRMAN. Does the system under which the meat packers operated in these unrelated lines utilize the services of the food brokers?

Mr. DAILY. They do; or they did, rather.

The CHAIRMAN. To what extent?

Mr. DAILY. A very large extent.

The CHAIRMAN. Then the entry or reentry of the packers into this business would not necessarily mean the elimination of the food broker?

Mr. DAILY. Not immediately, but eventually.

The CHAIRMAN. That is in the event that they should obtain a monopoly of this business?

Mr. DAILY. Yes, sir.

The CHAIRMAN. And your fear of monopoly is based upon the same reasons that the other gentlemen have heretofore expressed here?

Mr. DAILY. Well, I have heard but a few of them. My fear is based on human nature, Mr. Chairman. There is no actual law to put the finger on an individual and a monopoly which would control \$300,000,000,000 worth of distribution; it would be very hard to locate the fellow that would have to come up to the front and admit that he did wrong. I know that human nature is human nature. Business naturally is selfish. The incentive for all business is to increase one's business, and I don't know what would happen if they tried to increase it to \$300,000,000,000, but that is the basic fear in the minds of every man, although it has not been expressed that way, I think. I am not dealing with the moral status of any individual or any particular set of individuals, but I know the eventual outcome of such gigantic control must necessarily mean the mowing down of the weaker forces.

The CHAIRMAN. Mr. Hall, do you have any questions?

Mr. HALL. No.

The CHAIRMAN. Mr. Daily, do you know anything about the proportion of the total unrelated lines or grocery business that the packers handled before the entry of the decree?

Mr. DAILY. Those figures, I think, have not been available to the public. I have never heard it. The packers were handling all kinds of canned foods and bottled goods. By that I mean such products as catsup and grape juice and cherries, etc.

The CHAIRMAN. I believe that is all. Any question, Senator?

Mr. SMITH. No.

The CHAIRMAN. Mr. Ford?

Mr. FORD. No.

(Witness excused.)

The CHAIRMAN. Mr. Beckmann wants to take the 4.45 train. We will ask Mr. Beckmann to come up.

STATEMENT OF MR. ALFRED H. BECKMANN, SECRETARY-TREASURER NATIONAL CHAIN STORE GROCERS' ASSOCIATION OF THE UNITED STATES, NEW YORK.

The CHAIRMAN. Will you give your name, Mr. Beckmann?

Mr. BECKMANN. My name is Alfred H. Beckmann, and I am the secretary and treasurer of the National Chain Store Grocers' Association of the United States. Some time ago it came to my attention that the Attorney General had received requests to apply to the court to modify the decree which was consented to by the meat packers, in which I understand they agreed not to extend their monopoly into the production, purchase, sale, and distribution of food products not related to meat and meat food products.

I think I first read of this proposal to modify this consent decree from an article which appeared in the New York Journal of Commerce, and I called this to the attention of various members of our association.

The National Chain Store Grocers' Association of the United States consists of a group of firms, persons, or corporations (not over 35 at present) who are engaged in the business of operating retail grocery stores and selling direct to the consumer. These stores usually buy their products from the manufacturer or producer direct, in addition to which they frequently buy a percentage of their products from wholesale grocers.

Our claim is that through the operation of these chain grocery stores and the purchase direct from the manufacturer or wholesaler and through our experience as merchants in connection with merchandising direct to the consumer, we are able to make a saving in connection with our purchases which enables us to sell in many instances our goods to the consumer at a lower cost than perhaps the individual retailer is able to do. Our business is conducted on a cash-and-carry plan, which eliminates the cost of service, telephone, credit, and delivery to the consumer, and of which the consumer gets the benefit. In other words, while the ordinary individual retail grocer maintains a store in which he sells to the consumer on credit and makes delivery of his goods daily in his own wagons, frequently taking orders over the telephone, involves an extra overhead expense. We sell in the chain stores to the consumer without this extra overhead expense provided he is willing to come and buy the merchandise and take it away, paying cash therefor, and we consider this one of the economic methods of distribution to the consumer.

We, however, recognize that the expense which we have in connection with the purchase of the food products which we sell in this manner is not substantially different from the expense of the individual wholesale grocer, because it is an economic fact that all kinds of food products coming from all sections of the world have to bear the cost of original production, assembling or preparation, and transportation to the point where they are in condition to be distributed to the consumer. Our saving substantially is involved in the method which we use of distributing these goods to the consumer and the quick and more frequent turnover which we employ.

I am instructed to say that we are opposed to the modification of this consent decree, which would enable the packers to extend the monopoly which they now have in meat and meat-food products into the field of unrelated-food products.

The reason we are opposed to this modification is that we believe that if the packers are allowed to go into this field they will sooner or later obtain a substantial monopoly or at least control over the source of supply of a large part of the food products which we have to buy in order to have for distribution what the consumer wants and at a reasonable cost.

We feel confident that, as the representatives of the chain-store system of distribution to the consumer, we can buy much cheaper if there is not a monopoly in any one of the lines of food products which we are obliged to handle in order to please and satisfy the demands of the consuming public and at a low cost.

We therefore wish to protest against any action by the Attorney General before the court looking to a modification of this decree.

Furthermore, I would like to say that I do not see why any such step is necessary. The packers have not asked for it, as I understand, and certainly nothing which I have heard since I have been attending these hearings has indicated to me that a modification would be anything other than an absolute injury to the consuming public of the United States and to the existing channels of distribution of which we are one. We feel that we are closer to the public than any other channel of distribution and know somewhat of their feeling.

I understand that the canners of California say that they fear that they would be put out of business, at least many of the smaller ones, if the packers were allowed to utilize the methods, which, as a monopoly, they have utilized in the past in connection with the development of their huge monopoly in meat and meat-food products.

I do not believe that we would be exactly put out of business, but I do believe honestly and sincerely that the public would have to pay more for the merchandise which we sell direct to them if the packers are allowed to extend their monopoly into the various unrelated lines of food.

There are and always will be legitimate channels of distribution from producer to wholesalers, to retailers, to chain-store grocers, and to mail-order houses. Yet, if these channels of distribution are eliminated, and we believe they will be by monopolistic control, the innocent bystander, the consumer, will be the greatest sufferer. We believe that efficiency, supply and demand, rather than monopolistic agencies should govern distribution.

The CHAIRMAN. Mr. Beckmann, you fear that the packers will get a monopoly if they are permitted to resume those lines?

Mr. BECKMANN. I do, sir.

The CHAIRMAN. Is that based upon the same reasons that have been given by the other gentlemen who appeared here before?

Mr. BECKMANN. Practically so; yes, sir.

The CHAIRMAN. Are you familiar with what percentages of these unrelated lines the packers handled prior to the entry of this decree?

Mr. BECKMANN. Not with any degree of accuracy.

The CHAIRMAN. Do you know any of the unlawful acts or unfair acts that the packers have committed prior to the entry of this decree?

Mr. BECKMANN. I do not.

The CHAIRMAN. Mr. Beckmann, it has been said that the wholesale grocers fight the chain stores. Is that true?

Mr. BECKMANN. I couldn't say that it is true that they were fighting the chain stores in the way you put it; no, sir.

The CHAIRMAN. Do you buy from the wholesale grocers?

Mr. BECKMANN. In some instances; yes, sir. As a general rule buy direct from the manufacturer, with very few exceptions.

The CHAIRMAN. And do not purchase from the wholesale grocers?

Mr. BECKMANN. In some instances; yes, sir.

The CHAIRMAN. Do you experience any trouble in that?

Mr. BECKMANN. Yes, sir.

The CHAIRMAN. From what source does the trouble come?

Mr. BECKMANN. In some sections, where either the brokers or wholesale grocers, for possibly selfish reasons, I would say, might use their influence against the development of the chain-store industry.

The CHAIRMAN. That would have a tendency—buying direct would have a tendency to eliminate them. I assume?

Mr. BECKMANN. Not necessarily, because they are—

The CHAIRMAN (interposing). It would to a certain extent decrease their volume of business then?

Mr. BECKMANN. Yes.

The CHAIRMAN. I believe that is all I care to ask.

Mr. HALL. How many chain stores are there in your organization?

Mr. BECKMANN. We have only 32 members now representing about 12,000 stores.

The CHAIRMAN. Are there any other questions, Senator, or Mr. Breed?

Mr. BREED. Somebody handed me this question to ask Mr. Beckmann. It reads: "When chain stores are short of supplies, where do they get them?"

Mr. BECKMANN. My answer to that is that that seldom prevails, sir. We are such large buyers that we never find ourselves in that uncomfortable condition.

The CHAIRMAN. Does anyone else have anything further to ask? Thank you very much, Mr. Beckmann.

Mr. La France, you telephoned and wanted the resolution that one of your associations had sent in to the office, and there it is.

STATEMENT OF MR. E. S. LA FRANCE, PRESIDENT AND GENERAL MANAGER PEPIN PICKLING CO., WINONA, MINN.

The CHAIRMAN. Will you state your full name, Mr. La France?

Mr. LA FRANCE. E. S. La France.

The CHAIRMAN. Proceed in your own way, Mr. La France.

Mr. LA FRANCE. At the outset, Mr. Chairman, and gentlemen, I want to say that I have not come here prepared with a vast amount of data. That I am a member of the National Kraut Packers' Association, and at a meeting held, I believe, on June 8, at which meeting I was not present, the following resolution was adopted—

The CHAIRMAN. Will you permit me to interrupt you? May I ask how many members your association has, if you know?

Mr. LA FRANCE. I do not believe I can give you that information, not being an officer of it. Mr. Slessman here is an officer of that association, and he can give you the information, I think.

The CHAIRMAN. Well, what is your company?

Mr. LA FRANCE. The Pepin Pickling Co., of Winona, Minn. I am president and general manager of that company.

The CHAIRMAN. Proceed in your own way.

Mr. LA FRANCE. At this meeting of the National Kraut Packers' Association, held at Toledo on June 8, 1921, the following resolution was adopted unanimously, as I understand it:

"Whereas it is self-evident that if the Big Five meat packers are brought under Federal control as now being proposed in Congress, their handling of the so-called unrelated lines from the marketing of which they are now forbidden, will not be a menace to trade but of material benefit;

"Whereas the members of the National Kraut Packers' Association represent the majority of the manufacturers and canners of kraut of the United States who have heretofore marketed a material part of their product through the Big Five Meat Packers;

"Whereas the meat packers, through their efficient and economic distribution covering retail trade not generally reached by other distributing agencies, particularly retail meat markets where the public are accustomed to purchase kraut;

"Whereas prior to the meat packers being restricted from the handling of unrelated lines, a liberal quantity of kraut was sold them as 'futures,' helping thereby to stabilize production and the market;

"Whereas this year very little, if any, kraut has been sold as 'futures,' and production materially curtailed;

"Whereas an increase in the market for and the consumption of kraut would stimulate the growing of cabbage and broaden the farmer's market;

"Resolved, That the decree imposed upon the Big Five packers against handling unrelated lines should be removed and that copies of this resolution shall be sent to the congressional Representatives and Senators of the district in which our members are located."

Now, I am here as a member of the committee appointed to appear before this body. Our line of products are in a large measure vastly different to the lines that you have been listening to here this afternoon; namely, the canner.

As you perhaps know, the product of sauerkraut, and pickles, and other condiments related to them are in themselves of a perishable nature, and I presume, probably not because of the fact that we are large producers of kraut—we happen to be members of the Kraut Packers Association, but we are not factors in the business by any means—but largely because prior to the packers' decree a large source of our outlet for our product was through the packers, is why this is done.

Now, we have found that in the past few years there has been somewhat of an evolution taking place in the distribution of foods to the consumer. Formerly the retail meat dealer handled meats absolutely. He paid no attention to other lines. But gradually he has gotten into handling the lines that are somewhat related to his, lines of a perishable nature, because of the fact that his surroundings, his equipment, are better adapted to handle such perishable foods. Usually he has got refrigeration; he usually does his business in rooms

that are not heated, and as a result he is able to handle sauerkraut exposed, and other such food commodities, and get them to reach the consumer in a very much better condition. And so I really believe that it was the retail meat dealer who probably induced the packer to gradually work into other lines.

I am not here to fight the battles of the packer, nor representing any interest particularly, because we dispose of a large portion of our products through the wholesale grocer, whom we regard as our friend, and we certainly would not like to see anything done that would be of injury to him.

However, I have been unable to see where there would be any gigantic calamity occurring if the meat packer were permitted to return into the handling of food lines other than that which he himself produces.

Our experience with the packer was a very satisfactory one. We had occasion to do a large volume of business with the Armour Packing Co., and with Wilson & Co., and we now are doing business with small meat packers who are not included in this Big Five. We have in our city a small packing plant that travels a number of salesmen, and this distributes a large amount of our product, thereby reducing the overhead expenses in their salesmen, and distributing for us a large quantity of foods to the retail meat dealers, and some groceries.

Our experience with the packer was this: That comparatively no claims ever came to us for spoilage; that he was very prompt in meeting his obligations; that he was liberal in his purchases, and covering a large volume of business, over a period of time, the losses incurred through the handling of the meat packer were practically nothing—oh, they were infinitely small. No claims of any consequence for having come back to us.

The packers were reasonable with us. We aim to pack our own lines as much as we can under our own private brands, endeavoring to build up a business upon the quality of merchandise which we, ourselves, pack, and the packer, in our instance, did not exact of us to pack our stuff under his private brands. He was willing to distribute them to his trade under our established brands.

Therefore I presume that possibly I was selected as a member of this committee, not to come here and fight for any interest. Our interests are served by the parties that are involved in this controversy. We are friendly to the jobber, and we have had splendid service from the packer. We have no cause to record any complaint as to his methods. We found that the packer was usually willing to pay us a reasonable price for our merchandise; that his most exacting conditions in his purchases were extreme quality, and we found that it was harder to meet the packer's views in supplying him with quality merchandise rather than in supplying him with merchandise at low prices.

That, substantially, Mr. Chairman, is my report to this committee.

The CHAIRMAN. Mr. La France, your contention, then, is that the meat packer, by being in close touch with the retail meat market, gave you a wider distribution of your products than you otherwise secured; is that it?

Mr. LA FRANCE. Substantially; yes.

The CHAIRMAN. In addition to that the service that the meat packer rendered in the distribution of your goods was entirely satisfactory?

Mr. LA FRANCE. Yes, sir.

The CHAIRMAN. Do you fear that if the meat packer reenters these lines that he will obtain a monopoly in these lines?

Mr. LA FRANCE. I have stated in the record that I apprehended no great calamity if he did return in it, simply because of this fact, that because of his equipment for handling perishable foods that he was better equipped to handle it on a large scale with a less liability of loss than the average wholesaler.

The CHAIRMAN. Did you ever experience any unfair acts of the packers in the handling or distribution of your goods?

Mr. LA FRANCE. Absolutely none.

The CHAIRMAN. Have you any questions, Mr. Hall?

Mr. HALL. Mr. La France, it has been stated, I think, that in regard to their purchases they were willing to purchase low, and were not always careful of the quality. I understand you to say that it was just the reverse?

Mr. LA FRANCE. Well, I think you misunderstood my statement, sir. My statement was that—

Mr. HALL. No; it was not you. It was before you made your statement. I understood you that they aim at quality; is that it?

Mr. LA FRANCE. That is our experience, that they were very exacting in quality.

Mr. D. H. GRAY, of Armona, Calif. Mr. Chairman, in addition to your questions I have a few that I would like to have introduced into the evidence and asked of the witness, if you will read them, please.

The CHAIRMAN. Over what period of time did you deal with the packers, Mr. La France?

Mr. LA FRANCE. A period of about three years.

The CHAIRMAN. And in a general way what were the commodities that they handled for you?

Mr. LA FRANCE. Pickles and sauerkraut. Those are our two principal lines.

The CHAIRMAN. Do you think that the consuming public will be injured if the packers are permitted to resume the handling of these unrelated lines?

Mr. LA FRANCE. I fail to see where the consumer would suffer.

The CHAIRMAN. Have you talked with any other canners about this?

Mr. LA FRANCE. I have not. I have had very little discussion of it. This matter was brought to my attention—I was not present at the meeting that I was appointed at. I presume that my appointment was largely due to our having done some business with the packers. I have not discussed the matter, and I have come here with no data, and the report that I have given you was simply our experience from dealing with the packer prior to this decree.

The CHAIRMAN. It has been charged there that the wholesale grocers have been using all of their efforts—some of which are fair and some of which are unfair—to influence the canner or packer of these commodities to oppose this modification. Have you had any experience in that line?

Mr. LA FRANCE. Well, comparatively no. I have had letters go forward setting forth the probability that the packers would get a monopoly and go into the manufacturing business if they were left to do so.

The CHAIRMAN. You have received some letters from wholesale grocers upon this subject, I assume?

Mr. LA FRANCE. I think I have.

The CHAIRMAN. Do you care to discuss those or not?

Mr. LA FRANCE. I do not believe I would care to discuss them, Mr. Chairman.

The CHAIRMAN. That is all right.

Mr. BREED. Mr. Galloway, whose questions were those that were presented, may I ask?

The CHAIRMAN. Mr. Gray sent them up.

Mr. BREED. Where is Mr. Gray from?

Mr. GRAY. Armona, Calif.; D. H. Gray.

Mr. BREED. Does he represent kraut packers?

The CHAIRMAN. I really don't know. He will appear later; won't you, Mr. Gray?

Mr. GREY. I think so.

The CHAIRMAN. He will appear later. What service, if any, Mr. La France, can the meat packers render in distributing your products that the wholesale grocers can not render equally as well?

Mr. LA FRANCE. Well, possibly he may be more efficient in storage facilities, and in his shipping he utilizes refrigerator cars, where sometimes the wholesaler is not permitted to. I believe the wholesaler ought to be granted the same privileges, so far as shipping facilities are concerned, that the packers have.

The CHAIRMAN. Would this close contact with the retail meat trade also be an additional facility, perhaps, that the meat packer has over the wholesale grocer?

Mr. LA FRANCE. Well, I don't know as it would be any particular advantage, since most of the wholesale grocers to-day are calling upon the meat markets. Most of them handle the line of groceries.

The CHAIRMAN. That was a condition that existed formerly more than it does now, I assume?

Mr. LA FRANCE. Yes.

The CHAIRMAN. What is the approximate size of your plant, Mr. La France?

Mr. LA FRANCE. Well, it is a \$100,000 corporation; it is a Minnesota corporation.

The CHAIRMAN. Well, in pack, I mean.

Mr. LA FRANCE. In the kraut pack, our kraut pack?

The CHAIRMAN. Yes.

Mr. LA FRANCE. Normally from two to three thousand barrels of kraut. Pickles is our main business.

The CHAIRMAN. And as to pickles?

Mr. LA FRANCE. 100,000 bushels this year.

Mr. GRAY. I would like to ask one question, with your approval, Mr. Chairman. And that is this: Since the consent decree has taken place, and the packer has been withdrawn from the field of operations in distribution, what effect has that had upon your business?

Mr. LA FRANCE. Well, naturally our business has been less, but I do not really lay it altogether to the decree. Financial depression, and then the year 1920 was an absolute failure, almost, in our line of endeavor, so we have not thus far noticed any appreciable difference.

The CHAIRMAN. Senator Smith, have you any questions?

Mr. SMITH. What is the size of your organization?

The CHAIRMAN. He stated that.

Mr. SMITH. The number of plants interested in your kraut organization, of which you spoke?

Mr. LA FRANCE. Well, we have the one main plant, operating 10 stations in various sections of the country, contributing to it.

The CHAIRMAN. He means the National Kraut Packers' Association. Don't you, Senator?

Mr. SMITH. Yes, I mean the National Kraut Packers' Association. You speak for the National Kraut Packers.

Mr. LA FRANCE. Yes, sir.

Mr. SMITH. That is sauer kraut, isn't it?

Mr. LA FRANCE. Yes, sir.

Mr. SMITH. The National Sauer Kraut Packers?

Mr. LA FRANCE. Yes, sir.

Mr. SMITH. How many organizations are there, or plants, engaged in the manufacture of sauer kraut who are members of the organization for which you are speaking?

Mr. LA FRANCE. I just told the chairman a short time ago that I could not answer the question definitely, not being an officer of it, but I think practically every kraut packer in the country is affiliated with the organization.

Mr. SMITH. Do you know how many there are?

Mr. LA FRANCE. I couldn't tell you offhand.

Mr. SMITH. Was it your executive committee, or was it a meeting of your entire organization?

Mr. LA FRANCE. It was a regular meeting of the organization.

The CHAIRMAN. May I interrupt you, Senator, to ask a question?. Do any of the meat packers own any stock in your company?

Mr. LA FRANCE. Absolutely none.

The CHAIRMAN. Do you own any stock in the meat packers?

Mr. LA FRANCE. No, sir.

The CHAIRMAN. Have you any contracts with the meat packers now?

Mr. LA FRANCE. No, sir.

The CHAIRMAN. All right, Senator.

Mr. SMITH. About how many plants are there manufacturing sauer kraut, to your best judgment?

Mr. LA FRANCE. I couldn't answer.

Mr. SMITH. Fifty?

Mr. LA FRANCE. I couldn't tell you that.

Mr. SMITH. Twenty-five?

Mr. LA FRANCE. Yes, at least, and more.

The CHAIRMAN. I think the gentleman following will answer that, won't he?

Mr. LA FRANCE. Yes, he is an officer in the association. Mr. Slessman can answer that.

The CHAIRMAN. Senator, I think we can get that information from him definitely.

Mr. SMITH. I thought possibly he could give it to us. I just wanted to find out what volume of citizens you were speaking for who felt that the packers would be of service to them in their business.

Now, how do you finance your sauer kraut manufacturing? Do you buy the raw material from the farmer, or how do you obtain it?

Mr. LA FRANCE. We enter into contracts very similar to what has been related here by the gentlemen who have preceded me. We contract in the winter time. The product is planted in the spring, and it is grown under our supervision, and contracted to turn the entire output at a fixed price per ton or per bushel.

Mr. SMITH. Do you finance it?

Mr. LA FRANCE. Yes, sir.

Mr. SMITH. Through your bankers?

Mr. LA FRANCE. Yes, sir.

Mr. SMITH. Is your raw material expensive?

Mr. LA FRANCE. Quite so. And we have to carry it for a long time. Our raw material, before it is ready for market, requires carrying for a long time, and we aim to carry a year's crop ahead of us if we can.

Mr. SMITH. How does the value of the raw material compare with the cost of manufacture?

Mr. LA FRANCE. I don't really know as I understand your question, sir.

Mr. SMITH. What would be the price of the unmanufactured cabbage that it is made from? It is made from cabbage, isn't it?

Mr. LA FRANCE. Yes.

Mr. SMITH. Well, what would be the price of the unmanufactured cabbage compared with the price of the same weight of manufactured product?

Mr. LA FRANCE. Well, that varies very largely. That is influenced by the crops.

Mr. SMITH. Well, the average?

Mr. LA FRANCE. Our contracted prices are vastly different sometimes than the market. Sometimes we pay more for cabbage than the market affords, and sometimes our contracts are advantageous.

Mr. SMITH. Do you finance your purchases and manufacture through the use of credits given you in part by your sales to the wholesale merchants?

Mr. LA FRANCE. Absolutely not. We use our corporate credit.

Mr. SMITH. You, then, are not dependent upon your sales to the wholesale merchants to help finance your product?

Mr. LA FRANCE. No.

Mr. SMITH. Now, what proportion of your output did you sell to the meat packers, and what to the wholesale merchants?

Mr. LA FRANCE. Well, I should imagine probably the wholesalers got 60 per cent of our product, and 40 per cent to the packers. With the wholesale trade we work the retail trade and turn our orders over to the jobbers.

Mr. SMITH. If the packers' reentrance and continued entrance into the unrelated food stuffs brought about the elimination of a large part of the wholesale merchants and the substitution of the packers—a few—for the present mode of distribution, would that be beneficial or injurious to your business?

Mr. LA FRANCE. Why, I think it would be injurious to the general public.

Mr. SMITH. And it would be injurious to the general public?

Mr. LA FRANCE. Yes, sir, I do believe it.

Mr. SMITH. And if that is seriously a menace it would not be advisable, would it, in the interests of the general public, for them to invade the unrelated food supply?

Mr. LA FRANCE. If it is a serious menace it certainly would not be.

Mr. SMITH. Then the real question of difference is whether it is a menace or is not, in your judgment?

Mr. LA FRANCE. Absolutely.

Mr. SMITH. That is all.

The CHAIRMAN. Mr. Breed?

Mr. BREED. Just a few questions. Mr. La France, how many directors are there in the National Kraut Packers' Association?

Mr. LA FRANCE. There are five or six, I believe.

Mr. BREED. Can you say whether all of the directors of the association are favorable to the modification of this decree?

Mr. LA FRANCE. Why, it is quite apparent, since it was a unanimous resolution, carried unanimously.

Mr. BREED. The reason I ask you is because I have a letter here from Mr. Hart, of Hart Bros. Is he not a member of the association?

Mr. LA FRANCE. I don't know whether he is or not.

Mr. BREED. Do you know him?

Mr. LA FRANCE. No, sir.

Mr. BREED. Are you a director?

Mr. LA FRANCE. No, sir.

Mr. BREED. Oh, you are not a director?

Mr. LA FRANCE. No, sir, I am not. I am just a member.

Mr. BREED. Well, the reason that I asked was this: This is a letter of November 1, addressed to Mr. Arthur Williams, of R. C. Williams & Co., New York, signed by Mr. Hart, in which he says:

"In fact, I am a member of the board of directors of the National Kraut Association, and you can take my word for it that I am opposed to the Big Five getting back into the grocery business," and so forth.

Would that affect your opinion at all with respect to the opinion of your board of directors?

Mr. LA FRANCE. Why, as I stated at the outset, I was not present at the original meeting. That the original announcement came to me, of my being on the committee, and I was in sympathy with the contents of the resolution, in so far as our business having been very satisfactory with the packer in the past.

Mr. BREED. Well, do you know who the president of the National Kraut Packers' Association is, Mr. La France?

Mr. LA FRANCE. Mr. Babcock, isn't it, Mr. Slessman?

Mr. SLESSMAN. Martin Meeter.

Mr. BREED. Wasn't Mr. Slessman the president this last year?

Mr. LA FRANCE. No, sir.

Mr. BREED. Has he ever been president of the Fremont Kraut Co.?

Mr. LA FRANCE. I think he has.

Mr. BREED. You thing he has?

Mr. LA FRANCE. I can make it clear right here, gentlemen. As I said at the outset, we are more in the pickle business than we are in the kraut business. They are very closely related, and we have two organizations, the National Pickle Packers and the National Kraut Packers.

Mr. BREED. Which are you representing?

Mr. LA FRANCE. I am a member of both. I am a member of the National Kraut Packers' Association and I am a member of the National Pickle Packers' Association.

Mr. BREED. Well, which are you representing, Mr. La France?

Mr. LA FRANCE. I am here on the committee of the Kraut Packers.

Mr. BREED. You are here on the committee of the Kraut Packers?

Mr. LA FRANCE. Yes.

Mr. BREED. Well, you say Mr. Slessman was the president of the National Kraut Packers' Association at one time?

Mr. LA FRANCE. I think he was.

Mr. BREED. Is he the head of the Fremont Kraut Co.?

Mr. LA FRANCE. He is; yes, sir.

Mr. BREED. Is that not the company that Mr. Armour owned prior to February 27, 1920, the date when the consent decree was signed?

The CHAIRMAN. Well, now, if you know whether that is true or not you may state.

Mr. BREED. Of course, if he does not he can not.

The CHAIRMAN. Yes.

Mr. LA FRANCE. I don't know, anyway. I know absolutely nothing about Mr. Slessman's association.

Mr. BREED. Well, do you know whether Armour & Co., or any of the Big Five packers, owned any of the kraut plants that are members of your association?

Mr. LA FRANCE. No, sir, I do not.

Mr. BREED. You do not know?

Mr. LA FRANCE. No, sir.

Mr. BREED. Did you sell your kraut pack to all of the packers, or to what ones?

Mr. LA FRANCE. We did business with Armour & Co. in the Northwest; we supplied 21 of the northwestern branches and we did business with Wilson & Co. during the war.

The CHAIRMAN. Did you ever do any business with Libby, McNeill & Libby?

Mr. LA FRANCE. We have occasionally sold them a car, and we have bought from them.

Mr. BREED. Originally the kraut business was a bulk business, was it not, Mr. La France?

Mr. LA FRANCE. Yes, sir.

Mr. BREED. And is it only in recent years that it has been put up in tins and sold in that way?

Mr. LA FRANCE. Comparatively so.

Mr. BREED. And do you develop your business according to brands?

Mr. LA FRANCE. We are not putting any private brands up. We are packing our own brands.

Mr. BREED. That is what I mean; you are packing your own brands, are you?

Mr. LA FRANCE. Yes, sir.

Mr. BREED. Well, when you sold kraut to Armour and to Wilson, did you sell it in bulk, or did you sell your private brands?

Mr. LA FRANCE. We sold only in bulk to Armour, and we never sold any kraut to Wilson.

Mr. BREED. You sold your private brands through the wholesale grocer and other channels?

Mr. LA FRANCE. Yes, sir.

Mr. BREED. Do you think that the sale of private brands is promoted through using the packers as a means of distribution?

Mr. LA FRANCE. Not necessarily.

Mr. BREED. Isn't it a fact that the packers do not seek to sell and advance your private brands, but are interested in their own?

Mr. LA FRANCE. Naturally they would be.

Mr. BREED. Then would you say that the chief interest of the packers in the kraut business would be either in bulk, or the purchase in bulk and putting out their own private brands?

Mr. LA FRANCE. No; I don't think so, so far as our own experience in this goes. We were not canning kraut until after the packers went out of business. We sold the bulk kraut to them.

Mr. BREED. Is that practice true through the general kraut business?

Mr. LA FRANCE. I don't know whether they do any canning themselves or not. I don't believe they do.

Mr. BREED. No; I mean, is that experience of your firm pretty generally the experience throughout the kraut business—namely, that the putting up of the kraut in tins and private brands came only after the packers went out of business?

Mr. LA FRANCE. No; that is our own experience.

The CHAIRMAN. Well, that is assuming that he knows a great deal about that.

Mr. BREED. What?

The CHAIRMAN. That is assuming that he knows a great deal about the business of others. He knows of his own experience, but he does not know what everybody else in the business does.

Mr. BREED. Well, if he doesn't know what his competitors are doing, he doesn't know much about the kraut business.

The CHAIRMAN. If he knows what everybody else is doing, it might be an occasion for the antitrust law to operate on the kraut business.

Mr. BREED. I can't see that. Have you any idea how the competitors in your line are offering their kraut?

Mr. LA FRANCE. It is being offered in tin and in bulk.

Mr. BREED. Well, do you know whether the offering of kraut in tin as a practice in the trade has come about since the consent decree, or since the war?

Mr. LA FRANCE. No, I told you that we, ourselves, were not packing in tin prior to this decree.

Mr. BREED. But you know nothing about when the practice came in?

Mr. LA FRANCE. But sauerkraut has been canned for a number of years. Its popularity and outlet has grown in the last number of years. It is comparatively a few years since they began packing it.

Mr. BREED. And is that due to the growth of the private brands by the packers themselves.

Mr. LA FRANCE. I think it is due to the development and indorsement of the canning of everything in the food line. Kraut was one of the items that was successfully experimented with and brought out on to the markets. I think the cannery are responsible for bringing the sauerkraut out on the market.

The CHAIRMAN. That is all. Senator, have you anything?

Mr. SMITH. No.

The CHAIRMAN. Mr. Hall?

Mr. HALL. No.

The CHAIRMAN. Thank you very much, Mr. La France.

**STATEMENT OF MR. A. E. SLESSMAN, FREMONT KRAUT CO.,
FREMONT, OHIO.**

The CHAIRMAN. Mr. Slessman, I understand you have got to go away to-night?

Mr. SLESSMAN. Yes, sir.

The CHAIRMAN. Will you state your name?

Mr. SLESSMAN. A. E. Slessman.

The CHAIRMAN. And where do you live?

Mr. SLESSMAN. Fremont, Ohio.

The CHAIRMAN. What is your business?

Mr. SLESSMAN. Manufacturer of sauerkraut.

The CHAIRMAN. What is your company?

Mr. SLESSMAN. Fremont Kraut Co.

The CHAIRMAN. What is the approximate capacity of your company?

Mr. SLESSMAN. Four hundred cars a year.

The CHAIRMAN. And do you represent officially any organization besides your own corporation?

Mr. SLESSMAN. I am here as a member of the committee appointed by the National Kraut Packers Association at their meeting November 12, at Chicago. And by the way, I would like to say one thing: The statement issued by the National Kraut Packers Association and forwarded to you on about that day was the statement that they want in the record; not the one that was read here by Mr. La France.

The CHAIRMAN. Well, that is the only letter I found.

Mr. SLESSMAN. It was sent to you under Mr. Knox's signature.

The CHAIRMAN. Yes. This one is signed by Mr. W. H. Knox, secretary the National Kraut Packers' Association.

Mr. SLESSMAN. Well, this one covered the entire thing. It included the resolution.

The CHAIRMAN. Well, this letter included the resolution.

Mr. SLESSMAN. They want the entire letter in the record.

The CHAIRMAN. It may go in.

(The letter of November 10, 1921, from the National Kraut Packers' Association, Jackson, Mich., is as follows:)

"Hon. HERMAN J. GALLOWAY,

Special Assistant to the Attorney General,

Department of Justice, Washington, D. C.

"DEAR SIR: Reference is made to your letter of October 12 last, wherein you state the committee appointed by the Attorney General to consider modification of the consent decree in the case of the United States v. Swift & Co. et al. will receive written statements from any who may wish to present the same, which statement should set forth their views as to such modification and reasons therefor.

"The National Kraut Packers' Association in convention assembled at Toledo, Ohio, on June 8, 1921, passed the following resolution."

(Here follows the resolution which was previously read into the record by Mr. La France.)

(The letter continues as follows:)

"You will note the above resolution sets forth briefly, certain reasons which we believe sufficient, as showing that the best interests of the public require modification of the consent decree in the so-called packers' case. A committee has been appointed by this association and directed to appear at the hearing before your committee in order to present in person the result of our experience with and observation of trade conditions resulting from the entry of this decree. However, it may be advisable to state briefly some further points which occur to us as worthy of consideration by your committee in this matter.

"(1) As manufacturers and canners, we are asking the reestablishment for the kraut industry of the rights which every manufacturer and canner should have, viz: the opportunity of having his products promptly and efficiently distributed over the widest possible territory. For several years, our products have been widely distributed by both the wholesale grocers and through the branch houses of the packer. Both methods of distribution were eminently satisfactory. Competition between the wholesale grocers and the packers in buying from us meant not only a more stable and certain market for our product, but resulted in an increased acreage and better prices and conditions for the truck gardener or

grower. Selling competition between these food purveyors led to the creation of new markets and a better demand for our food products—and certainly keen competition in the purchase and distribution of any food can never prove injurious to the consumers. If the so-called consent decree is not modified, one of the best markets and most efficient distributing systems for our product is destroyed. This means a set-back for our industry with resultant loss to the growers, manufacturers, and consumers. We can not believe the Government wishes to discriminate against manufacturing of food, denying us access to markets and the unrestricted rights of distribution we have heretofore enjoyed and which every manufacturer in other lines of business now enjoys. If those engaged in the packing industry have violated the laws of our land, we believe they should be punished as others are punished for any such violations. They have not been charged with any violation of law and should not be made to suffer, nor should the truck gardener or farmer or consumer be injured for any alleged wrong-doing of the packers. In our experience with the packers as distributed, enjoy any unfair methods of doing business entirely fair and proper. If they enjoy any unfair advantages or special privileges in transportation or engage in any unfair method of competition, surely there are now sufficient laws upon the statute books to correct these abuses without injury to the innocent.

"(2) The Department of Labor, in a report recently issued, states that the cost of food in this country during September was 53 per cent higher than it was in September, 1913. We do not believe that this consent decree has had, as yet, any effect upon such costs. We submit, however, that it will not help to lower the cost of food if the branch houses, storage spaces, and extensive distribution facilities of the packers can not be utilized in carrying food from the producer to the consumer. It would seem that only demagogues or those whose interests are purely selfish would claim that such distribution machinery should lie idle or that the use thereof would lead to a condition which the Government could not by law control.

"(3) We understand that the one fundamental public policy in this country in reference to business is that free and unrestricted competition shall prevail. All of the antitrust acts passed by Congress and similar acts upon the statute books of every State in the Union are grounded upon the provision that 'competition is the life of trade.' The courts in this country in innumerable decisions, every political organization in the country in each and all of their platforms, and public opinion wherever expressed on this point, are unanimous that the interests of all citizens are best served by allowing every citizen the right to pursue or engage in any legitimate line of business. If this is correct, and it is further admitted that the distribution of food products is a legitimate business, how can it be urged that one class of people, such as the packers, may be denied lawfully the right of competition. We, therefore, regard the theory of unrelated products as un-American in principle.

"An increasingly large number of wholesale grocers are becoming interested in the ownership and operation of canning establishments. We do not believe that laws should be enacted in this country or any laws so enforced that these wholesale grocers could not be manufacturers because chiefly engaged in distribution. Nor do we believe that because one group of persons may be engaged chiefly in the distribution of one line of products they should by law be prohibited from engaging in the distribution of another line. Admittedly, the wholesale grocers in objecting to the complete utilization of fall channels of food distribution are acting for their own interests. We feel certain your committee will take such action in this matter as it required for the best interests of the one hundred million citizens of this country as a whole.

"Firmly believing that producers of food materials, those who prepare foods for market, such as ourselves, and that the millions of consumers in this country are entitled to every consideration in order that food products may be distributed as widely and efficiently and cheaply as possible, we urge modification of the consent decree.

"Respectfully submitted.

"THE NATIONAL KRAUT PACKERS' ASSOCIATION,
"W. H. KNOX, *Secretary*."

The CHAIRMAN. Approximately how many growers contribute to your factory?

Mr. SLESSMAN. I operate five kraut factories, and I probably have 600 growers.

The CHAIRMAN. And what is the acreage?

Mr. SLESSMAN. The acreage, from 1,000 to 1,100, normally. I would like to make a statement for the benefit of those gentlemen.

The CHAIRMAN. Proceed in your own way, and after you are through we will ask you.

Mr. SLESSMAN. Armour & Co. bought an interest in my business in 1915, and I bought their interest a year ago in May. I bought it back. I do not owe Armour & Co. a dollar to-day.

Mr. BREED. Congratulations.

Mr. SLESSMAN. Well, now, I don't know. I want to say that my relations with Armour & Co. were very satisfactory and profitable to me, and that is the reason I am here today, because of my gratitude, and I have absolutely no fear of monopoly on their part, because they deal fair.

Mr. BREED. Well, they are friends of ours, too.

The CHAIRMAN. Now just proceed in your own way, Mr. Slessman.

Mr. SLESSMAN. The fact that Armour & Co. was interested in my company—when they went out, it naturally hurt my business. A great many wholesalers wouldn't buy from anyone that was interested that way; that is, the narrow ones. There are good wholesalers, and indifferent ones, and bad ones; and some of them were very narrow. I couldn't help Armour & Co. buying in my company; they bought my partners out. And it made it hard for me to do business afterwards.

Well, last year I went over the situation, and I contracted just half of my normal acreage. I put out future prices at \$9 for 45-gallon casks, and \$1.10 a dozen for No. 3 crop in the usual time, early in January. We were unable to sell the average of future stuff; we cut down our acreage then 50 per cent. Along in August the condition of the crop looked bad. We commenced to sell a few on the basis of \$11.75 for 45's and \$1.15 for No. 3's. Well, the growing crops looked worse, and we withdrew all prices, and to-day the price of bulk kraut is \$17 for 45's, and \$1.17 for No. 3. The pack is exceedingly short; the shortest we have ever had. I don't blame that to the wholesale grocers. There was a big carry there, and the kraut was sold below the cost of production for several months. And the wise wholesale grocers knew it, and they bought spot stuff, and that is good business. And of course we could only provide for the crop that we could finance and carry in our vats this last season.

I want to speak in reference to Mr. Hart. Mr. Hart was a director of the National Kraut Packers' Association. He is a wholesale grocer at Saginaw, Mich.—Hart Bros. They manufactured kraut a couple of years. They have not manufactured for two years. And he was a demoralizer in the business when he was in it. I know Mr. Mike Hart very well, and he is a nice fellow, and his interests are on the other side in the battle.

I don't know that I have anything further to offer, with the exception that I heard one statement here with reference to Mr. Campbell. Mr. Campbell was not at the meeting November 3rd. I was there, and I happened to be appointed by Mr. Roy Clarke as chairman of that resolution committee; the committee that caused so much trouble. It was the resolution that caused the trouble. And Mr. Lon Sears, the president, or Mr. Roach, up and made the motion and the action was unanimous. They say that there were 18 members present. There were more than 18 men present, but they were not different companies.

Mr. BREED. Your are referring to the Western Cannery Association?

Mr. SLESSMAN. I belong to the western association; yes. And Mr. Clarke also decided that a majority of the members present can do business. That is, the decision on that resolution was based on the fact that the meeting was not called for that purpose, and he called it illegally. And the cannery men, most of those cannery men had not changed their minds, but there was a certain pressure brought to bear there that they were afraid to express themselves.

Mr. Campbell was invited there by Roy Clarke. Roy Clarke, the president of the Western Cannery Association, told me that Mr. Campbell was invited there to speak, and he asked me to get up—he said, "Now I want an excuse to have him talk," and he asked me to get up and say that Mr. Campbell was here and some of the members would like to hear him, but he told me when to do that. And so I saw that it was steam-roller stuff, so I got up and asked the privilege of—I said that Mr. Campbell was here, and I said that several members would like to hear him. That was before the vote was taken, but one of the gentlemen got up and said it was out of order, and they would not permit him to talk until after the vote was taken. Then I asked that the ballot be in writing.

The CHAIRMAN. Secret.

Mr. SLESSMAN. Secret ballot, and that was out of order. And so the fellows that didn't vote "yea" were afraid to say anything. There was only one side of the question put.

The CHAIRMAN. Are you ready for us to ask questions?

Mr. SLESSMAN. Yes, sir.

The CHAIRMAN. You say none of the packers own any control in your business?

Mr. SLESSMAN. No, sir; no interest at all.

The CHAIRMAN. And you have no contracts with them at this time, is that right?

Mr. SLESSMAN. None whatever.

The CHAIRMAN. Did you get a second to that motion that Mr. Campbell be permitted to speak at that meeting?

Mr. SLESSMAN. No, sir; there was an objection raised to it right away.

The CHAIRMAN. You say that after Armour ceased handling these commodities, you had considerable trouble in getting wholesale grocers to take your goods?

Mr. SLESSMAN. No, sir; I won't say that. Of the wholesale grocers I called on personally I was able to sell most of them. And we pack good goods, and a great many of my friends have told me that I won't be able to continue in business; that the wholesalers won't do business with me, and I happen to be just a little bit of a scrapper. If they won't do it in the regular way, I will find a way of marketing my product. I feel that the wholesale grocers are not that unfair. I am here because I feel that the packers gave me an unusually square deal, and I am under no obligations in any way, shape, or manner to the packers.

The CHAIRMAN. The packers did not send you here, did they?

Mr. SLESSMAN. No, sir.

The CHAIRMAN. Do you know how they feel on it, even?

Mr. SLESSMAN. I know how some of the men that handle kraut feel; of course they want to handle it. I don't know how the big men in the organization feel.

The CHAIRMAN. Have you received any communication, or have you heard from any wholesale grocers the position that the canners and so forth take on this question?

Mr. SLESSMAN. I have heard a great deal about it. I have had some letters, but they were not arbitrary at all. Some of them were wholesalers that feel friendly toward me, they were friends of mine, and they said that they felt that may be my attitude was due to my former association with them. And they wanted to know where I stood on the matter, and I felt it was good policy not to answer them, so I have not answered them or entered into any controversy with reference to the matter.

The CHAIRMAN. Do you feel that if the packers go back into these unrelated lines, that they will obtain monopoly of them?

Mr. SLESSMAN. There is no chance in the world for them to do it.

The CHAIRMAN. Why do you say "no chance"?

Mr. SLESSMAN. The canning business covers too big a territory, and the goods are produced locally in localities and small communities, that I do not think would have organization enough. They usually can buy canned foods over there yet below cost of production, at least sauerkraut.

The CHAIRMAN. Do you think that if the packers go back into this business that they would eliminate the wholesale grocers?

Mr. SLESSMAN. I do not. I think it would improve the wholesale grocers' efficiency. I live in a little town of 13,000; there are 52 retail grocers there, and half of them do not belong there. A man can rent a room, and if he has got \$100 some wholesale grocer will put a stock in there, and then he breaks down, and the public pays for it. There are more failures in the retail grocery business than in the kraut business. We fortunately do not have any wholesale grocery failures in our line at all.

The CHAIRMAN. Do you know anything about the number of wholesale grocers there were at the time the packers entered into these unrelated lines, as compared with the number at the time of the entry of the decree?

Mr. SLESSMAN. I have heard Mr. Campbell's statement with reference to the matter, that is all the information I have.

The CHAIRMAN. Do you know anything besides that?

Mr. SLESSMAN. I know nothing besides that.

The CHAIRMAN. That is in the record. Mr. Hall, do you wish to ask him any questions?

Mr. HALL. Does the fact that you have been friendly with Armour in any way influence your testimony here, Mr. Slessman?

Mr. SLESSMAN. Why certainly. It does to this degree, that I feel that they are the finest people I have ever dealt with, and they have given me such fair treatment that I would be an ingrate if I didn't state my position in the matter.

The CHAIRMAN. Over what period of time did they handle your stuff, Mr. Slessman, how, long, approximately?

Mr. SLESSMAN. The first kraut I sold them was in 1912.

The CHAIRMAN. And when did they quit—1920?

Mr. SLESSMAN. They quit last year.

The CHAIRMAN. And kraut was the only product they distributed for you?

Mr. SLESSMAN. Yes, sir, I started in with pickles since then, to my sorrow.

The CHAIRMAN. Have you talked with any other cannerymen about this, Mr. Slessman?

Mr. SLESSMAN. A great many, sir.

The CHAIRMAN. What is the sentiment that you find, from such talks, if there is a sentiment; a ruling sentiment?

Mr. SLESSMAN. The sentiment up until recently has all been in favor of the modification of the decree.

The CHAIRMAN. Recently it has been the other way, do you think?

Mr. SLESSMAN. Not the other way, but they don't say anything about it.

The CHAIRMAN. Do you know why?

Mr. SLESSMAN. Yes, sir, they are scared.

The CHAIRMAN. What are they afraid of, do you know? Or do they say?

Mr. SLESSMAN. Why, they are afraid that they won't be able to dispose of their goods to the wholesalers. They are afraid that the decree won't be modified and they will be punished for taking the stand.

Mr. HALL. But you state you have no such fear because you have a market for your goods?

Mr. SLESSMAN. No, sir, I have not the market.

Mr. HALL. You have not the market?

Mr. SLESSMAN. I have not the market, and I am absolutely dependent upon the wholesale grocers. But I say that if I am forced to it I will be able to find a market—I hope so anyhow. At least I think that I will be able to do that. I might not, but then I believe that the wholesale grocers are going to buy from me just the same. They might not like it all right, but then I don't dislike the wholesale grocers, and I feel that their position is absolutely all right on this. They are trying to protect their business, but I think that they could better their conditions somewhat—improve their methods, and the packers would not be a menace to them. The public is entitled to the best source of distribution, and if the packers afford a little bit better vehicle, the wholesale grocer should come up to that.

The CHAIRMAN. Anything else, Mr. Hall?

Mr. HALL. No.

Mr. SMITH. Were you at the first meeting at Chicago when the resolution favorable to the modification was passed?

Mr. SLESSMAN. No, sir; in June I was not at that meeting, no, sir.

Mr. SMITH. Was that the meeting where the resolution was passed in favor of modification?

Mr. SLESSMAN. Yes, sir, that was the meeting.

Mr. BREED. Are you sure about that, Mr. Slessman?

Mr. SLESSMAN. I am absolutely sure about it. I was not at the June meeting.

The CHAIRMAN. Now wait a minute. One is speaking of the National Kraut Association, and the other is speaking of the western cannerymen.

Mr. SMITH. I am speaking about the western cannerymen.

Mr. SLESSMAN. Yes, sir.

Mr. SMITH. You were at the meeting of the western cannerymen?

Mr. SLESSMAN. Yes.

Mr. SMITH. Mr. Campbell was there, was he not?

Mr. SLESSMAN. Mr. Campbell was not at the meeting; no, sir. He was in Chicago.

Mr. SMITH. Didn't he make a speech at that first meeting?

Mr. SLESSMAN. No, sir, he didn't.

Mr. SMITH. He saw you about it there at Chicago, and he was conferring with the—

Mr. SLESSMAN (interposing). I never met Mr. Campbell until in Chicago at that time when I was at the meeting he called me out, but that was after the action had been taken.

Mr. SMITH. You didn't see him until after the action was taken?

Mr. SLESSMAN. No, sir, I did not. I never met Mr. Campbell before that time.

Mr. SMITH. Didn't you know that he was there to get you to pass that resolution?

Mr. SLESSMAN. No, sir, nobody got me to pass the resolution.

Mr. SMITH. I don't mean you; I mean the entire meeting.

Mr. SLESSMAN. No, sir, he had no influence on that whatsoever. With the exception of the letters that he asked people to write—I suppose that he did stir up indirectly, but there was some things talked over there, and this just naturally came up at that meeting.

Mr. SMITH. Now at the second meeting there were a great many more present than at the first, weren't there?

Mr. SLESSMAN. Yes, sir; it was the best attended meeting of the western canners that I ever attended. This controversy had brought out a big attendance; practically everybody was there to see a lot of fireworks.

Mr. SMITH. And did you have fireworks?

Mr. SLESSMAN. No, no; everybody was afraid. I made a motion, and nobody seconded.

Mr. SMITH. Well, who was afraid? You say everybody was afraid. Who was afraid?

Mr. SLESSMAN. Now you can't talk to me that way.

Mr. SMITH. I am not talking to you improperly.

Mr. SLESSMAN. Pardon me——

The CHAIRMAN. Wait a minute, gentlemen. Let us be fair about it.

Mr. SMITH. I am perfectly fair.

Mr. SLESSMAN. You can't use that tone of voice to me, no, sir.

Mr. SMITH. I asked you who was afraid.

Mr. SLESSMAN. The canners.

Mr. SMITH. What canner?

Mr. SLESSMAN. Pardon me, but if you will talk to me in a less loud tone——

Mr. SMITH. Mr. Chairman, that is a legitimate question.

Mr. SLESSMAN. You can't talk to me in that tone of voice.

Mr. SMITH. That is a perfectly legitimate question.

Mr. SLESSMAN. I am not hard of hearing, if you please. If you will talk to me in an ordinary tone of voice I will be glad to answer, sir.

Mr. SMITH. I will modify my tone of voice.

Mr. SLESSMAN. I did not come here to offend anybody.

Mr. SMITH. What canner was afraid? You say the canners were afraid. Will you name a canner who was afraid, and who was intimidated by a wholesale grocer?

Mr. SLESSMAN. No, sir; I do not say that; no, sir. That the wholesale grocers intimidated them, I do not say that.

Mr. SMITH. Will you name a canner who told you he was afraid and was intimidated?

Mr. SLESSMAN. No, sir; I do not intend to talk about that, sir.

Mr. SMITH. Do you know one?

Mr. SLESSMAN. I know this, that several fellows agreed to second any motion I made, and they didn't any of them get up and do it.

Mr. SMITH. Well, do you know why they didn't?

Mr. SLESSMAN. Why, certainly I do know why.

Mr. SMITH. How do you know?

Mr. SLESSMAN. Why, it is just my opinion.

Mr. SMITH. Did you hear any canner say that he had been intimidated by the wholesale grocers?

Mr. SLESSMAN. No, sir; there wasn't any of them intimidated that I know of. There was no methods of that sort used at all.

Mr. SMITH. Didn't you say they were afraid of the wholesale grocers?

Mr. SLESSMAN. Well, you are trying to put a different construction than what I meant on it.

Mr. SMITH. Well, then, I don't understand you. I am trying to put the one I thought you meant. What do you mean?

Mr. SLESSMAN. Your records will show what I said in reference to it.

Mr. SMITH. I ask you, what did you mean when you said that they were afraid?

Mr. SLESSMAN. Well, I stated that some time ago. They were afraid that they would lose their source of distribution.

Mr. SMITH. Who was afraid?

Mr. SLESSMAN. These various canners.

Mr. SMITH. Name one who ever told you—

Mr. SLESSMAN (interposing). Oh, I certainly won't name one.

Mr. SMITH. Do you know one who ever told you he was afraid?

Mr. SLESSMAN. I have not said so; no, sir; no, sir; I didn't. That was my opinion I am giving you, sir.

Mr. SMITH. Without anything to base it on?

Mr. SLESSMAN. Well, they didn't do as they said they would do, so I just formed that opinion.

Mr. SMITH. They might have lost their confidence in you.

Mr. SLESSMAN. They might have. Yes, put it that way, if that is a better way—they lost confidence.

Mr. SMITH. How many members are there?

Mr. SLESSMAN. Of the western canners?

Mr. SMITH. No, how many members are there of the sauerkraut organization?

Mr. SLESSMAN. Forty-seven or forty-eight I believe.

Mr. SMITH. Each controls a plant?

Mr. SLESSMAN. Yes, sir. Some of them several plants.

Mr. SMITH. Where are they located principally?

Mr. SLESSMAN. Well, from New York State to Utah and Colorado.

Mr. SMITH. Now was it the directors of the sauerkraut organization, or the entire membership?

Mr. SLESSMAN. It was the entire membership.

Mr. SMITH. That passed the resolution?

Mr. SLESSMAN. Yes, sir; and it was unanimous, and the only objection was the letter from Mr. Hart in reference to the matter, and that was read at the association, and discussion was invited on it.

Mr. SMITH. Now, at the second meeting of the canners' association at Chicago—when did that take place?

Mr. SLESSMAN. I think it was November the 13th to the 14th. About that date, sir.

Mr. SMITH. Was Mr. Campbell inside your hall at the time that meeting was going on?

Mr. SLESSMAN. Yes sir, he was; a part of the time at least.

Mr. SMITH. You moved that he be allowed to speak, did you, or you just suggested it?

Mr. SLESSMAN. Oh, the president asked me to do so. Mr. Clarke told me he had invited Mr. Campbell there, but it was rather embarrassing to him to have him talk, and he asked me to get up talk, but he told me when and where.

Mr. SMITH. When did he tell you?

Mr. SLESSMAN. Well, he said after the conference committee came in and reported.

Mr. SMITH. After the report was made?

Mr. SLESSMAN. Yes, after they reported. Well, they reported, and then there was nothing in their report in reference to this decree whatsoever, and then immediately somebody introduced this resolution, and of course I asked for Mr. Campbell to be heard then, and it was declared out of order.

Mr. SMITH. How many members voted against the resolution at that meeting?

Mr. SLESSMAN. Not any that I know of.

Mr. SMITH. Well, you were not intimidated; why didn't you vote against it?

Mr. SLESSMAN. Well—

Mr. SMITH. You were not afraid?

Mr. SLESSMAN. No, sir, I wasn't afraid; but what was the use?

Mr. SMITH. Well, why didn't you make a speech against it?

Mr. SLESSMAN. I can't make a speech, sir.

Mr. SMITH. You can't make a speech—I thought you could.

Mr. SLESSMAN. I never made one in my life.

Mr. SMITH. Well, make a talk then.

Mr. SLESSMAN. No, I very seldom do that.

Mr. SMITH. Nobody made a talk against it?

Mr. SLESSMAN. I don't know—nobody knew that the resolution was going to be offered that I know of.

Mr. SMITH. Well, it was offered; they heard it, didn't they?

Mr. SLESSMAN. Yes.

Mr. SMITH. And nobody voted against it?

Mr. SLESSMAN. I didn't hear anybody, sir.

Mr. SMITH. I don't think I have anything further.

The CHAIRMAN. Anything, Mr. Breed?

Mr. BREED. Mr. Slessman, won't you look this over here and see if that is the copy of the proceedings with the resolution passed at the first meeting of the Western Cannery?

Mr. SLESSMAN. The resolution is right, but I don't know as to this part of it, sir. I think the resolution is right.

Mr. BREED. Well, I don't want to upset the record at all, but this was handed to me as the copy of the resolution.

Mr. SLESSMAN. Yes, I think this is the copy of the resolution, if I recollect.

Mr. BREED. And of the proceedings of your committee, and it is signed by yourself, A. E. Slessman, chairman, Sears, Dawson, and Gerber; wasn't that the committee?

Mr. SLESSMAN. Yes, sir.

Mr. BREED. And it does state that Mr. A. E. Slessman called attention to the fact that the Department of Justice at Washington were reviewing the recent so-called consent decree restraining the meat packers from handling again food products, and that the National Wholesale Grocers' Association and the Southern Wholesale Grocers' Association have asked to be heard and to give their reasons why the order should be made permanent.

Mr. SLESSMAN. How does it come that what I said is in here, and what any body else said is not here? I may have said words to that effect, but there were several others.

Mr. BREED. Did you say that?

Mr. SLESSMAN. I may have said it—

Mr. BREED. This is from your record.

Mr. SLESSMAN. No, that is not from—

Mr. BREED (interposing). Well, then this report goes on to say:

"Mr. Vernon Campbell, of the California Cooperative Cannery Association, who has been working for more than five months to have this decree set aside, assisted this committee, and we inclose you herewith copy of the resolution that was wired to Mr. Daugherty and was O. K'd by the Western Cannery Association." Was that true?

Mr. SLESSMAN. Well, I don't think that Mr. Campbell assisted the committee. The committee drew up their own resolution. And if I remember correctly, Mr. Campbell came into the room at the invitation of the committee, just before we finished, or—

Mr. BREED. Well, all I wanted to do was to get at the truth, as that is all we are seeking here, as to whether Mr. Campbell—

Mr. SLESSMAN. I don't doubt that I said words to that effect, but I didn't know there was a record of it.

Mr. BREED. Well, did Mr. Campbell come to your meeting and talk to you—to this association?

Mr. SLESSMAN. No; he wasn't in the meeting.

Mr. BREED. But didn't you say he came into the room just before the resolution?

Mr. SLESSMAN. He came into the committee room where the committee met.

Mr. BREED. Yes.

Mr. SLESSMAN. But I don't think he assisted in the formation of that resolution. I think it was read to him.

Mr. BREED. Well, if the report from your association shows that to be a fact, and this is a true copy, then you would not say it was false, would you?

Mr. SLESSMAN. Well, I don't know how they would get that report, because if I was chairman of that committee I certainly didn't make that report.

Mr. BREED. Well, this was sent out to your members.

Mr. SLESSMAN. This is signed by me as chairman. I never got one. I am a member, and I never got one; I never saw that before.

Mr. BREED. Well, then, would you look that up?

Mr. SLESSMAN. Yes, sir; I will be glad to do it.

Mr. BREED. I just want to ask you one more question. You said that you had no fear of the packers getting any monopoly in this unrelated business. Were you speaking more particularly with reference to the kraut business?

Mr. SLESSMAN. From what I know of the kraut business. The reason I say that some of the big people that are operating canning plants can not compete with the smaller people—

Mr. BREED. I understand you to say that the packers went into the kraut business about 1912?

Mr. SLESSMAN. I think that is the first year that I sold them kraut.

Mr. BREED. And what was the date when they acquired 51 per cent of your plant?

Mr. SLESSMAN. 1915.

Mr. BREED. So that it took them three years to get control of you over your objection, did it?

Mr. SLESSMAN. No; there was no objection on my part. I had two partners, you see, and I only owned a third of the business, and you see they—well, I don't want to take up a lot of time on this.

The CHAIRMAN. Go ahead.

Mr. SLESSMAN. Because that is not material. I can't see where that is material.

Mr. BREED. Well, my only point in this—and we are seeking to get at a tendency. They did acquire 51 per cent of your business three years after they went into the kraut business, didn't they?

Mr. SLESSMAN. Yes, sir.

Mr. BREED. And didn't you say on direct examination that it was your two partners who sold out to them?

Mr. SLESSMAN. Yes, sir.

Mr. BREED. I gathered the impression that you did not exactly approve of that.

Mr. SLESSMAN. No; I didn't say that. The first year the volume of business was very small. The next year it was quite a little larger, and the next year they ordered 100 to 150 cars, and I got afraid of it, and I wouldn't take it, because Libby, McNeill & Libby had been my big customer, and they had started their own factory. I was afraid that Armour & Co. would do the same thing, and so I cut down my sales to them. Well, they bought from a great many other packers that year, and they had a lot of trouble with it. The quality wasn't right, and the deliveries weren't right, and it was mixed up, and they called me in, and they said that they particularly wanted—because I knew the kraut business—they wanted to make some tie-up with me where they could buy more goods, and that is the reason they bought an interest in it.

Mr. BREED. Do you know, or have you any figures as to the total amount in pounds of the sauerkraut business, we will say in 1917?

Mr. SLESSMAN. Armour & Co. handled normally about 60 per cent of our output.

Mr. BREED. I mean the total kraut business.

Mr. SLESSMAN. Of the United States?

Mr. BREED. Yes, sir; at any time.

Mr. SLESSMAN. We have the figures, but I don't recollect them.

Mr. BREED. Well, I will just read you from the meat packing industry report by the Federal Trade Investigation, part 4, page 231:

"Its sales of kraut," referring to Libby, "in 1915 was 5,489,004 pounds; in 1916, 4,298,775 pounds; in 1917, 8,451,887 pounds; in 1918, 18,810,192 pounds. Of these years the country's total pack is available only for 1917. This was 78,095,957 pounds, of which Libby sold 11.5 per cent."

Would you say that that was approximately correct as to the total number of pounds of sauerkraut during the year 1917?

Mr. CAMPBELL. Mr. Chairman, could I ask the witness a question?

The CHAIRMAN. Yes; just as soon as Mr. Breed finishes.

Mr. SLESSMAN. No; there was more kraut than that packed by the association that year. Libby is not in the association.

Mr. BREED. Well, what would you say was the total—about?

Mr. SLESSMAN. Well, I would think that it was considerably more than twice that much.

Mr. BREED. You would?

Mr. SLESSMAN. Yes, sir.

Mr. BREED. Well, it would look as though the packers were gradually making an inroad into the kraut business during that period, if these figures are in any respect correct, would it not?

Mr. SLESSMAN. Well, you see we figure an average yield per acre as 12 tons of cabbage, and that they have the per cent above and below. In 1917 the percentage was way above, maybe 150 per cent; and Libby has been very aggressive in the kraut business; there is no question about that.

The CHAIRMAN. Pardon me right there. Do you know whether this decree prevents Libby from handling kraut anyhow?

Mr. SLESSMAN. Oh, yes; they handle kraut; they handle kraut, yes, sir.

Mr. BREED. Well, one more question. In any event, to-day, Mr. Slessman, you are the head of the Fremont Kraut Co.?

Mr. SLESSMAN. Yes, sir.

Mr. BREED. And it is an independent company?

Mr. SLESSMAN. Yes, sir.

Mr. BREED. And you own your company and are doing business?

Mr. SLESSMAN. I took the stock that I got from Armour Co. and gave it to my employees. I divided it with the men that I depend upon.

Mr. BREED. And prior to the date of this decree you were not an independent packer, were you?

Mr. SLESSMAN. No, sir; I was associated with Armour & Co.

Mr. BREED. That is all.

The CHAIRMAN. Mr. Campbell, you had a question.

Mr. CAMPBELL. I would just like to ask a question to clear up that matter of the resolution.

Mr. Slessman, how did it happen that I was called into that committee meeting which drew up the resolution?

Mr. SLESSMAN. At the suggestion of Mr. Frank Gerber you were called in.

Mr. CAMPBELL. When I came into the meeting were you there, Mr. Slessman?

Mr. SLESSMAN. No, sir; I was not.

Mr. CAMPBELL. Where were you?

Mr. SLESSMAN. I think I was over at the Hotel La Salle at that time.

Mr. CAMPBELL. What were you at the hotel for?

Mr. SLESSMAN. I went over to see if I could find you.

Mr. CAMPBELL. You went over to see if you could find me?

Mr. SLESSMAN. Yes.

Mr. CAMPBELL. One more question. Who drew the resolution? In whose handwriting was it?

Mr. SLESSMAN. Mr. Frank Gerber did the writing of the resolution. He asked suggestions from everybody, but Mr. Gerber did probably the most of the work on it.

Mr. CAMPBELL. There were no suggestions from me that went into that resolution?

Mr. SLESSMAN. I didn't see any, sir.

Mr. CAMPBELL. That is all I want to ask.

The CHAIRMAN. Mr. Slessman, I am going to ask if you will furnish us the packs, the statistics as to the crops.

Mr. SLESSMAN. I will give you the figures that the association keeps. You see, some of the big packers are not in the association—Heinz and Libby, and a few of the larger ones.

The CHAIRMAN. Well, these figures cover only the association pack?

Mr. SLESSMAN. These figures cover only the association pack. And then you see in every city there are a lot of little packers that are not in the association.

The CHAIRMAN. Well, are figures available as to the total pack or not?

Mr. SLESSMAN. Figures are available for the total pack for the last 10 or 15 years.

The CHAIRMAN. Where can they be found?

Mr. SLESSMAN. Mr. Knox, the secretary of the association, at Jackson, Michigan, has them.

The CHAIRMAN. Will you be kind enough to get them for us?

Mr. SLESSMAN. I will ask that Mr. Knox will forward them to you.

The CHAIRMAN. Thank you very much.

(Mr. Slessman was excused as a witness.)

The CHAIRMAN. Now Mr. Wilson, I think we might as well have you. You want five minutes.

Mr. WILSON. I want to thank you, Mr. Calloway, for giving me a chance to come on the stand.

The CHAIRMAN. It is not a chance; we want to hear you, you see.

Mr. WILSON. I want to leave to-night, and I want the privilege of reading; it is a very short statement.

STATEMENT OF JAMES A. M. WILSON, REPRESENTING ALBERT MACKIE CO., NEW ORLEANS, LA.

Primarily the objections which I have to offer, as a wholesale grocer, are not actuated by selfish motives. The wholesale grocery trade does not, and never has objected to competition, provided that competition is fair, square, open, and above-board. As a matter of fact the wholesale grocery trade thrives on competition, and is always better off for it, there being no more true saying than that "Competition is the life of trade," for whenever it exists trade becomes more active and in large volume and in the large volume depends the net return of net profit to the wholesale grocer.

What we object to and what we fear is unfair methods of competition. Under present methods of food distribution of such lines as are distributed by wholesale grocers, we have a system of competitive buying and selling which absolutely guarantees first of all that the producer shall receive, under normal conditions, a fair value for his products, and that such products shall pass on through their regular trade channels to the consumer at fair price to the consumer.

Objection has been made, I know, by producers in some sections to the low prices which have been obtained for their products during the past 12 months, and there has been some disposition to blame the wholesale grocer for this condition. It can be shown, however, that this condition has not been caused through any fault of the wholesale grocer, but is a perfectly natural condition, resulting from the readjustment of trade lines to conform with new state of affairs.

As regards the consumer, the large number of wholesale grocers fighting incessantly for volume of trade, absolutely guarantees that resale prices to the retail merchant will at all times be at a small per cent of increase over and above jobbers' actual cost of the merchandise, plus the actual distributing cost.

On the other hand, should the meat packers be permitted to again enter into the wholesale grocery lines, and follow their usual course of dominating or attempting to dominate the trade with reference to the items which they handle, we would have a condition very shortly of where competitive buying would be practically restricted to the five big meat packers, which, by reason of the small number of buyers could easily develop into a buyers' monopoly. It must be admitted that it would be very much easier for a small group of five buyers to consult with reference to limits to be paid, much more easily than could a large number of buyers now represented by the several thousand wholesale grocers scattered broadcast over the country.

In the case of the wholesale grocer, it is quite plain that there could be no agreement as to unit of price to be paid for any commodity, by reason of the large number of buyers so widely scattered, as it would, of course, be impossible for any exchange of ideas as to value to be made quickly enough to be of any service in the adjustment of price; therefore, the only other consideration which could govern the price to be paid would be the law of supply and demand. In the final analysis this should be the only consideration which should cause market fluctuations; nothing should be permitted which would have the effect of artificially advancing or depressing the market.

It is just as important that the producer obtain for his products a fair return, as it is that the consumer shall buy the goods at a fair price; interference at either end of the line causes hardships and distress. If the producer does not get a fair return it ultimately effects the consumer by reason of the fact that it generally results in a lesser production the following season, and such small production means a higher price.

If I remember correctly, one of the gentlemen testifying said that in his opinion the percentage of sales by the meat packers of unrelated lines, such as are handled by the wholesale grocers, did not exceed 5 per cent of the total sales of wholesale grocers. This in itself would not be a menace were that per cent of sales distributed over all of the items usually sold by a wholesale grocer. Their activities, however, prior to the consent decree were centered on items

of canned foods, such as canned fruits—pineapple, asparagus, peas, salmon, and sardines. Under present systems of wholesale grocery merchandising there are a large number of items which are sold by the wholesale grocer at an exceedingly small gross margin of profit and in some cases at actual cost and still others at terms below cost. Such items, of course, are the staple commodities consisting of the actual necessities of life. The wholesale grocer then depends upon the larger margins of profit carried by the canned food items in order to bring his average gross profit up to a point where it will cover his operating expenses and leave a net profit in return for his labors. Should the meat packers reenter the wholesale grocery field and concentrate again on canned food commodities and by their large purchasing power and other means obtain control of these items, it can be plainly seen that the wholesale grocer would then have a very much restricted line of commodities to offer, consisting largely of those commodities which have in the past been sold at small margins of profit.

Therefore, as these margins of gross profit would not be sufficient to justify the continuance of his business or to carry the costs thereof, there would be two alternatives for him to follow—one, to go out of business entirely; the other, to advance his margins on the staple commodities, such as sugar, meal, beans, flour, and others to a point where the gross margins would be sufficient to cover his cost and leave him a profit.

Thus the public would suffer by being forced to pay higher prices for actual necessities instead of, as at present, buying the actual necessities at small margins and letting the nonessentials take care of the load.

The CHAIRMAN. Mr. Wilson, you are a wholesale grocer?

Mr. WILSON. Yes, sir.

The CHAIRMAN. And you appear here in your individual capacity as a wholesale grocer?

Mr. WILSON. I am also one of a committee of the Southern Wholesale Grocers.

The CHAIRMAN. Yes; that is what I am coming to.

Mr. WILSON. I am also a member of the National Wholesale Grocers. That is, I mean my firm is.

The CHAIRMAN. Now, your fear is that if the packers go into these lines again, that they will gain a monopoly of them?

Mr. WILSON. Yes, sir.

The CHAIRMAN. That is based upon substantially the same reasoning that has been set forth heretofore by persons that have appeared to-day?

Mr. WILSON. In my own words, that fear is based upon control through their very large purchasing power at the source of supply.

The CHAIRMAN. Do you think their transportation privileges affect that, too?

Mr. WILSON. Yes, in a measure; yes.

The CHAIRMAN. But the other is the main cause?

Mr. WILSON. Yes.

The CHAIRMAN. Are you familiar with what percentages of the total they handled prior to this decree?

Mr. WILSON. I have no figures.

The CHAIRMAN. Are you familiar with any unfair practices that they might have been guilty of prior to this decree?

Mr. WILSON. No; I could not make a statement in a definite way.

The CHAIRMAN. Mr. Hall?

Mr. HALL. No.

The CHAIRMAN. Senator?

Mr. SMITH. No.

The CHAIRMAN. Mr. Ford?

Mr. FORD. No, thank you.

The CHAIRMAN. Thank you very much, Mr. Wilson. We will now call Mr. Baker. I didn't mean to make you wait till the last, but you are the last one that made the request.

STATEMENT OF MR. AUSTIN L. BAKER, OF THE ELDRIDGE-BAKER CO., BOSTON, MASS.

Mr. BAKER. I am representing the Boston Wholesale Grocers' Association here, and also the New England Executive Association of Wholesale Grocers.

The CHAIRMAN. What is your membership, approximately, Mr. Baker?

Mr. BAKER. Well, the Boston association has a membership of something like 65; not all residents of Boston, but some in New Bedford and Fall River and Salem and the southern part of New Hampshire.

The CHAIRMAN. And what is your association?

Mr. BAKER. The other association is a peculiar kind of an association. It is composed of delegates of five wholesale grocers' associations located within New England—the Southern Wholesale Grocers' Association, the Worcester, the Portland, the Bangor, and the Boston. I think that probably the delegates would represent, through their associations, a membership of something considerably over 100, perhaps in the neighborhood of 125 wholesale grocers, in New England.

I have got a couple of telegrams here that are simply cumulative along the line of all this evidence that we have heard, but they are very short, and with your permission I will read them and make them part of your record, and after that I would like to say a few words along a little different angle.

The CHAIRMAN. Proceed.

Mr. BAKER. This is a telegram dated Boston, November 29, and is as follows:

A. L. BAKER,

Hotel Washington, Washington, D. C.:

At executive meeting of Boston Wholesale Grocers' Association to-day resolutions condemning any modification of packers' decree whatsoever was unanimously indorsed.

B. F. BULLARD, *President.*

The second one, the same date:

A. L. BAKER,

Hotel Washington, Washington, D. C.:

At a meeting of wholesale grocers representing all sections of New England it was resolved that for reasons of public policy and to prevent monopolistic control of production and distribution of food products, which would be so injurious to the well-being of the citizens of the entire country, any action tending toward the annulment or modification of the so-called packers' consent decree should be dropped. No other resolutions. Received several letters and verbal assurance that action would be taken.

FRANK F. LEAVITT.

This is from the Executive Association of Wholesale Grocers of New England, and signed by Frank E. Leavitt, secretary. That is about all on that line.

The line I wish to speak on particularly—well, now, I will begin this way—it is rather a crude way, but if you gentlemen are married men and keep house, as I hope you do, as all good citizens should be married and keep house, you have probably received bills from your groceryman that attracted considerable attention. You say at once when you received these bills: "Well, how can there be this tremendous discrepancy between the price at the primary source and the price that appears on this bill?" And beyond that, listening to questions that have come from the commission here, it seems to me that back in the minds of the commission there might be a thought that perhaps the consent decree had something to do with this wide range in between the producer and the ultimate consumer.

The CHAIRMAN. If I might suggest, Mr. Baker, don't you think that is the question in the public mind generally—because of that?

Mr. BAKER. I think so, I really do think so. If you will allow me to illustrate in my crude way, I would like to answer that by a little matter of a personal talk, as you might say. I was born on Cape Cod a good many years ago, and in addition to a fish diet down there they used to give us some corn once in a while, and they raised the corn down there, and corn at that time was worth all the way from 25 to 40 cents a bushel. Well, after we raised it we would send it to the mill, a windmill there with the great long arms, you know, and the miller would take every tenth bushel that he ground, as his charge for grinding the corn. Well, the average price, let us say, at that time would be around 35 cents a bushel. Well, after the corn was brought back to the home, part of it was fed to the hogs, and part of it was fed to the cattle, and part of it was for the children, made up in the shape of a hasty pudding, which you men that were born in the country know all about. It was fixed up with a little water and boiled and boiled and was served to the children with milk,

and sometimes sugar, but mostly with molasses, and they could have all that they wanted for breakfast, they could have just as many dishes as they wanted, because the grain only cost 35 cents a bushel.

Well what happens now when you want corn for breakfast? You get it in the shape of corn flakes put up in a fancy wax-lined package that contains a few ounces, and I have been told that this corn represents an investment, put up in that manner—that is, the consumer pays for it when he gets it in that manner \$14 a bushel. Well, now, you don't have to have it that way if you don't want it. You are bringing it upon yourselves. You want it. And the way I used to take it as a boy was hasty pudding. You might say, "Well that happened a long while ago"—and it did. It happened a long while ago, longer perhaps than I would like to admit.

And with your permission I would like to give you one more illustration to carry out the idea I am trying to get over; something that happened recently. During the war shoes and clothes and everything to wear were so high that I considered that I would get along as well as I could without buying any more. I did get along for some time, but finally my feet were in such shape that I knew I needed a pair of shoes, and so the other day I went into a store where I used to buy shoes. Now it happens that I need a particular kind of soles to fit my feet. And so I sat down and had my feet fitted, and then I said, "What is the price?" And I was told "\$12, and 25 cents war tax." Now I used to buy these shoes, mind you, before the war for \$5; that was the price I paid before the war, and during the war \$10, and I had not bought any shoes since the \$12 price, and now that the war was over I thought it would not be so high, and instead of that it was twelve dollars and a fraction. I said "Don't you know that the war is over; that material is only 50 cents on the dollar that goes into the shoes?" "Well," he said, "I understand that, but these shoes are made from high-priced stock. They were priced at fourteen dollars, and something, and now they have come down to twelve, and you got a little discount." I thought I was being squeezed, but I took them because they fitted my feet.

Two or three days after that I was going down the street, and I saw a window and it said "Closing out sale of shoes. \$3.50 and \$4." Well, I thought, "I will square myself right here," so I went in and bought a pair of each. Well, I took them home, and I put on the \$3.50 shoes and I wore them one day, and they pinched my feet so that I couldn't walk, and I took them and had them stretched, but I couldn't get them to fit my feet to save my life. And the \$4 shoes, although they were the size shoes that I had always wore, as I thought, they would not fit me at all, and so I changed them for 10's the next day; when I bought them they were 9's and I changed them for 10's, but they were not big enough, and so I changed them for 11's, and I have got them now and wear them, but they hurt my feet terribly.

But what I am getting at is I can get along with those cheap shoes all right. They keep my feet off the ground, and they provide a covering for my feet, but they don't suit me. I am willing to pay for the convenience and the comfort that the high-priced shoes give me. And that explains to a large extent, it seems to me, a considerable portion of this condition, of this spirit. We know we are being squeezed when we pay these prices, but we are willing to pay them because we are getting what we want.

I guess that is about all, Mr. Chairman.

The CHAIRMAN. Your idea is, Mr. Baker, that you want service, you get it, and you are paying for it?

Mr. BAKER. Exactly.

The CHAIRMAN. You reiterate what has been said with reference to the danger of the packers coming back into the business, I assume?

Mr. BAKER. I feel that way, sir.

The CHAIRMAN. Your reasons are the same as others, practically, that have appeared before?

Mr. BAKER. Practically.

The CHAIRMAN. Do you have anything, Mr. Hall?

Mr. HALL. No.

The CHAIRMAN. Senator?

Mr. SMITH. No.

The CHAIRMAN. Mr. Ford?

Mr. FORD. No.

The CHAIRMAN. Thank you very much, Mr. Baker. Ten o'clock to-morrow morning, gentlemen.

(Thereupon, at 5.45, an adjournment was taken until 10 o'clock the next day, Friday, December 2, 1921.)

FRIDAY, DECEMBER 2, 1921.

The committee met at 10 o'clock a. m., in room 704, Department of Commerce, pursuant to adjournment on yesterday, Hon. Herman J. Galloway (chairman) presiding.

Judge Hainer not present today.

The CHAIRMAN. The committee will come to order.

Mr. SMITH. Mr. Chairman, here is a resolution Mr. Wilson intended to offer in connection with his testimony, but which he omitted, the resolution having been adopted by the rice growers.

The CHAIRMAN. The rice growers of where?

Mr. SMITH. The rice growers of that section, meeting in New Orleans.

Mr. BREED. For or against modification of the consent decree?

Mr. SMITH. An expression of an earnest desire by the rice growers that the meat packers be not allowed to participate in handling their product.

The CHAIRMAN. It may go in.

(The resolution referred to is here copied in full in the record as follows) :

THE RICE MILLERS' ASSOCIATION,
New Orleans, La., Nov. 22, 1921.

Hon. H. M. DAUGHERTY,
Attorney General,

Department of Justice, Washington, D. C.

HONORABLE SIR: A matter has recently been brought to my attention which directly affects the rice industry, and I am writing this letter to place the position of the rice industry before you. I refer to the decree issued by the Department of Justice some years ago with reference to divorcing the Big Five meat-packing companies from the general marketing of commodities other than meat and meat products. It is my understanding that the decree become formally effective in February, 1922, and that the period permitted by the Government for the packers to make the necessary arrangements to divorce themselves from the marketing of the commodities mentioned terminates at that time.

A matter has been brought to my attention that some action has been, or might be taken by the packers to prolong this period, or in some other manner change, or secure an extension of the original decree.

The Rice Millers' Association including in its membership a greater part of the rice mills in the United States, has taken action on this matter. As Secretary-Treasurer of the Rice Millers' Association, I am authorized and instructed by our executive committee to address a letter to you, attaching thereto an official resolution on the subject. You are urgently requested to give due consideration to the appended resolution in any action which is taken or contemplated by the Department of Justice with reference to this matter.

An acknowledgment of this letter and resolution will be greatly appreciated.

Very truly yours,

F. B. WISE, *Secretary-Treasurer.*

RESOLUTION.

To the United States Department of Justice, Washington, D. C.

The Rice Millers' Association, an organization consisting of practically all of the rice millers of the United States and having affiliated with it as Associate Members, a large number of the dealers, jobbers and brokers interested in rice marketing and distribution, does to-day, through its executive committee, file the following resolution, and urgently requests the Department of Justice to give same thorough and full consideration:

"Whereas the Rice Millers' Association, having had brought to its attention the early termination of the original decree by the United States Government granting the Big Five meat packers a given time in which to divorce themselves from handling and marketing a large number of food stuffs other than meat and meat products;

"Whereas rice has during the past been one of those commodities which was handled by the above-mentioned packing companies;

"Whereas it is considered that a large number of individual wholesale grocers scattered throughout the United States, all buying separately, all using their own methods of distribution, would tend toward a more widespread and larger distribution of American rice than would be effected if a monopoly of rice marketing and distribution by a few packing companies, were they permitted;

"Whereas it is to the betterment of the rice millers, and greatly to the betterment of the rice producers that there be at all times a free, wide open, competitive domestic market for American rice, which conditions are not considered possible even under a partially monopolized market condition;

"Whereas the present method of marketing rice through the wholesale grocers and their sales forces is, and has proven satisfactory: Be it

Resolved, That the Rice Millers' Association respectfully protests against any change in the present decree affecting the marketing of rice by the Big Five packing companies, and further urgently requests the United States Department of Justice to enforce the original decree at the time it becomes effective without any change or extension. We furthermore support the position being taken by the National and Southern Wholesale Grocers' Association regarding this very important matter."

THE RICE MILLERS' ASSOCIATION
EXECUTIVE COMMITTEE.

Done this 22d day of November, 1921, at New Orleans, La.

By F. B. WISE, *Secretary-Treasurer*.

The CHAIRMAN. Mr. McKinney, I believe you wish to make a brief additional statement.

Mr. McKINNEY. Yes, Mr. Chairman, if I may.

STATEMENT OF MR. PRESTON McKINNEY—Resumed.

Mr. McKINNEY. I just wish to state that I have a telegram from my Cannery's League office in San Francisco, stating that since my leaving there George H. Hook, a canner of San Francisco, and Haiku Fruit & Canning Co., of Haiku, Hawaiian Islands, have requested that I represent them in this hearing as opposed to a modification of the consent decree.

The CHAIRMAN. Is that all you wish to say, Mr. McKinney?

Mr. McKINNEY. Yes, sir.

The CHAIRMAN. The committee will now hear Mr. Clark. State your name and address and whom you represent.

STATEMENT OF MR. JOHN G. CLARK, OF BAD AXE, MICH.

Mr. CLARK. My name is John G. Clark, of Bad Axe, Mich., and I represent the firm of Clark & McCaren, our own firm of wholesale grocers, having one house at Bad Axe and one at Port Huron, both in Michigan.

The CHAIRMAN. Do you represent any other organization or association?

Mr. CLARK. I am also representing the Michigan Wholesale Grocers' Association, having 72 members, all located in Michigan.

The CHAIRMAN. You may proceed with your statement.

Mr. CLARK. We are objecting to the modification of the so-called packers' consent decree, because we believe that the packer has been given a preferred and expedited service over the railroads of this country that is necessary to take care of his fresh meats and deliver them to the consumer in good order. Because of the highly perishable nature of the main product of the slaughter houses this service has been developed marverously. The packer owns his own refrigerator cars and, according to the testimony of the Federal Trade Commission and according to evidence submitted before the Interstate Commerce Commission hearing in Chicago in 1919 and 1920, the packer is shown to enjoy very low rates and remarkably efficient service in the movement of his cars.

To the prompt movement of these perishable goods we have no objection, but we do object to this same distributing system being used by these great companies whose greatness has been developed through these special privileges in handling nonperishable products in unrelated lines because they do enjoy this special and necessary service.

In our own locality in Port Huron, several of the packers have branch houses, notably Swift, Cudahy, and Armour. Cudahy & Co. are still active factors in the distribution of canned goods, such canned goods coming from Chicago in their meat cars which receive very rapid transportation. Also Swift & Company, according to the reports of our salesmen last week, are selling the great bulk of eggs sold in Port Huron at prices around 45 to 50 cents a dozen, having gathered these eggs from the same or nearly localities in April and May at a cost as low as 12 cents per dozen to the farmer.

Mr. BREED. May I ask you where those eggs were kept between last April and the date when they are now being sold?

Mr. CLARK. In a Chicago warehouse, so far as I know, or warehouses.

Mr. BREED. Do you know whether the packers own and control any cold-storage warehouses?

Mr. CLARK. They do. I understand they own, or did own 50 per cent of the warehouses in the United States.

Swift & Company also have considerable creamery butter business at that point and all these products come in to our market with the fresh meats in the refrigerator cars.

Michigan is very close to Chicago and prior to this consent decree a number of so-called peddler car routes existed on the railroads in Michigan radiating from Chicago. It was a common practice then that, if a quantity of fresh meat insufficient to make a minimum car was unobtainable in a town, then very attractive prices were made in canned goods, soap, rice or other non-packing house products, in order to move the car forward at carload rate of freight with this rapid service.

With the tremendous tonnage controlled by the packer he is enabled to continue to enjoy preferential treatment over the wholesale grocer, as was clearly shown at the above mentioned Interstate Commerce hearing.

We have no figures other than the Federal Trade Commission figures giving the exact amount of canned goods handled by the packer, but estimating the 5 per cent of nonpacking house products that Swift & Company handled of their entire volume of business prior to their signing the consent decree, would mean about \$60,000,000 per year, as in the Federal Trade Commission's statement Swift & Company's volume amounted to about a billion two hundred thousand dollars during the year 1919. These figures are approximate, but may be corrected by reference to the original testimony.

The State of Michigan is one of the largest producers of canned foods and, from the best statistics we have in the State, production of canned fruits and vegetables amounts to about 8 to 10 million dollars per annum, depending on the season. From those two approximate figures it is apparent that Swift & Company did as much business as the entire canned fruit and vegetable production amounted to in seven States as fertile and productive as our own.

These figures have no relation to the other packers and their volume, nor do they take into consideration the fact that the packer eliminates from the 5 per cent volume of unrelated lines which he said he did—the items of soap, lard compound, cheese, butter, eggs, and canned meats, which are all a considerable part of the volume of the average wholesale grocery business. In other words, the packer is not using the same basis to arrive at the comparative volume of business done by the wholesale grocer and the packers, respectively.

Wilson & Co., in Saginaw, are active in the distribution of canned goods in our territory, their supply reaching Saginaw from Chicago in their meat cars, so that two, at least, of the so-called Chicago packers, so far as our personal experience is concerned, are still active competitors and are still using these unrelated lines to make up the tonnage in carloads into those two points mentioned—Port Huron and Saginaw.

Another point that I have not yet heard a witness bring up at this hearing is the lack of competition, in some lines at least, between the packers themselves. As an illustration, I was a member of the State hospital board, located at Pontiac, Mich., from the fall of 1907 until the boards were abolished by law in 1921. From 1908 until 1918, it was our custom to advertise for proposals for meat for use in the State Hospital. Such proposals were mailed to the Chicago packers and also the local packers throughout Michigan who desired to make a bid on the wants of the hospital. During that entire 10 years, at intervals not longer than 6 months (and often we would buy for a period covering our wants not to exceed 90 days), Swift & Company were always the lowest bidder, and invariably upon opening the bids, during the last five years at least, it was a commonly expressed opinion of the other trustees on the board

that we had been allotted by some sort of arrangement as a special customer of Swift & Company. I have no knowledge that any such agreement existed, but the facts are so remarkable as to deserve comment, at least.

With these facts and many others which have been related here as applying to other territories, our people in Michigan, I believe, have just cause to protest to the committee in the wholesome fear that a monopoly may, and in all probability would, prevail should the packer be allowed to reenter the field of unrelated lines.

From the standpoint of our people in Michigan, we are very glad indeed that the Department of Justice has given us this opportunity to be heard, and we stand ready at any time to furnish whatever evidence we can to substantiate any of these statements should they be questioned.

That is all I have to present, gentlemen of the committee.

The CHAIRMAN. Mr. Clark, as you have stated, you are in the wholesale grocery business?

Mr. CLARK. Yes, sir.

The CHAIRMAN. You have said in your statement that you have no other figures than those contained in the Federal Trade Commission's report with reference to the proportions of grocery lines which the packers have handled.

Mr. CLARK. Yes, sir.

The CHAIRMAN. You fear a monopoly if they are permitted to resume the handling of these lines?

Mr. CLARK. I fear a control amounting to a monopoly, Mr. Galloway.

The CHAIRMAN. And what is your fear based upon?

Mr. CLARK. The congressional investigations and their reports covering a period of 31 years in Congress; the reports of the Federal Trade Commission; the figures that are in the office of the Food Administration and at present available; and our own experience in that market.

The CHAIRMAN. Very well; just how do you think they will be able to attain control or have a monopoly?

Mr. CLARK. In our market they control the egg business, practically; and they control the cheese business. They control the meat business in Port Huron. I hardly think there is a packing plant at Port Huron worthy of the name. Very few cattle are slaughtered there. Pontiac had a little packing house, and still has one, for that matter, but they can hardly do any business. Cattle are shipped right from there into Chicago and the meat shipped back to town again. Based on that performance, I think the meat packers could easily handle and control the canned-fruit business of Michigan should they enter the field.

The CHAIRMAN. Do they have any advantages over the wholesale grocer in the handling of these lines of business?

Mr. CLARK. Yes, sir.

The CHAIRMAN. What are those advantages?

Mr. CLARK. Preferential rapid-freight service.

The CHAIRMAN. What else?

Mr. CLARK. They used to have an advantage in rates, but I understand rates are under process of being changed.

The CHAIRMAN. Are there any other advantages?

Mr. CLARK. Well, the immense advantage of unlimited capital.

The CHAIRMAN. Mr. Clark, do you know of any unfair practices that the packers indulged in prior to this time?

Mr. CLARK. I related one that applied to our own field that put us out of the game. As an illustration, in 1919 one of the packers, and I forget whether it was Swift or Cudahy, in our market in order to put up cars of meat into Port Huron, sold tomatoes at a dollar a dozen when the market at that time was \$1.70 and when I paid \$1.70.

The CHAIRMAN. Mr. Clark, do you know whether those tomatoes that they sold cost them more than a dollar a dozen?

Mr. CLARK. I think they did. But, Mr. Galloway, they were operating, as I understood it at that time—or, anyway, I understood that they were allowed to make 9 per cent or 8 per cent, whatever the Government allowed them to make, on their invested capital and surplus. And in my estimation the prices they were making on canned goods at that time, and I want to say that their other lines were very profitable that year, I say the prices they made on canned goods at that time were done to establish their brands—and they could well do it and still have their 9 per cent that they were allowed.

The CHAIRMAN. That was under Government regulation during the war?

Mr. CLARK. Yes, sir.

The CHAIRMAN. What objection would you have to permitting the packers to go into the export business alone?

Mr. CLARK. Well, the exportable surplus of wheat governs the price of wheat; the exportable surplus or lack of such surplus. And I would say that the same would be true of any other commodity.

The CHAIRMAN. In other words, you feel if the meat packers were permitted to go into the export business alone they could control the price of canned goods just the same as if they were handling such goods for domestic use?

Mr. CLARK. Perhaps not just in the same way, but their action would be a large factor in determining the domestic price, of course, according to the amount they handled.

The CHAIRMAN. Would you object to the meat packers going into the business on a commission basis? That is, that they should not purchase or manufacture these goods, but handle them as agents for others?

Mr. CLARK. I have heard you ask that question of other witnesses, Mr. Galloway, and I did not understand what you meant by "commission basis" or "commission business." Who should then determine the price at which the goods would be sold?

The CHAIRMAN. The canner.

Mr. CLARK. And who should pay for the goods?

The CHAIRMAN. The fellow that buys them.

Mr. CLARK. Do you mean the retailer?

The CHAIRMAN. Yes.

Mr. CLARK. I should say that that sort of thing would be impossible, because no canner would agree to carry the credits of the United States retailers; he could not do it. He would have accounts go bad in, for instance, La Crosse, Wis., and Baltimore, Md.

The CHAIRMAN. Assuming that the meat packers took care of the collection of accounts, and when the goods were sold paid the canner for them, what objections then would there be to their handling these goods on that basis?

Mr. CLARK. I do not think that would be practical, because the most of the canners, as explained by Mr. Roach on yesterday, have to have their future purchases in order to go to the banks and get money on them.

The CHAIRMAN. If it were possible what would you say would be the objection to such a plan?

Mr. CLARK. I would say it would be impracticable, Mr. Galloway.

The CHAIRMAN. Because of what? Why would it be impossible?

Mr. CLARK. Because, naturally, the insurmountable obstacle of getting sufficient capital to can the stuff. No canner in the United States that I know of is able to carry his pack on any such scheme as that.

The CHAIRMAN. Let us assume that the canner could do that, and if it could be done then what would be the objection to it; I mean if it could be actually accomplished.

Mr. CLARK. Well, the meat packer would soon be the sole distributor, wouldn't he? On a 5 per cent basis, did you say?

The CHAIRMAN. Yes.

Mr. CLARK. He would put us out of business because we could not handle it on a 5 per cent basis. And becoming the sole distributor he would become the sole market through which the canner could sell his goods, and, therefore, the meat packer could fix the price to the grower, and in the end he would control the situation and have a monopoly, you might say.

The CHAIRMAN. I just wanted to get your views. Any other questions, gentlemen?

Mr. BREED. Referring to the question just asked by Mr. Galloway, namely, if the meat packer attended to the collection of credits from the retailer, did you understand by that question that the meat packer was to be responsible for the payment to the canner?

Mr. CLARK. Yes, sir.

Mr. BREED. Well, if the meat packer became responsible to the canner for the payment of goods purchased, then the meat packer would not be doing business on a commission basis, would he?

Mr. CLARK. No; he would be buying outright.

Mr. BREED. He would be buying outright, you say?

Mr. CLARK. Yes, sir.

Mr. BREED. What do you understand by the proposition of opening this consent decree to allow the meat packer to do business on a commission basis?

Mr. CLARK. I did not understand it, Mr. Breed. It is so impracticable I do not believe it is possible. In this proposed scheme if the canner is to receive his money he must receive it from the so-called meat packer; he can not receive it from the retailer.

Mr. BREED. You mean that in any scheme of sale by the canner someone must buy and be responsible for the goods which you, as wholesaler, sell?

Mr. CLARK. Yes, sir.

Mr. BREED. Would you be satisfied to see the meat packer merely as your agent or commission man and take the credits which he might incur in sales by him as your agent to the retailer without any responsibility on the part of the packer for the purchase price?

Mr. CLARK. No, sir; he must pay the money. As an illustration, I came down with a starch manufacturer the other day, who makes a lot of private brands. He told me he had closed his plant rather than run on private brand starch for two different houses. One was Larkin & Co. He said, "I will not have my business tied up in the hands of one or two distributors." He said, "I am going to own my own business so that a man can not tell me what he will pay after I build the business up."

Mr. BREED. You gave an illustration in answer to a question by Mr. Galloway of unfair competition by the meat packers, and referred to the meat packers selling tomatoes in your market at a dollar a dozen when the market price was \$1.70, in order to make up cars to ship outside. Will you explain that a little further?

Mr. CLARK. Why, if Cudahy, for instance, supposing he were the packer, wanted 20,000 pounds of fresh meat in a car to make up a carload, and he should get 15,000 pounds of meat orders only and could not sell any more meat to go in to make up that car the forepart or the latter part of the week, we will say, then he would go to retail grocers and offer them merchandise at very low prices in order to make up the additional 5,000 pounds.

Mr. BREED. Oh, you meant by your illustration that the meat packer—and who was he?

Mr. CLARK. Well, I do not know just which one it was, Swift or Cudahy, but I do know it was one of them.

Mr. BREED. Shipped out of where?

Mr. CLARK. Out of Chicago.

Mr. BREED. To some distant point?

Mr. CLARK. This point was Port Huron, Mich.

Mr. BREED. He only had half a carload of fresh meats?

Mr. CLARK. A part of a car.

Mr. BREED. Then he sold to Port Huron retailers tomatoes at less than the market price in order to fill up and make a carload lot, is that it?

Mr. CLARK. We do not know why he sold them at a very much reduced price. We do not know what is going on in a man's mind. It might have been that, and we presumed that was the cause of it. Also it might have been possible that because that year he was only allowed to make 9 per cent or 8 per cent on his capital and invested surplus and had made it.

Mr. BREED. Allowed by whom?

Mr. CLARK. By the Government.

Mr. BREED. The Food Administration?

Mr. CLARK. Yes, sir. I believe that was Mr. Hoover's order then. Having that amount of money made already that fact might have caused them to make these lower prices. In any event, the packer made the price.

Mr. BREED. Is the freight on carload lots less than the freight on less-than-carload lots?

Mr. CLARK. Yes, sir.

Mr. BREED. So there would be a saving if he could ship a carload?

Mr. CLARK. He would save not only on the 5,000 pounds he was short, but on the 15,000 pounds he already had sold and in the car.

Mr. BREED. I believe that is all.

The CHAIRMAN. Do you know the name of the people who bought that stuff?

Mr. CLARK. No; I do not; but I think I could find it for you, Mr. Galloway.

The CHAIRMAN. It was told to you by whom?

Mr. CLARK. Our salesman in that market. And I believed it because canned goods were piled up in retailers' stores in Port Huron at that time.

Mr. HALL. These dollar goods you spoke of—do you know they were sold at less than the meat packer paid for them; less than what they really cost him?

Mr. CLARK. I have no way of knowing that, but I do know that the market at that time was \$1.70.

Mr. HALL. What have you to say about the quality of the goods?

Mr. CLARK. They handle good quality goods. Their goods are usually very, very good, and their service is very prompt.

Mr. HALL. So the discrepancy in price would not exist because of quality of the goods?

Mr. CLARK. Oh, no.

The CHAIRMAN. You may ask him questions now, Senator Smith.

Mr. SMITH. On account of the volume of the variety of that meat packer's business was he able to put his profits on one and to drop the price of the other down so low as to demoralize the business in the one that he made the price low on?

Mr. CLARK. I believe so.

Mr. SMITH. That was the process?

Mr. CLARK. I believe so.

Mr. SMITH. And as they approach a monopoly that facility for demoralizing a trade and breaking down the wholesale trade would, of course, increase, would it not?

Mr. CLARK. Yes, sir.

Mr. SMITH. I believe that is all.

The CHAIRMAN. Mr. Clark, do you know whether they actually did that, or is that just your feeling that they could have done it and probably did?

Mr. CLARK. Oh, I don't know, and have no way of knowing, Mr. Galloway. It is merely an opinion gotten from experience with them as competitors.

The CHAIRMAN. Has anyone else any questions?

Mr. DAILY (representing Food Brokers' Association, Chicago). I would like to ask a few questions, Mr. Chairman.

The CHAIRMAN. Very well, but one minute. Let me exhaust the other side first. Mr. Breed, anything further?

Mr. BREED. I believe not.

The CHAIRMAN. All right, Mr. Daily.

Mr. DAILY. Mr. Clark, in what year did the incident happen that you have just narrated in regard to No. 3 tomatoes?

Mr. CLARK. I believe in 1919.

Mr. DAILY. Did you say in 1919?

Mr. CLARK. Yes, sir.

Mr. DAILY. What was the opening price of tomatoes in that year?

Mr. CLARK. I could not tell you, Mr. Daily.

Mr. DAILY. Do you remember the range of opening prices since, say, 1917?

Mr. CLARK. I do not. Prices fluctuated so sharply during the war time that I could not say.

Mr. DAILY. Do you know any opening price sales of a dollar at any time since 1917?

Mr. CLARK. I do not; not since 1919. My answer referred to 1919. I could not say about since 1917.

Mr. DAILY. How high did No. 3 standard tomatoes go during that period?

Mr. CLARK. Indiana's went up as high as \$1.85 and \$1.90.

Mr. DAILY. Then on resale after the pack was disposed of, what price?

Mr. CLARK. About \$2.25 was the common price.

Mr. DAILY. You do not know just what the opening price in the year that you mentioned was?

Mr. CLARK. I do not.

Mr. DAILY. Is it a common thing for the meat packers or others, when necessity demands it, to carry over tomatoes from one year to another?

Mr. CLARK. I should think they could. In fact, it has often been the business to buy spots when futures are higher. I believe one witness related that about kraut on yesterday.

Mr. DAILY. And an opening price of a dollar in your opinion had not been made in tomatoes for some years, has it?

Mr. CLARK. No.

Mr. DAILY. You spoke about private brands used by the meat packers. Do they do very much of their volume in private brand goods?

Mr. CLARK. I never saw them have but very little else. Once in a while they may have a job lot, but usually they deal in their own brand.

Mr. DAILY. How do they have these private brand goods manufactured?

Mr. CLARK. They send labels to some factories that produce goods for them, and they have some factories of their own.

Mr. DAILY. They do have some factories of their own?

Mr. CLARK. Yes, sir.

Mr. DAILY. Do you know how many?

Mr. CLARK. No, sir.

Mr. DAILY. Do you know where they are located?

Mr. CLARK. I know one was testified to on yesterday as being at Frankfort. Libby, McNeill & Libby own a good many in Michigan. But it is pretty hard to say just what factories the meat packers do own. According to the report of the Federal Trade Commission they are in so many businesses it is pretty hard to tell just where ownership lies.

Mr. DAILY. Referring to the export business, in your experience as a wholesale grocer what is the effect of a report current in the trade that England is in the market for apricots, or that an order has been placed by the authorities at Washington for some cars of beans for export, or any other commodity; what happens to the price of the commodity when there is a report on the street, as we say, that those particular goods are needed for export?

Mr. CLARK. It advances the price.

Mr. DAILY. Is that always based upon fact or is it sometimes a rumor?

Mr. CLARK. It is based on rumor. As an illustration, during the year 1918 Michigan had a very large crop of potatoes. The war board asked me to assist in selling them if I could. We came East and interested some people in the dehydration of potatoes. I came to New York and met a broker who gave me an order for 300 cars of Michigan potatoes. New York potatoes that year had some sort of thing to happen to them, and they were dark inside, and did not dehydrate well. I took this order for 300 cars to be stored in Michigan, and went back to the food administrator, Mr. Prescott. Potatoes were selling at that time at 60 cents a bushel. Our war board had really promised the farmers a dollar, and we wired every food administrator in the State of Michigan that we wanted these 300 cars of potatoes. What was the result? The price of potatoes in Michigan immediately advanced to \$1.25 a bushel, and we just bought six cars of potatoes. Those were all the potatoes we actually bought in that market. And we did not get any except at the advanced price.

Mr. DAILY. Would it be possible for operators who were not at all nice as to their methods to advance the market sharply based on rumor that certain goods were needed for export?

Mr. CLARK. Well, they could. As Mr. Roach explained on yesterday, the movement of 10 cars of a certain commodity would certainly affect the market. To sell at a depressed price or purchase at an advanced price, either one, would affect the market either way.

Mr. DAILY. Mr. Clark, do you know anything about the commissions paid for the sale of canned goods on a brokerage basis?

Mr. CLARK. Only by rumor, Mr. Daily.

Mr. DAILY. What is your idea regarding it?

Mr. CLARK. I think the brokers get 2 per cent to 3 per cent. But you would know about that.

Mr. DAILY. But I am not on the stand at the present time. Mr. Clark, would it be possible for any operator, dealer, or factor to sell the retail trade of the United States canned goods in any volume on a commission of less than 15 per cent?

Mr. CLARK. No, sir. I think the firms that do go direct to the retail trade throughout the United States have a very high cost of operation. For instance, the H. J. Heinz Co., which handles very high grade merchandise and do a very good business, do that business at a very much higher ratio than through the ordinary way of distributing merchandise.

Mr. DAILY. I am now talking about future contracts. What number do wholesalers purchase?

Mr. CLARK. In round lots of a thousand cases, and in many cases by the carload, of course.

Mr. DAILY. Are there any retailers in the United States, or, at least, any considerable number of them, that would handle 2,000 cases of any particular commodity?

Mr. CLARK. Very few.

Mr. BREED. May I inject, and wholesalers purchase at a fixed price.

Mr. CLARK. On futures; yes, sir.

Mr. BREED. The price is fixed in the purchase, and that is in advance of the growth and packing of the crop.

Mr. CLARK. Yes, sir.

Mr. DAILY. How many months in advance of the packing operation do the canners have their goods offered for sale?

Mr. CLARK. Oh, about six months. As testified by Mr. Roach on yesterday, they are busy on their selling campaigns now. They are going to retailers now to know how many berries they want next year. They take that to the wholesaler, and the wholesaler bases his purchase on the probable number of cases the retailers will buy.

Mr. DAILY. How many retailers are there in the United States?

Mr. CLARK. I think 400,000.

Mr. DAILY. In other words, to handle canned goods or any other commodity on a commission basis and develop the maximum of possibilities it would be necessary to open up 400,000 accounts?

Mr. CLARK. Approximately so.

Mr. DAILY. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Clark, you say the canners would go to the retailers and take their orders and take those orders to the wholesale grocers. Why do they take them to the wholesale grocers?

Mr. CLARK. Well, the canners send salesmen with our men. They carry samples and cut them. The canner's salesman could not ship orders direct to the retailer, and he ships the orders to us in carloads and we break up those carloads at points all over the United States, wherever there is a jobbing point, and that saves freight charges. The freight or cost of transportation is, say, 15 cents a dozen on No. 2½ tomatoes in carloads, and if shipped in less than carload lots the additional freight charges would be largely in excess of the profit, the wholesale grocer gets. And if the canner were to attempt to handle the matter direct with the retailer he would have to ship in less than carload lots.

Mr. SMITH. That is what I wanted to bring out. And in that way, by handling these goods in large quantities, you save in the distribution more than your profit?

Mr. CLARK. Yes, sir.

Mr. SMITH. And if they were shipped direct to the retailer in broken lots it would make the cost to the retailer larger than what you charge him; that is the effect of it, is it not?

Mr. CLARK. Yes, sir. Another thing, Mr. Galloway, when these, say, five cases of strawberries of Mr. Roach's Hart brand are exhausted, that retailer may want another case or two. They may go quicker than expected, and to protect such a situation we try to carry stocks at our stores for his convenience.

Mr. HALL. Have you any idea why it makes the cost so high to the distributor who sells to the wholesaler?

Mr. CLARK. Yes, sir; it is the cost of traveling salesmen, for one thing. I bought from Mr. Heinz for years when I had a retail store. He has a number of traveling salesmen, and his places are not as conveniently located as those of the wholesalers, perhaps. He has to ship to some place in our State and break up the cars there. His man calls more infrequently than do the salesmen of the wholesale grocers, and his whole operation in such a large territory and some of it going at less than carload rates, makes a very expensive proposition.

The CHAIRMAN. What is the necessity for a canner sending a salesman around with your salesman if you are going to distribute his goods?

Mr. CLARK. It is a matter of salesmanship. Specialty people in a great many lines do that. The additional business a specialty house will get over and above what our salesmen will sell will pay his expense. You must remember that our salesmen have several thousand articles to sell, and in going into a store the retail man will have quite a list of articles that he wants to buy. Our salesman calls there, say, every week, and he can't make a specialty of this one thing, while the specialty salesman probably goes there once a year. Our salesman can not lay too much stress on some one particular article, for instance, while the specialty salesman can do that, and the specialty man will sell more of his goods than our man would sell.

The CHAIRMAN. Of course, any additional expense by the use of such salesman would have to be paid in the end by the consumer?

Mr. CLARK. It amounts to a very small amount per dozen or per case.

The CHAIRMAN. Anything else, gentlemen?

Mr. BREED. The wholesale grocer has a large number of salesmen, has he not?

Mr. CLARK. Yes; he has.

Mr. BREED. About how many salesmen has your house?

Mr. CLARK. We have 15 salesmen in the grocery business.

Mr. BREED. And they travel over what territory?

Mr. CLARK. They travel over seven counties in what is known as the Thumb of Michigan.

Mr. BREED. Do very many canners adopt the method which you have just referred to of also having salesmen for their particular brand?

Mr. CLARK. Some of them do. What percentage do I do not know, Mr. Breed.

Mr. BREED. It is rather a small percentage, is it not?

Mr. CLARK. I imagine only the large canners can do that.

Mr. BREED. In other words, do I understand that very few small canners located throughout the United States have any salesmen for their own special product?

Mr. CLARK. Very few have their own salesmen.

Mr. McKINNEY. Only a few special brands undertake that system?

Mr. CLARK. We have quite a number in our own territory. Those people who were here yesterday, Mr. Sears and Mr. Roach, have specialty men.

The CHAIRMAN. Do you know whether this decree prevents Libby, McNeill & Libby from handling these unrelated lines?

Mr. CLARK. I do not think it does.

Mr. BREED. Does not this decree prevent Libby, McNeill & Libby from using any special cars of Swift & Co. or of the other packers in handling and distributing their products?

Mr. CLARK. I understand it prohibits them from shipping their goods in conjunction with Swift & Co.'s merchandise.

Mr. BREED. So that unless Libby, McNeill & Libby were permitted to go into the business of owning special refrigerator and peddler cars they would not have any greater advantage than the wholesale or canner in that respect?

Mr. CLARK. No.

The CHAIRMAN. Are there not a number of the smaller meat packers, outside of the so-called Big Five, that are handling these unrelated commodities?

Mr. CLARK. We have none that I know of in Michigan. They are very local if there are such, Mr. Galloway. I think there are some, however, in the United States.

The CHAIRMAN. If there are do not they have the advantages that you fear the Big Five would have in event they handled these unrelated lines?

Mr. CLARK. No; I do not. The Big Five have been entrenched, as shown by various congressional investigations, throughout a period of some 30 years, and have had special privilege.

The CHAIRMAN. The smaller meat packers would have the advantage which you claim exists as to transportation facilities, wouldn't they?

Mr. CLARK. They do not own refrigerator cars of their own.

The CHAIRMAN. None of them?

Mr. CLARK. None that I know of. There are, perhaps, some that own some few refrigerator cars, but not anything in line with the Swift and Armour car lines.

The CHAIRMAN. Anything else, gentlemen?

Mr. DAILY. Just one question: Do you remember the figures given by Mr. Roach yesterday as to the size of his pack?

Mr. CLARK. Yes; he packs about 1,000,000 cases per year.

Mr. DAILY. How many canners are there in the United States that pack a million cases, Mr. Clark; have you any idea?

Mr. CLARK. I do not think there are many; not with such a variety of lines as he packs, at least.

Mr. DAILY. In your opinion is the canning industry composed of large or small canners?

Mr. CLARK. It is composed of a great many small canners.

Mr. DAILY. Would a pack of 30,000 cases represent an average pack taking into consideration the thousands of canneries in the country?

Mr. CLARK. We have several small canners in Michigan who run about that.

Mr. DAILY. Are there sections of the country where there are none but very small canners?

Mr. CLARK. Yes, sir.

Mr. DAILY. Do they operate the year around?

Mr. CLARK. Some of them do, but some operate only during the time of seasonal products. Some pack beans, for instance.

Mr. DAILY. The number of bean packers necessarily can not be very large?

Mr. CLARK. No, sir.

Mr. DAILY. You think of beans, I take it, on account of being in Michigan?

Mr. CLARK. Yes, sir.

Mr. DAILY. In other words, in your opinion the canning industry is composed of a great number of very small companies or canneries.

Mr. CLARK. Yes, sir; the total industry is composed or made up of a lot of small companies or canneries.

Mr. DAILY. That is all.

The CHAIRMAN. That is all, Mr. Clark. We thank you.

Mr. CLARK. And I want to thank you.

The CHAIRMAN. Is the representative of the H-O Cereal Co. here?

Mr. FITZWATER. Yes, sir.

The CHAIRMAN. You may come around. What is your name?

**STATEMENT OF MR. E. L. FITZWATER, OF BUFFALO, N. Y.,
REPRESENTING THE H-O CEREAL CO.**

The CHAIRMAN. What is your business?

Mr. FITZWATER. My position is vice president in charge of sales of the H-O Cereal Co.

The CHAIRMAN. Do you represent any other organization besides your own in the hearing here?

Mr. FITZWATER. I do not.

The CHAIRMAN. State what your company manufactures.

Mr. FITZWATER. It manufactures oatmeal, rolled oats, as they are commonly called, wheat flakes, Presto self-rising flour, and we manufacture mixed feeds. Our main plant is in Buffalo, and we also have a plant at Hamilton, Canada.

The CHAIRMAN. Would you state your approximate capacity of all these lines combined; how many pounds or whatever way you figure it?

Mr. FITZWATER. I could better give it to you in dollars and cents, Mr. Gallo-way, if that is satisfactory.

The CHAIRMAN. That is all right. Just give us a rough estimate.

Mr. FITZWATER. Approximately our business is about \$5,000,000 a year.

The CHAIRMAN. Now, just proceed in your own way, please.

Mr. FITZWATER. I want to say here, gentlemen, that I am not here and my company did not send me here at the request or suggestion of anybody. We are here representing ourselves alone. Our firm was established about 50 years ago. Some four or five years ago the Armour Grain Co. bought out the Buffalo Cereal Co., located in Buffalo, N. Y., and during the period of the war there were times when it was absolutely impossible for our company to get any cars in which to ship their cereals to New York City, which is our largest market, and yet at that very same time the Armour Grain Co. were shipping cereals to the New York trade in their refrigerator cars, and getting all they wanted.

Now, gentlemen, we feel that is an unequal privilege. It is discrimination, and on these grounds alone we oppose any modification whatsoever of the so-called packers' consent decree.

And in making this statement we want to make it clear that we are not afraid of competition—that is, fair competition—but we do not think that is fair competition; or rather, we are not afraid of any fair competition from any meat packers so long as they do not enjoy any privileges. But we certainly think that in the instance just named they enjoyed unequal privileges to the detriment of our business.

If we understand the proposed modification of this packers' consent decree, we feel there is nothing to prevent the meat packers from establishing retail chain stores all over the country, and through their large resources of capital they could very easily undersell the other retail merchants for a time, until they had put them out of business, and then they would raise their prices. And through that process they would put our own customers out of business, and then we ourselves would have to go out of business.

But as I stated at the outset, we are not opposing the proposed modification of the consent decree except on the basis of unequal privileges. We are not

afraid of the meat packers in any fair competition. That is about all I have to say, Mr. Chairman.

The CHAIRMAN. Mr. Fitzwater, your fear, then, is based on what you feel is an unfair advantage which the meat packer has in the way of transportation facilities?

Mr. FITZWATER. Absolutely.

The CHAIRMAN. And you think that because of that they would sooner or later gain control of your line of business?

Mr. FITZWATER. Yes, sir; without question.

The CHAIRMAN. Do you know what proportion of your line of business the meat packers handled or manufactured prior to this consent decree?

Mr. FITZWATER. I do not. I have no figures on that, Mr. Galloway.

The CHAIRMAN. Do you know of anything else besides the transportation matter of which you spoke that you considered unfair acts on the part of the meat packers when in this business?

Mr. FITZWATER. That is the only thing I can recall pertaining to our own business.

The CHAIRMAN. They owned their own cars?

Mr. FITZWATER. Yes, sir.

The CHAIRMAN. And when they wanted them during the war they could get them?

Mr. FITZWATER. Yes, sir.

The CHAIRMAN. And you were trying to get cars from the railroad at the same time?

Mr. FITZWATER. Yes, sir; but could not.

The CHAIRMAN. Were the railroads furnishing cars to any other people at that time, or do you know?

Mr. FITZWATER. It was a question of shortage of cars with everybody, I think, Mr. Galloway. But they, through their private ownership, controlled the movement of their own cars.

The CHAIRMAN. If your corporation had a sufficient volume of business you could own your own cars, couldn't you?

Mr. FITZWATER. Well, we probably could if we had the resources and capital, but we are a small manufacturing plant in our line of business as compared with the resources the meat packers have.

The CHAIRMAN. What are the companies that the meat packers own besides the Armour Grain Co. that were engaged in the manufacture of cereals?

Mr. FITZWATER. What other companies of the meat packers do you mean?

The CHAIRMAN. What other companies that the meat packers controlled that you know of were engaged in the manufacture of cereals, other than the Armour Grain Co.?

Mr. FITZWATER. I can not recall any other meat packer, Mr. Galloway.

The CHAIRMAN. No other than the Armour Grain Co.?

Mr. FITZWATER. No, sir.

The CHAIRMAN. Any questions, gentlemen?

Mr. BREED. Mr. Fitzwater, you have stated that the meat packers used their refrigerator cars to ship cereals out of their Buffalo cereal plant, is that correct?

Mr. FITZWATER. Yes, sir.

Mr. BREED. What was that plant, belonged to what packer?

Mr. FITZWATER. The Armour Grain Co.

Mr. BREED. Where located?

Mr. FITZWATER. At Buffalo, N. Y.

Mr. BREED. What is the name of the cereal company that formerly owned it?

Mr. FITZWATER. It was formerly owned by the Buffalo Cereal Co. Some four or five years ago the Armour Grain Co. bought them out and they now own them.

Mr. BREED. Did the Armour Grain Co. or Buffalo Cereal Co. own any refrigerator or private cars?

Mr. FITZWATER. The Buffalo Cereal Co. did not own any private cars or, refrigerator cars.

Mr. BREED. Do you know whether the Armour interests or the Armour Grain Co. owned refrigerator cars?

Mr. FITZWATER. The Armour interests certainly did own refrigerator cars.

Mr. BREED. Do you think the Armour Grain Co. owned those refrigerator cars?

Mr. FITZWATER. I do not believe so.

Mr. BREED. Do I understand that Armour & Co. were putting at the disposal of the Armour Grain Co. its refrigerator cars or private cars owned by them—Armour & Co.?

Mr. FITZWATER. That is the way I understood it; yes, sir.

Mr. BREED. Those refrigerator cars and private cars were essentially provided for and originally used in the shipment of fresh meat and perishable products—perishable meat products—were they not?

Mr. FITZWATER. That is the way I understood it.

Mr. BREED. What you complain of is that the private cars of Armour & Co. were used by the Armour Grain Co. to ship unrelated products—namely, cereal products?

Mr. FITZWATER. Yes, sir.

Mr. BREED. Did that affect you injuriously?

Mr. FITZWATER. Why, it could not help it, Mr. Breed. The very backbone of our business is in New York City. We could not get cars to ship our goods to our customers, and yet at that very same time the Armour Grain Co., through their parent company, could ship cereals in refrigerator cars, and did, when it was impossible for us to get cars from the railroad companies.

Mr. BREED. This decree prevents Armour & Co. from allowing the use of their refrigerator and private cars for the shipment of these unrelated products?

Mr. FITZWATER. That is the way I understand it now; yes, sir.

Mr. BREED. You said that the only thing you feared in this matter was unequal opportunity or special privileges?

Mr. FITZWATER. Yes, sir.

Mr. BREED. And yet you testified, did you not, that you were afraid you would be put out of business?

Mr. FITZWATER. Yes; if this decree is allowed to be modified I fear that they will go back to their old methods of shipping cereals in their privately owned cars, thereby giving their trade preferential service over what we could give the trade; and also, through their large resources, what would stop them from going into the retail business?

Mr. BREED. Then you do fear the power of their monopoly through their large resources, also, do you not?

Mr. FITZWATER. Yes, sir; we absolutely do.

Mr. BREED. Do you know of any other cereal company bought by any of the packers prior to 1920—other than the Buffalo Cereal Co., I mean?

Mr. FITZWATER. I can not say definitely, but I think Armour & Co. bought some up in Michigan.

Mr. BREED. How about the Maple Flakes Co., of Battle Creek, Mich.?

Mr. FITZWATER. Yes, sir; Armour bought the Maple Flakes Co. They owned the Maple Flakes Co., the Armour Grain Co.; yes, sir.

Mr. BREED. So that prior to 1920 the packers were increasing their ownership in cereal plants?

Mr. FITZWATER. Yes, sir.

Mr. BREED. That is all.

The CHAIRMAN. Senator, have you anything?

Mr. SMITH. No.

The CHAIRMAN. Mr. Daily, anything?

Mr. DAILY. Mr. Fitzwater, in answer to a question from, I think it was the chairman, you stated that you thought it would be best for you, if your company was financially able to do it, to own your own cars. Do you know of any attempt having been made by any interest outside of the meat packers to buy, own, and control cars in order to meet their competition?

Mr. FITZWATER. I do not; no, sir.

Mr. DAILY. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Fitzwater, what is the source of your information that the Armour Meat Packing Co. furnished these cars to the Armour Grain Co.?

Mr. FITZWATER. I get it from our own company right there in Buffalo.

The CHAIRMAN. Do you know how they found out that the Armour Meat Co. was furnishing these cars to the cereal company, or grain company?

Mr. FITZWATER. Well, we were right there in the same city, Mr. Chairman.

The CHAIRMAN. You saw them ship in their cars?

Mr. FITZWATER. I didn't see them personally, but I know from what our own people told me.

The CHAIRMAN. Do you know whether the meat packers had gone into the retail business to any extent before the decree was entered?

Mr. FITZWATER. Whether they had gone in?

The CHAIRMAN. Yes; whether the meat packers had gone into the retail business to any extent before the decree was entered?

Mr. FITZWATER. I do not; no, sir.

The CHAIRMAN. But you fear that they may in the future; is that right?

Mr. FITZWATER. Yes, sir.

The CHAIRMAN. That is all.

Mr. SMITH. Cereals are not ordinarily shipped in refrigerator cars, are they? They are not needed to be shipped in refrigerator cars, are they?

Mr. FITZWATER. Why, no, sir. On the other hand, we tell the trade to store their cereals in a dry place in their warehouse, and never in their basement or cellar.

Mr. CAMPBELL. Mr. Chairman, there is one point of information I would like to get, if possible. You asked the witness whether he felt it was illegal for Armour & Co. to furnish these cars to this cereal company for their use.

The CHAIRMAN. Well, I am afraid that the question whether it is illegal, Mr. Campbell, is a conclusion of law, and we have got a right to answer that as much as the witness.

Mr. CAMPBELL. The point I was getting at is this: What objection he had to the Armour Grain Co. using the cars of Armour & Co. during the war, when there was a shortage of cars.

The CHAIRMAN. I think the witness has already stated that his objection was based on the unfair advantage to them because they could not get cars. If you want to repeat it, you may.

Mr. FITZWATER. That is exactly it, as you stated it, Mr. Chairman.

The CHAIRMAN. That is already in the record, Mr. Campbell.

Mr. CAMPBELL. I missed that point.

The CHAIRMAN. Have you anything further?

Mr. CAMPBELL. No.

The CHAIRMAN. That is all.

Mr. SMITH. Armour & Co. have other cars besides their refrigerator cars, haven't they?

Mr. FITZWATER. Yes, sir.

Mr. SMITH. And these goods may have been shipped in those cars?

Mr. FITZWATER. Some of them in those; yes, sir.

Mr. BREED. Do Armour's private cars usually have Armour's name on them?

Mr. FITZWATER. Yes, sir; I think they do. One can easily distinguish them.

Mr. BREED. So the men in your establishment would be able to identify Armour's private cars if they saw them used?

Mr. FITZWATER. Yes, sir.

The CHAIRMAN. But for all you know Armour & Co. might have let these cars to the railroad companies, and they have been furnishing them to the grain company?

Mr. FITZWATER. Of course, I would have no way of telling that, Mr. Chairman.

The CHAIRMAN. You don't know about that?

Mr. FITZWATER. No, sir.

The CHAIRMAN. No, sir?

Mr. SMITH. Except you know that they did not let you put yours in there, too?

Mr. FITZWATER. They might let them to the railroad company. I know they wouldn't let them to us, I know that.

The CHAIRMAN. That is all; thank you, Mr. Fitzwater.

(Mr. Fitzwater was excused as a witness.)

The CHAIRMAN. Now the National Wholesale Grocers have the remainder of the time to-day and to-morrow.

Mr. BREED. There are some other private people here that want to get away, Mr. Chairman. We are perfectly willing to let them go on first.

The CHAIRMAN. Very well.

Mr. BREED. I think Mr. Crane asked if he could go on so that he could get away. We are perfectly willing to wait and let Mr. Crane put in his statement.

Mr. CRANE. If there are some of the people here outside of the wholesale grocers that want to get away, I am glad to wait my time, Senator.

The CHAIRMAN. We will hear you, Mr. Crane.

STATEMENT OF MR. B. D. CRANE, OF THE REYNOLDS-DAVIS GROCERY CO., FORT SMITH, ARK.

The CHAIRMAN. Just give your name, Mr. Crane.

Mr. CRANE. B. D. Crane.

The CHAIRMAN. And where do you live?

Mr. CRANE. Fort Smith, Ark.

The CHAIRMAN. What is your business?

Mr. CRANE. Wholesale grocer. And my firm is Reynolds-Davis Grocery Co.

The CHAIRMAN. And do you represent any other organization besides your own corporation at this hearing? Do you cover that in your report?

Mr. CRANE. Yes; I cover that in my report.

The CHAIRMAN. Very well. Just proceed in your own way, then, Mr. Crane.

Mr. CRANE. My name is B. D. Crane, of the Reynolds-Davis Grocery Co., of Fort Smith, Ark., and in the name of my firm and the Arkansas Wholesale Grocers' Association—and I think they are of record in your office, Mr. Chairman.

The CHAIRMAN. Pardon me just a moment. How big a membership are they?

Mr. CRANE. Some sixty odd.

The CHAIRMAN. Representing the wholesale grocers over the entire State of Arkansas?

Mr. CRANE. Yes, sir.

The CHAIRMAN. Just proceed.

Mr. CRANE (continuing). I wish to enter my protest against any modification of the joint decree as between the Department of Justice on the one side and the five leading meat packers on the other. By correspondence the Business Men's Club of Fort Smith, Ark., and the traffic bureau of the same place have entered formal protest, and copies of this correspondence have been mailed to the two Senators from my State and to Congressman Wingo from my district, and I wish to appear in person as against any change or modification as against this decree.

It may be said that I am selfish, and in reply I will say that self-preservation is the first law of nature. But a few years ago the meat packers first began to sell and distribute foods unrelated to the meat-packing business, such as canned fruits and vegetables, evaporated fruits, rice, coffee, cereals, etc., always selling such items as were productive of a reasonable margin of profit, or had shown a market opportunity for a profitable investment, such as rice and other things. In some of these lines the meat packers were selling probably as much as 25 per cent of the volume of that particular line in my section. Two packers, namely, Swift and Armour, had branch houses in my town, and these houses were specifically built for the handling of perishable meats and other products (perishable), and three other leading packers ran peddlers through my own town, and these two named packers ran peddler cars immediately around me, and in this way my entire territory was covered both by branch houses and peddler-car service, and these cars were run not less than two times a week.

It was right, in my opinion, that the meat packer should be accorded this service for those items the product of a slaughtered animal requiring expedited service and refrigeration, and that he should have at the same time a low minimum weight, but having been accorded all these, the opportunity was offered to him to ask for and receive the privilege from the railways of shipping other unrelated items in this car, the idea being that the railway should receive a certain amount of money for a given service. In other words, the railway would receive a specific amount of money for a certain number of pounds of freight delivered to a certain distance or town.

By this means the packer was enabled to have an expedited service and could name to the man to whom he would ship the day and hour when goods might be expected, and such service was not accorded and not possible to any other shipper. The volume of business a few years ago being done by the meat packers in unrelated lines was small in volume and insignificant in proportion to his total volume of business, but within five years it has grown to great magnitude and represented probably 5 per cent of his total volume of business and in some instances as much as 25 per cent of the volume of specific items in certain communities. In this way the wholesale grocer was being crowded out of certain lines, such as canned fruits and vegetables, evaporated fruits, cereals, and many other things. As a wholesale grocer, I take myself and my line of business seriously. I think I perform a public service; am conscientious in it and try to handle all those things of a food nature other than certain items of produce and the like in such a way as to serve my patrons and the community in which I do business.

I do not speculate, except in so far as to anticipate reasonable wants, and I do try at all times to have all the things which are usual to me in my business, irrespective of whether I anticipate market advances or market declines. I try to serve in such a way that my customers and the community will be able to get at all times all the items which I am accustomed to sell. Many items are sold at a greater price than the cost of doing business, such as all of those named as handled by the meat packers, whereas many other items are sold upon a lesser margin of profit than the average cost of doing business, such as sugar, feed, flour, and some other items. Now, if the packer is permitted to absorb this so-called profitable business and will leave to me only that which is unprofitable, it is but a mere matter of time when I will be driven from business and in my place there remains the packer who is not rendering an equal service, who is not selling those unprofitable items, and which are really most essential to public welfare. Then, the community is hurt, and only the meat packer has been the gainer.

The commercial interests of my town have entered their protest against any modification of this decree; they do it advisedly, because they see and know that the local wholesale grocery interests serve the interests of the community, pay taxes in it, live in it, create wealth in it, and do their banking locally. They belong to all the civic and trade organizations, and traffic bureaus; they contribute their proportion toward the upbuilding of the town, the maintenance of its schools, roads, churches, and general taxation.

The packer and with his peddler-car service does none of these, but rather destroys them all. The peddler-car system and service will have the tendency to destroy local enterprises, such as jobbing houses, independent manufacturers, and will take away business from banks and transfer all of these to remote and larger centers, which shifts the burden of wealth and of taxation from many and smaller places to a few and larger places, and it makes these smaller places all less able to maintain their general welfare. Wholesale grocers in my community, as an illustration—and I take it that my community is but a sample—are leaders in all that pertains to the upbuilding, the promotion, of the general community welfare, and within the last 10 years I chance to have been the president of our business men's club, when probably a dozen new enterprises, such as smelters, furniture factories, scissors factories, glass factories, oxygen plants, were located in my town, and through the instrumentality of the business men's club and by and through bonuses given to such new enterprises and secured by the voluntary subscriptions of the business interests already in the town, and my house contributed thousands of dollars toward this community interest and the promotion of these new enterprises; so far as my knowledge goes—and I was president of the club at the time, and I have reasonable means of knowing—no meat packer contributed 5 cents to any of these things of public welfare. Within my knowledge this has happened on other occasions, and I well remember a new railroad was built from my town into Oklahoma, and the community raised and donated \$75,000 and gave it to the railroad as a bonus to assist it to finance itself. The packers now run their peddler cars over this road and to which they contributed not a cent, and they have preferential service over shippers who did assist to build the road, and in the public interest.

Day before yesterday I heard the chairman ask the witness why groceries were so high—why they were not cheaper? I do not attempt to answer this, but I remember seeing a bulletin issued recently—I think by the Department of Labor—in which it said the cost of living at this time was 77 per cent higher than in 1913; that housing and lighting were 80 per cent higher; that clothes, etc., were 92 per cent higher; that furniture was 112 per cent higher, and that foods were 56 per cent higher than in 1913. This is from memory.

I am reminded of a question that a single man asked of a married man—"Why do married men live longer than single?" The answer is, "They don't; it just seems longer."

As an illustration, giving one of the reason why foods are not cheaper and the cost of living less, let me use a few figures:

There are in the United States approximately 24,400,000 families. The average family consisting of 4.30 persons. I don't know where they get the 0.30.

Average grocery bill per family, \$500.

According to Harvard Bureau of Business Research, average per cent of profit to the wholesaler is 2 per cent.

The average family pays to the wholesale distributors as a profit, on the wholesalers' efforts and investment about \$10.

Hence, the average individual in the United States pays as a profit to the wholesale distributor of foods the sum of \$2.32.

I mean to say that the toll I take and that the toll that the average wholesale grocer takes for the service that he renders to the public will not total more than \$2.32 per annum as a cost to the average consumer for the service rendered and as an interest charge on the investment. I wish to call attention to the fact that the last raise in wages that was given to the four brotherhoods of \$600,000,000 was approximately twice as much as the total net earnings of the 5,000 wholesale grocers doing business in the United States. In mentioning \$500 as the average grocery bill for the average family, I have included in this many items not sold by the average wholesale grocer, such as milk, fresh meats, fresh vegetables, bread, poultry, etc.

The theory and temper of our laws is for equal opportunity to all and special service to none and the Sherman Law and the Clayton Act were both in the public interest and as against monopoly. Should the wholesale grocer be eliminated from the channels of distribution of food and these channels fall to the five leading meat packers, there comes a monopoly of distribution, and if a monopoly of distribution, a final monopoly of production, and then the food interests of the United States will be centered in the hands of a small group of five large meat packers.

With the passing of the independent wholesale distributor there will pass at the same time the independent manufacturer and the independent producer. Such a situation is unthinkable and I earnestly present my protest against any modification of the packers' joint decree.

Let me add that during the prosperous times of the war many new grocery houses sprang up in my section, and to my personal knowledge practically every one of these is now for sale, or has been sold, or the management is seeking new employment, because the days of profitable business are past.

Permit me to supplement my report with just two or three additional suggestions. The question is frequently asked by the chair what proportion of the grocery business was being done by the packer. This is a very relevant question, but there are other features to be taken into consideration at the same time. The packer does not necessarily have to do all the business or even the major part of it to drive out competition. There are three other elements that enter into a consideration of this kind, viz, terms, service, and price. I am not prepared to take issue or to argue at any length on the first, but may mention the fact that in my section the packer sells upon shorter terms, gets his money, and in no way acts in such a capacity as to finance the trade of the community. The next is a matter of service, and this brings in his shipping facilities and which are enjoyed by no other line of business. This has been thoroughly brought out in the suit of the wholesale grocers as against the railways before the Interstate Commerce Commission, and I will endeavor, so far as my limited ability will permit, to answer such questions along this line as may be put to me. The last consideration is one of price, and next in importance to service. The packer by means of his enormous buying power and widely separated points for distribution and his shipping facilities for reaching all such points enjoys an advantage against any and all others excepting packers.

The difference between profitable and unprofitable business is shown by a small ratio of one's business, and I have been told that 17 per cent is the difference between prosperity and the want of prosperity. To take away from me or any other wholesale grocer such a volume of business as to take from the profit and transfer it to the loss side of the business would mean a retirement from business. And just another idea: The question has been asked, Why are foods so high? Why don't they come down? I would say that I have recently seen it in print that in 1913 45 per cent of the average family's income was spent for foods, and that in 1920 it was but 28 per cent. It will be seen from this that the average family has more money now to spend for other things, such as gasoline, moving pictures, "say it with flowers," and clothes-dressing establishments.

Someone yesterday quoted from Scripture, and I will supplement that, I think, with the full verse from Ecclesiastes:

"Whatever has been will be; and whatever has been done will be done. There is no new thing under the sun and 'all is vanity' sayeth the preacher."

The CHAIRMAN. Mr. Hall, do you have anything to ask?

Mr. HALL. No.

The CHAIRMAN. Mr. Crane, you made some statements there of percentages that packers handled of certain lines. You said they went as high as 25 per cent in certain lines. Do you know what lines they were?

Mr. CRANE. Why, I tried to enumerate them.

The CHAIRMAN. In your statement?

Mr. CRANE. I tried to.

The CHAIRMAN. I beg your pardon. I will get it then. What is your source of information on that, as to those statistics?

Mr. CRANE. Why, seeing the goods on customers' shelves through the eyes of our salesmen, and from the statements of our salesmen, and from the reports that come in to us.

The CHAIRMAN. And you compiled those statistics yourself from that information?

Mr. CRANE. I wouldn't like to say I compiled them, because I have had no positive data, but that is an assumption.

The CHAIRMAN. But that is your estimate and opinion, is it, Mr. Crane?

Mr. CRANE. That is my estimate and opinion, sir.

The CHAIRMAN. And that is based upon the statements of your salesmen from their observation of their customers' stores?

Mr. CRANE. We have not a salesman that does not come in contact very intimately with packing competition, sir; and that is the information that comes to me, and over a period of several years.

The CHAIRMAN. It would, however, be confined more or less to the sections that your salesmen cover?

Mr. CRANE. My information would be confined to that.

The CHAIRMAN. Yes. Now, you speak of the probability of the packers taking away these more profitable lines and leaving you certain other lines not so profitable. Is it your experience that the handling of canned goods is more profitable than the handling of some other lines in the wholesale grocery business?

Mr. CRANE. They so regard it.

The CHAIRMAN. And you are enabled to make a bigger profit on those than on other things?

Mr. CRANE. If I did not I would not be able to serve my community with those unprofitable lines, such as sugar, and flour, and bulk salt, and some other things, sir.

The CHAIRMAN. Well, the canned goods do bear more than their proportion of the cost of this traffic?

Mr. CRANE. It would be a very ideal condition if everything in your house bore a just proportion of the expense of doing business—

The CHAIRMAN. Surely.

Mr. CRANE (continuing). But that condition, you see, is as far away as the millennium.

The CHAIRMAN. But they do bear more than their just proportion?

Mr. CRANE. No, sir; I did not say so. More than an average proportion.

The CHAIRMAN. That is all right. Put it that way. Well, is that quite fair to the producer of canned goods—either the grower or the canner?

Mr. CRANE. Well, who makes me do that? He is unwilling to give me a profit on my sugar that I distribute at a positive loss. I am making 18 cents a hundred on sugar. You rode on a sleeper, didn't you, when you came here?

The CHAIRMAN. I have done so, yes.

Mr. CRANE. You did. Now that was the smoothest and most commodious and even-running car of that train, wasn't it?

The CHAIRMAN. Well, sometimes I have felt that it was not.

Mr. CRANE. I think so. Now, I understand—I am not prepared to either deny or affirm—but I am given to understand that there are 30,000 pounds of scrap iron on that sleeper. Now the railroad doesn't want to handle that 30,000 pounds of scrap iron, but by having that 30,000 pounds of scrap iron in the car, that makes that coach go it will stay on the track better, and not run off the track, and it will run smoother, and it is the pleasantest riding coach on the train. You have been across the Atlantic, and you have seen vessels, and the first thing they do before they get a vessel into the water, and even before leaving port, is to ballast that vessel. And with what? Why, with dead matter. They don't want to haul that dead matter, but that dead matter balances and ballasts that vessel in the water.

Now, these unprofitable items of ours are the ballast in our business, sir, that we are bound to carry to properly serve our constituents. Did I choke myself to death with too much lariat?

The CHAIRMAN. No, not at all.

The CHAIRMAN. Why wouldn't it be proper, Mr. Crane—this may be highly idealistic, and so forth, but why wouldn't it be proper for all commodities to bear their equal proportion of the cost of this service?

Mr. CRANE. Well, in the first place human nature. Each man wants to get an advantage if he can, don't you see, or put his best foot forward. One man will take sugar, another man may take some other commodity, and another man may take some other commodity, until finally all three men have got the same commodity, and they are feeding that one thing as molasses to catch flies, I presume.

The CHAIRMAN. Competition is brought about as the result?

Mr. CRANE. Competition, sir; competition. Now the retail grocers one time got me on the chair in Fort Smith, and they said, "Look here, it looks as if you fellows have got a combination here. I have called up every one of you, and it seems that every one has got the same price on sugar." And I said: "My dear fellow, will you pay me more for sugar than my competitor across the street? Will you buy sugar from me if he is 5 cents lower than I am?" "No." "No, you will buy from him, won't you?" "Yes." "Well, if I don't meet his price you won't buy from me, and so it looks as if you folks fix the price that is paid for sugar." "Well, I guess that is right." "So it is the low man that names the price, not the high man."

Mr. BREED. Could I ask a question here?

The CHAIRMAN. Very well, Mr. Breed.

Mr. BREED. What did you enumerate as the least profitable lines carried by the wholesale grocer?

Mr. CRANE. Now, I have yet to hear of a statistician who can prove out mathematically the things that are or are not profitable, but we judge by the average cost of doing business. I know of no means of allocating to each and every department in your business the cost of running that department in your business, and so we have got to take the general average as a basis.

Mr. BREED. Well, what I mean is that shows the least spread between the purchase price and the selling price.

Mr. CRANE. The thing for which we are most abused, and some of us blame near got in the penitentiary on, I guess, which is sugar.

Mr. BREED. What else?

Mr. CRANE. Flours, and those people who handle feeds, and bulk salt.

Mr. BREED. Well, now, I would like to ask you if those so-called lines are not usually bought frequently and sold out rather quickly?

Mr. CRANE. They are.

Mr. BREED. Do you buy those things six and eight months or a year in advance of the time that you wish to have them?

Mr. CRANE. No, sir.

Mr. BREED. You therefore do not have to carry the storage charge during that period?

Mr. CRANE. I do not.

Mr. BREED. Or the insurance?

Mr. CRANE. Or the insurance.

Mr. BREED. Or the interest on your investment?

Mr. CRANE. The rapidity of the turnover is much greater; the turnover is much more rapid, sir.

Mr. BREED. Then the turnover in these unprofitable lines is or is not rapid?

Mr. CRANE. Very rapid.

Mr. BREED. Now, you stated that the canned goods and lines of that sort showed an apparent larger profit or spread between the cost to you and sale price; is that correct?

Mr. CRANE. I beg your pardon.

Mr. BREED. Read the question.

(The question was read by the reporter as above recorded.)

Mr. CRANE. Yes; and the reason for that, don't you see, is logical and reasonable.

Mr. BREED. Well, now, I want to ask you: When do you contract for these canned goods and these lines usually?

Mr. CRANE. Why, ordinarily as soon as the canners put out their future prices.

Mr. BREED. How far away is that from the date when the goods are delivered to you and you sell them?

Mr. CRANE. Well, probably in some instances as much as nine months.

Mr. BREED. Do you contract at a fixed price to buy these canned goods, usually?

Mr. CRANE. It is named in the contract, sir, and it is fixed.

Mr. BREED. Then it is your business, however, to bear the risk of a drop in the market between the date when you contract to buy them and the date when you sell them to the retailer?

Mr. CRANE. I assume that risk, sir, when I name the price in the contract.

Mr. BREED. Do you pay for these goods at the time of delivery to you? Canned goods?

Mr. CRANE. Why, we discount every bill that ever comes into our house, sir, within the discount period.

Mr. BREED. Do you frequently have to store and carry these goods in your warehouse?

Mr. CRANE. I have got some of them that I have had since 1918, at this moment. Bought under Government control.

Mr. BREED. Then is there a quick turnover in connection with this other line of goods that you mentioned as more profitable?

Mr. CRANE. Sure; flour and bulk sale, etc., and some other items, are very quick, sir.

Mr. BREED. No, these canned goods, is there a quick turnover in them between the date when you buy them and the date when you sell them?

Mr. CRANE. I would say that the average turnover of the average canned goods in our house was not more than twice a year.

Mr. BREED. Well, then, there is an added expense represented by storage, interest, insurance, etc., in these so-called more profitable lines, that does not pertain to the other lines you mentioned?

Mr. CRANE. Most assuredly.

Mr. BREED. Did you take that into consideration when you answered the chairman's question?

Mr. CRANE. Why, yes.

Mr. BREED. In connection with these lines is there also an item of loss to the wholesale grocer involved in spoilage and leakage?

Mr. CRANE. Yes.

Mr. BREED. During this period of carrying?

Mr. CRANE. We have certain guaranty periods, but we are not always able to turn these goods over and dispose of them within that guarantee period, and we have a lossage.

Mr. BREED. Does that item of possible loss apply to sugar and salt?

Mr. CRANE. I would think not.

Mr. BREED. That is all.

The CHAIRMAN. Senator, do you have anything?

Mr. SMITH. Yes.

Mr. HALL. Mr. Crane, you don't pay for your goods which you contract for in advance, until they are delivered?

Mr. CRANE. Well, now, when you say "delivered," I differ with you there. I pay within 10 days from the date of the invoice, irrespective of whether or not I ever see these goods. The man may never deliver them to me, but upon the presentation of the proper documents I pay him and wait for the goods.

Mr. HALL. When they are invoiced, yes.

Mr. CRANE. When they are packed and cured in the fall.

Mr. HALL. And what time elapses usually between that time and the time you actually receive the goods, ready for sale?

Mr. DAILY. I don't think Mr. Crane understood your question. You mean to say that these invoices are issued when the goods are shipped.

Mr. HALL. That is what I thought.

Mr. CRANE. Well, now, for instance, the California Packing Corporation put out their prices on asparagus in January or February. I may make my contract for the asparagus in January and February. I may have no other goods in California to come with that asparagus when packed, and they may have to assemble that with other goods packed at a later date, so it may be possible that I would not get those goods until eight months after that.

Mr. HALL. And when do you pay for it?

Mr. CRANE. I pay for that on the presentation of the bill of lading showing the shipment, probably eight months later.

Mr. HALL. So you have no capital tied up?

Mr. CRANE. No, but I have it in them until sold, and I have had asparagus in my house a year.

The CHAIRMAN. Considering, Mr. Crane, the rapid turnover which you have on such commodities as sugar, salt, and so forth; and considering on the other hand the costs of carrying and handling such commodities as canned goods, for instance, the investment, insurance, leakage, and so forth, during a period of a year, do you think that you would receive more profit or more pay for your efforts and services in handling canned goods than you have from sugar?

Mr. CRANE. You know, I would be a happy man if I could answer that question, don't you see, to my own satisfaction. That has been worrying me a whole heap.

The CHAIRMAN. You don't know about that?

Mr. CRANE. That has been worrying me a whole heap, and I would like to run across some one who could answer that for me and satisfy my mind so I could change the current of my own business, but I can answer that inferentially.

The CHAIRMAN. Answer it inferentially.

Mr. CRANE. The shrewdest set of merchants are the meat packers, and I have yet to hear of a meat packer that sold a pound of sugar or a pound of flour.

The CHAIRMAN. And then you infer that the canned goods business must be the most profitable because that is the only one that the meat packers kept?

Mr. CRANE. That seems to be the assumption on his part, I should say, as proven by his own acts.

The CHAIRMAN. And you follow that assumption?

Mr. CRANE. He has got more sense than I have got.

The CHAIRMAN. The meat packer would have the same charge expenses, and so forth, that you have in the handling of these goods?

Mr. CRANE. Yes, in their two local houses there, sir, they have got warehouses of their own, and I have never seen a pound of sugar come out of either one of those warehouses there in Fort Smith, or a peddler car.

May I indulge in a little bit of persiflage, or tell an argument or two that the packer's salesman frequently uses and gives in the sales of his goods?

The CHAIRMAN. Yes.

Mr. CRANE. Now this comes to me, you see, through our salesmen. It comes from the salesmen, I don't see it, but I have got 15 or 20 of them, and in addition to all of my own troubles, I have to listen to theirs, and then I try and give them a solution. They will come to me with a complaint, you see, that the meat packer has got a 15 cents a dozen lesser price on corn or tomatoes or other good staple, and I will say, "Well, the market conditions do not warrant them in that." "Well," he will say, "I agree with you, but the argument of the meat packer's salesman was to the customer, 'I have got a car of meat coming, and I am short in tonnage in this meat car, and I am able to give you, don't you see, this preferential price on this commodity by reason of the fact that I have got to pay for this weight in this car whether I fill it in the car or not, and I am fighting now for tonnage.'" And the tonnage argument is one of the biggest arguments that the packer's salesman offers, don't you see, to the retail trade.

The CHAIRMAN. Well, who loses by that?

Mr. CRANE. I wish I knew.

The CHAIRMAN. Does anybody lose by the fact that they sell it cheaper to the retailer?

Mr. CRANE. Eventually I think the retailer and the consumer himself, because if that thing is followed to a finality, why then I am out of business, and if I am out of business—well, it is just like a dog chasing his tail around, don't you know.

Mr. BREED. You are obliged, in order to meet the daily demands of the consuming public in your locality, to see that they get the main basic commodities of life,—sugar, salt, flour, etc., to carry those goods constantly on hand, are you?

Mr. CRANE. I don't care whether the market is either going up or going down, I am going to have those basic things, don't you see, that sustain human life, in my house all the time.

Mr. BREED. The consumer needs them, requires them, and you couldn't do business without carrying them, could you?

Mr. CRANE. I don't think so, and I am a servant.

The CHAIRMAN. Anything, Senator?

Mr. SMITH. No.

Mr. STEVENS. Mr. Chairman, your question in regard to the part borne by canned goods as related to other wholesale grocery commodities interested me very much, and I have a theory of it which I don't know is at all correct, but I wanted to ask Mr. Crane if canned goods are regarded as more in the light of a luxury than a staple article?

Mr. CRANE. Almost without exception.

Mr. STEVENS. Canned corn and peas, are they regarded as staple, or a luxury?

Mr. CRANE. I think mankind lived until about 100 years ago without the assistance of canned foods.

Mr. STEVENS. Would that account then somewhat for the difference in proportionate cost?

Mr. CRANE. I beg your pardon?

Mr. STEVENS. Would the fact that they are regarded as luxuries then account somewhat for the fact that there is a greater profit?

Mr. CRANE. Why, I fancy so, sir; and those things which are, don't you see, most sought for by those who are able to afford them, ordinarily pay the widest range of profit.

Mr. STEVENS. That was my feeling.

The CHAIRMAN. Were you through, Mr. Stevens?

Mr. STEVENS. Yes.

The CHAIRMAN. Mr. Daily?

Mr. DAILY. Mr. Crane, you say that the world lived until 100 years ago without the aid of canned foods.

Mr. CRANE. I think it was a Frenchman, wasn't it, that discovered it?

Mr. DAILY. Yes, sir.

Mr. CRANE. I would hate to go back a hundred years.

The CHAIRMAN. They lived longer than that without automobiles, too, didn't they?

Mr. CRANE. Now you have spoken a mouthful.

Mr. DAILY. Mr. Crane, the conditions applying to living 50 years ago or 75 years ago, are they the same as now with respect to agricultural products?

Mr. CRANE. Well, I think there was a Negro preacher in Richmond, Virginia, a few years ago who said: "De world do move." That was the discourse of the sermon: "The world do move," and the conditions are entirely different now, sir.

Mr. DAILY. Well, Mr. Crane, that is more to the point.

Mr. CRANE. The standard of living is different, sir.

Mr. DAILY. And is it not true that without the aid of the conservation of food as now practiced by sterilization through heat, that our food supply is more plentiful, even of the necessities?

Mr. CRANE. Why, we are able to do like the squirrel, sir; we are able to gather nuts in the summer time and preserve them for the winter time when we want to eat them.

Mr. DAILY. I want to get the record perfectly clear on this point, so that the mental confusion caused by your splendid witticisms may not be misunderstood. Do I understand you to say that canned foods are a luxury?

Mr. CRANE. No, sir; no, sir. I did not mean to say that. I mean to say that some canned foods are more luxurious than others.

Mr. DAILY. All right.

Mr. CRANE. Oh, no.

Mr. DAILY. Now, Mr. Crane, in what branch of the canned foods do the packers specialize, if any?

Mr. CRANE. Well, the two or three leading staples in the way of vegetables, that is, the four leading staples, I may say: First is corn, second is tomatoes, third is peas, and the fourth one probably is kraut.

Mr. BREED. He said packers.

Mr. CRANE. Packers, yes; they specialize, that is. And now with the fruits, the California fruits, most largely, sir.

Mr. DAILY. Do they not make a lead of California canned fruits?

Mr. CRANE. They did.

Mr. DAILY. Relatively speaking, what position do the California canned fruits occupy in the canned food sales in regard to profit?

Mr. CRANE. Well, you have asked me for statistics that I am not prepared to give you, sir.

Mr. DAILY. As a wholesale grocer, Mr. Crane, do you consider it more profitable to sell California canned fruit than, for instance, canned tomatoes?

Mr. CRANE. Now you lectured me a minute ago. Now I am going to lecture you. My name is Crane—just the same as the bird.

Mr. DAILY. Unfortunately, I was not in when you gave your name to the clerk—Mr. Crane. You are acting as if you would like to lift me with one, Mr. Crane. But my questions are all asked with good purpose. Will you read the question?

(Mr. Daily's question was read by the reporter as above recorded.)

Mr. CRANE. Why, I think so. I think the California fruit is less a staple item than the tomato.

Mr. DAILY. How has your business been on California canned fruits in the last three years?

Mr. CRANE. I live in a fruit State, if you will pardon me for mentioning it. A great many people think we have nothing but swamps down there, but this year my business in California canned fruits has been extremely good, as compared with other years. Last year it was nominal. That sort of thing depends upon whether we have a crop at home. This year we haven't any at home, and business is good.

Mr. DAILY. Well, do you know or do you not know whether any of the Big Five packers own or control any California fruit canners?

Mr. CRANE. Oh, that is beyond my knowledge, sir.

Mr. DAILY. Yes, sir.

Mr. CRANE. I would rather the California people would speak for that. I only speak for my particular surroundings.

Mr. DAILY. The point upon which I am trying to secure information, Mr. Crane, is as to whether or not they specialize upon any particular line of canned foods. For instance, as I said, do they specialize on canned fruits, California canned fruits?

Mr. CRANE. Morris and Wilson by means of peddler cars; Swift and Armour locally, and Libby through the instrumentality and the means of distribution of Swift, handle all of those article, two of those packers locally, three of them in tramp cars, and they distribute them very largely. I wonder if I have answered your question?

Mr. DAILY. Does any canner use specialty salesmen in your territory for the purpose of selling futures or other sales?

Mr. CRANE. The gentleman who had just testified lives in a wealthy State. I live in an agricultural State. The average farm in my State produces only \$1,498 as an income for the farmer. His buying capacity is small. His demand for high-grade goods is small. There is no occasion for sending out specialty men to sell those essentials which practically sell themselves, and are useful, and there is no occasion to send out those higher grade things that appeal to the palate, and the man with the average high income is able to pay for, and by reason of that fact there is very, very little specialty work in the selling of canned fruits and canned vegetables in my section, and I only know of one concern that does it, and that one concern sells a high-grade line of stuff, which is Del Monte goods.

I have gone a long way around to get down to it.

Mr. DAILY. Yes. From your knowledge do you know whether or not it is a common practice with canners to use specialty salesmen?

Mr. CRANE. Why, certain canners like Curtis, like Roach, like Sears, like the California Packing Corporation, don't you see, with their highly advertised line of goods—Del Monte. I know of none in my immediate section, and not through me.

Mr. DAILY. You have not named over a dozen canners I judge—I didn't count them—and there are a great many canners in the country, are there not?

Mr. CRANE. Why, I think they run probably into the hundreds, maybe into the thousands. I don't know, sir.

Mr. DAILY. In other words, it is only the larger canners that use specialty salesmen?

Mr. CRANE. Yes. That is my understanding. And there are a lot of things that are packed in my State, like strawberries, apples, tomatoes, and I have never yet seen a specialty salesman selling those items.

Mr. DAILY. Do you know whether there are many canners in the United States packing a volume of 100,000 cases?

Mr. CRANE. No, my range of vision is almost ended in my back yard.

Mr. DAILY. Can you tell me the opening price on tomatoes in 1917, 1918, 1919, or 1920?

Mr. CRANE. No, sir, I could not. I wish I could tell you that.

Mr. DAILY. Well, Arkansas is a tomato producing State, is it not? Are there not tomato canners in Arkansas?

Mr. CRANE. Yes, sir; but I have been told that the first two human faculties that are given to you are observation and memory, and also those two first faculties are the first two that perish, and I am reaching the time of life when my faculties are getting defective, and one of those is memory.

Mr. DAILY. Do you know anything about the ownership of canneries by the meat packers?

Mr. CRANE. Only in so far as the story was told in the Federal Trade Investigation, sir.

Mr. DAILY. Do you recall what that was?

Mr. CRANE. No, sir; again my memory is faulty.

Mr. DAILY. That is all, Mr. Chairman.

The CHAIRMAN. Anything, Senator?

Mr. SMITH. No.

The CHAIRMAN. Mr. Breed?

Mr. BREED. No, sir.

The CHAIRMAN. That is all; thank you very much.

(Mr. Crane was excused as a witness.)

Mr. SMITH. Mr. Chairman, I have a short statement from Mr. Frank S. Gates, of Oklahoma, whom I don't think is able to be present this morning. I would like to put it in, that is all. I will submit it for the record.

The CHAIRMAN. If you will pardon me, I have an appointment at 12 o'clock that I made by wire three or four days ago with a gentleman out of town.

Mr. SMITH. There is nothing new in it, except a reference to oil and the oil refineries. It is just on the line with what has been said before, but he wanted to speak for Oklahoma.

The CHAIRMAN. You may hand it to the reporter. (Following is the statement presented by Mr. Smith on behalf of Mr. Frank S. Gates:)

STATEMENT OF FRANK S. GATES, WHOLESALE GROCER, ARDMORE, OKLA.

Mr. Chairman and gentlemen of the commission, my experience in the wholesale groceries extends over a period of 26 years. I make this statement that you may know that I should have some knowledge of the business in which I am engaged.

I desire to submit to you a brief history of the business as I have observed it develop in the section in which I live.

My object in placing these facts before you is to bring to your mind the relative influence the wholesale grocer has had to the meat packer in food distribution, developing of the country and contributing to the general advancement and welfare of its people and their relative value in the economic life of our nation.

I do not want to be understood as endeavoring to underrate the meat packing industry, its influence or its great value in our industrial life, but I shall endeavor to bring to your attention the danger that lies ahead when too much power, control, and capital is centered in the hands of a few and who might use that great power and control for selfish purposes and to the end that our nation and its people might be made to suffer.

It has been my observation that the wholesale grocer, as a rule, starts in a small way with limited capital, in a great many instances evolving into the exclusive wholesale business from the retail business.

The wholesale grocer may be found located in towns of 3,000 people, sometimes in towns of less. Beginning in a small way, with limited capital they expand or grow as the community in which they are located increases in population and develops.

The wholesale grocer has a responsible part in building up the towns and cities in which they operate and have their money invested. As a rule, they are heavy taxpayers and liberal contributors to the general civil life and prosperity of the towns and cities in which they are established.

Their profits are generally reinvested in those localities from which it is made or it is used in the extension of their business as occasion should demand.

It is estimated that at the present time there are 4,000 or more exclusive wholesale grocers established throughout our nation, in addition to this an equal or greater number of wholesale produce houses handling green fruits, vegetables, etc. These wholesale grocers and produce houses are scattered

throughout the length and breadth of our land in open competition with each other in the distribution of our nation's food supplies.

They represent the best and most economical and safest method of food distribution yet devised.

I would point out to you that the farmer, the producer, the grocer, and the canner through the present system of distribution by the wholesale grocer and the wholesale produce man has an unlimited field of competition and markets in which to dispose of his products and through which competition he is enabled to attain highest market prices.

It has been stated that certain growers or producers in California have suffered as a result of the meat packers being unable to buy their products owing to the operation of the consent decree.

Such a statement is subject to challenge and the truth of it is easily disproven when one understands the general industrial and business depression throughout the entire country and which depression is affecting all lines of business and industry.

I would point out to you the very pertinent fact that during the past year that the stock raiser, the cattle man especially, has suffered to the extent that hundreds engaged in this business have already lost their entire fortunes and many are facing bankruptcy now.

Is it reasonable to believe that the meat packer would be more interested in saving the grower or fruit canner from rack and ruin than the cattle and stock man on which the interests of the meat packer's business primarily depend? It is generally understood that the meat packers dominate and practically control both the buying and selling ends in the markets of those commodities in which they are largely active.

Should the meat packers be permitted to again enter the grocery business, it is possible that at some future time a giant monopoly might be built up and they would be in a position of absolute control of the Nation's food supply.

The deplorable plight of numerous small, independent oil refineries throughout the country might be cited as an example of the danger of monopoly.

The present high prices of all meat products to the consumer as they relate to the market price to the producer do not argue for the boasted efficiency and economy in the meat packers' methods.

The consent decree stands as a silent sentinel protecting the food supply of our Nation against possible monopolistic control. This decree was entered after an expensive and searching investigation made by the Federal Trade Commission.

Any modification of this decree would endanger the peace and prosperity of our country.

Mr. SMITH. I have also, Mr. Chairman, a letter from ex-Senator Weeks, written to Senator Kenyon in August, 1919, and placed in the Congressional Record December the 19th, 1920, in which he expresses strongly his opinion against the packers invading these unrelated products, but Mr. Breed has it also, and as it is really his time, I shall just leave him to present it.

Mr. BREED. I was going to put that with Mr. Hoover's letter, one after the other.

Mr. SMITH. Yes. I put the extract from Mr. Hoover's letter into the Record, and I think it is probably better for the two to just go together.

The CHAIRMAN. All right. We will adjourn until 2 o'clock, then, gentlemen. (Whereupon a recess was taken until 2 o'clock p. m. of the same day, Friday, December 2, 1921.)

AFTER RECESS.

The committee resumed at 2 o'clock p. m. pursuant to recess.

The CHAIRMAN. The committee will resume. We will hear Mr. Stevens. But, first, Mr. Dailey, I understand you would like the record to show that you appear here representing whom?

Mr. DAILEY. Representing the National Food Brokers' Association, Hearst Building, Chicago, Ill.

The CHAIRMAN. You may proceed, Mr. Stevens.

STATEMENT OF ROLAND E. STEVENS, ESQ., REPRESENTING THE WHOLESALE GROCERS OF VERMONT, MONTPELIER, VT.

Mr. STEVENS. Mr. Chairman, Mr. Hall, and gentlemen, before I take my seat to begin the serious business with which I am sent here, I beg your indul-

gence for a moment while I refer to a recent incident that afforded me at least, and, I presume some others, some relief and amusement.

Mr. Chairman, I am under the conviction that it is not an easy task to guide a ship of this kind and to keep an even keel. The intense earnestness of the men who have gathered here from all over this country seems at times to electrify the atmosphere so that some explosion is more or less desirable in order to relieve us.

Last evening, Mr. Chairman, when the cloud of war hovered over us, you, with considerable risk of your personal safety, stepped in between the belligerents, and rescued the sauerkraut and pickle business from complete extinction by the larger competitor from the South, and you restored the loyal and enthusiastic apostle unharmed, if not entirely unscathed, to his anxious friends.

Every man, I think, admires a brave man. I hardly think there is another man in this room that would have had the temerity to rise in his fighting clothes and face the ex-Senator from Georgia (Mr. Smith) when the light of his amiable countenance gave way to the shadow of righteous indignation. I present my compliments to the fighting crown prince of the kraut industry, and to the ex-Senator from Georgia—

Mr. SMITH. He was not in the slightest danger from me. I had not the slightest idea of touching him.

Mr. STEVENS. And I congratulate them both on the celerity with which they agreed upon the limitation of armament.

Mr. SMITH. He having arisen, I thought courtesy required me to rise as well. [Laughter in the room.]

Mr. STEVENS. I trust that the larger conference now sitting in Washington may hear of this incident and profit by it.

Now, Mr. Chairman, and Mr. Reporter, my name is Roland E. Stevens, my residence address is Hartford, Vt., my office address is White River Junction, Vt., and my official address is Montpelier, Vt.; but my general address is Vermont, so that you will infer that I am quite thoroughly a Vermonter.

But, seriously, Mr. Chairman, and gentlemen, I represent—and probably you would like to have enumerated the various concerns I represent—not as a wholesale grocer, because I am not a wholesale grocer, but as attorney I represent all the wholesale grocery concerns in the State of Vermont. They are not numerous, and if you like I will name them for the record.

The CHAIRMAN. You may do so if you see fit, or you may give the number, just as you choose.

Mr. STEVENS. There are 10, that number being all of the wholesale grocery concerns in the State of Vermont. There is no association of Vermont wholesale grocers.

Mr. Chairman and gentlemen of the committee, the Vermont wholesale grocers have instructed me to say that they are unalterably and anxiously opposed to any modification of the so-called consent decree against the meat packers.

I would like to suggest, as has already been suggested here, that there is not as yet any issue between the meat packers and the wholesale grocers, strictly speaking. The issue is between the interests, according to the evidence, other than the meat packers, who have requested modification, and of all who oppose it, which latter includes, as we have seen, about 95 per cent of the canners and fruit growers and fruit packers of California as against similar interests represented by Mr. Vernon Campbell, which latter interests are about 5 per cent of the canners, fruit growers and fruit packers in California, and the other interests appearing here on yesterday.

This is my understanding of the case as it now exists. So it is plain that the wholesale grocers and the others opposed to modification are not attacking the meat packers; nor are the meat packers attacking the wholesale grocer and others, unless it be through Mr. Vernon Campbell and those associated with him. This he denies and we must assume that that is true.

But, Mr. Chairman, the wholesale grocers are fearful that if the consent decree should be modified as requested they most certainly would be attacked and utterly destroyed by the meat packers or many of them at least destroyed if not all of them.

The position of the wholesale grocers of Vermont is identical with that of the members of the National Wholesale Grocers' Association, the Southern Wholesale Grocers' Association, and all of the wholesale grocers, fruit growers, fruit packers, and other allied interests which have appeared at this hearing.

Daniel Webster, when arguing the Dartmouth College case before the United States Supreme Court, said with a great deal of emotion that although Dartmouth College was a small college there were those who loved it. He himself, an alumnus of the college, loved it, and he could hardly refrain from showing in his argument his emotion.

The Supreme Court of the United States rescued the college from being snuffed out of existence by a more pretentious and larger organization which was organized for the purpose of putting out of existence Dartmouth College as a college. And by this act the Supreme Court encouraged, to the great credit and glory of this country, the founding of a great many other small colleges all over the land.

I realize, Mr. Chairman, that this is not germane to the issue here, except so far as it seems to me to supply an additional reason why the wholesale grocers in a small State or small wholesale grocers in any State, who object to a modification of the consent decree enabling the great packing interests, and by that I mean the meat-packing interests, to crush them out of existence.

As compared with the meat-packing houses every wholesale grocery concern in the United States is a small concern. I have heard it stated here during this hearing that there are, approximately, 4,000 wholesale grocers in the United States. I have before me a clipping, I think from a trade paper, which states that there are 5,950 wholesale grocers in the United States.

Now, gentlemen of the committee, of this large number of wholesale grocery concerns there must be many hundreds and probably thousands who are quite small concerns. Each small concern, as well as each large one, is a distinct asset and benefit to the community it serves. It is a home maker. It furnishes an opportunity for the young men to develop in the communities they have known and become fond of. If these are all destroyed by a huge and hideous monopoly it can not help affecting very seriously the stability and morale of hundreds of communities.

Vermont is a small State. But, gentlemen, there are those in Vermont who are as fond of it and its institutions as are the Californians of their great and magnificent State. Surely Senator Shortridge and his fellow Californians must have left an impression on this committee that they did not regard their State or their occupations or their institutions solely in the spirit of economics. They fairly breathed fondness for their State and their localities and their institutions.

It is not practicable and I assume it is not desirable to conduct a hearing of this kind on strictly legal principles. It has more as I see it of a social aspect than a legal one, and so I am presenting to you gentlemen a social reason why this consent decree should not be modified.

The consuming public of Vermont I am very sure would not like to have the wholesale grocers of the State put out of business by the meat packers unless some greater benefit to them is going to result. On the other hand, I believe that I am within the bounds of reason when I say that the wholesale grocers of Vermont if convinced that control of food products by the meat packers would result in better service and lower prices permanently, and I emphasize the word "permanently," to the consumer they would agree that their business should give way to a better and cheaper system of food supply.

Returning to the economic phase of the issue, this committee has several times indicated its interest in the matter of food exports, as have a good many others. I think we all agree that there should be the freest possible export outlet for our food products. We think there now is. Although under the decree the meat packers can not export unrelated food products, there is nothing to prevent anyone in the United States from exporting for the meat packers to foreign concerns all they are able to absorb. Furthermore, there are many exporters of food products that are not affected by this decree. Mr. Campbell himself has said that he contracted to export, as I remember it, about 85 per cent of his product to the Armour interests abroad. So it is plain that the export market is open to all who wish to export.

It has been intimated here that it is against public policy to prohibit the meat packers from exporting unrelated food products, and for this reason it might be well to modify the consent decree to the extent of allowing them to export again. In this connection I would call the committee's attention to this peculiar feature of the situation as I see it: The meat packers were facing criminal prosecution by the United States Government—

'The CHAIRMAN' (interposing). Mr. Stevens, in that connection I expect to introduce a little later on and put into the record Mr. Palmer's speech to a

committee of the Congress in which he said that was not under consideration in the entry of this decree.

Mr. STEVENS. I made this statement in view of my own opinion that that was the case. Of course, I do not know.

The CHAIRMAN. There has been a good deal of talk of that, and I thought it was only fair to Mr. Palmer and his administration of the Department of Justice that the record be clear upon that subject. I expect to introduce that a little later.

Mr. STEVENS. Is there any objection then to this statement—

The CHAIRMAN (interposing). Go ahead and make your discussion as you see fit, but I wanted to state that in order to clear up the record.

Mr. STEVENS. I do not want to take any ground that may not be tenable. This is stating my view.

The CHAIRMAN. That may be in the public mind, but Mr. Palmer has stated it was not in his mind.

Mr. STEVENS. And they thought best to agree with the Government that they should be perpetually enjoined from exporting, among other things, unrelated foodstuffs. So they did agree, and consented that the decree might be made.

I am laying this out as it seems to unfold itself to me. I am anxious to be corrected if I am wrong. The apparent consideration for this agreement—and here again I may be wrong—was that they should be relieved from prosecution. Now, the statute of limitations makes it impossible to renew any criminal prosecution. They reasoned, as I supposed, that they would receive a self-imposed or agreed upon sentence.

If the decree should now be modified as requested the meat packers would be restored to the position of advantage they held when prosecution was started and would have entirely escaped.

Now, gentlemen of the committee, I raise this question: If what I say is true, would not this be more against public policy than to continue the decree in force?

A comparison of exports for 10 months of 1920 and 1921, ending in October—and I take these figures from the Government report of November 28, to be found on page 773—is as follows: In 1920, breadstuffs, in bushels and pounds, 18,999,967.04; in 1921, breadstuffs, in bushels and pounds, 25,586,902.38.

And this surprised me very much, that there was so large an increase over the exportation of breadstuffs in 1920.

In the matter of meat products in pounds, the records show: In 1920, 1,475,524,091; in 1921, 1,732,708,684, or an increase of considerably more than 300,000,000 pounds.

As to canned goods: In 1920, \$42,122,438; in 1921, \$18,243,676.

So you will see there was a considerable shrinkage, of approximately \$14,000,000 worth in 1921 as compared with 1920. But as I thought that over it seemed to me that the shrinkage, in a considerable measure at least, is accounted for by the difference in value of the product of canned goods in 1921, as compared with 1920. I have heard here at various times that there has been a great slump, that there was a great slump in price. While these figures show a large shrinkage in exports of canned goods, they also show a large increase in breadstuffs and meat products, largely staple products, which I believe indicates that foreign consumers have been buying very much more of what they considered necessities of life and less of the luxuries.

The average exports of canned goods for 10 months during 1910 to 1914, during that period, amounted to only \$7,885,753, or much less than one-half the exports of canned goods for the 10 months of the present year.

I feel that I would like to present to you some reason as stated by various wholesale grocers in Vermont as they see them:

"We consider it would be a crime for the Department of Justice to allow any modification of this decree, in view of the experience we all received while they handled groceries. We know they coerced many retailers and in some cases believe they openly threatened them to give their business to the packers. Of course, these orders were not issued from the head office, but instructions were received by the branch houses in such a way that those in charge, when desperate, would resort to every possible method, often times questionable if we consider fair competition."

Mr. BREED. Who says that?

Mr. STEVENS. The Montpelier Grocery Co., Montpelier, Vt.

Now, E. D. Keyes & Co., wholesale grocers of Rutland, Vt., in a telegram addressed to me, say:

"We are in accord with the feeling of the wholesale grocers and believe if packers' demands are granted it will work series injustice to all distributors."

The Rutland Grocery Co., E. C. Johnson, say:

"We believe it dangerous to allow this to go through."

The De Witt Grocery Co., Brattleboro, Vt., say:

"There is no need of my going into the reason why this decree should stand. Every grocer and meat man in the country knows that the packers would soon control the canned goods business and eventually the entire grocery business, if they were allowed to do so. This would eliminate all competition, and they would have a monopoly of the wholesale grocery business."

I have a letter from the Montpelier Grocery Co. All the Vermont wholesale grocers are unanimous in opposing modification of the packers' consent decree, believing it would be very dangerous and disastrous to the public good to allow such power to any set or group of persons. This was evidenced by their record in adulterating canned meats, rolled oats, and so forth, and manipulating prices as when rice was advanced 5 or 6 cents a pound during the war time because Armour controlled all the rice in the market.

Such facts are too well known to require concrete cases, as shown by court records and convictions. They have controlled the raw and finished products of meats, hides, and so forth, until they have rolled up most enormous fortunes. In support of the above it is well known that Swift & Co. owned A. K. Lawrence Leather Co. of Boston, Mass., which showed profits in recent years of \$30,000,000.

The meat packers claim they can handle the business cheaper than the wholesale grocer. This may be true if they are granted a monopoly by the Government by the use of private cars and compelling special privileges from the railroad companies. But their reputation does not show a single instance where they have passed this saving back to the consumer. On the other hand, they have rolled up greater fortunes, by which means they have been in complete control of the markets. Their power was clearly shown when the meat packers were handling groceries by their salesmen taking advantage of the retail trade and in every way causing unfair competition.

The total amount, if that is of any interest to the committee, of the wholesale grocery business in Vermont is not large, somewhere between \$10,000,000 and \$12,000,000 yearly. And it is interesting to me to know, by direct telegrams on the subject, that the net profits and the gross profits are somewhat different and lower than stated to be here in other localities, which confirms the idea advanced that they vary largely in various localities.

The Rutland Grocery Co. states that their annual gross profits were 12 per cent. Their annual gross sales were only \$250,000, which is not a very large concern. Their net profits were 2½ per cent.

French-Bean Co., of St. Johnsbury, state that their gross sales last year were \$710,800. Their gross profit was something over 9 per cent, and their net profit a little over 2 per cent.

The St. Johnsbury Grocery Co., at St. Johnsbury, had annual gross sales last year of \$370,000, and a gross profit of 9.2 per cent and a net profit of one-half of 1 per cent. This is interesting, gentlemen, because it shows very keen competition. The St. Johnsbury Grocery Co. and the French-Bean Co. are located side by side, or rather within a short distance of each other. The St. Johnsbury Grocery Co. is the younger concern, and they are out after business. And the fact that their net profits were one-half of 1 per cent as against the French-Bean Co.'s net profit of a little over 2 per cent would seem to indicate that they do really compete. It seems to me that this strengthens the argument that the 5,950 wholesale grocers in the United States are really in active competition.

The De Witt Grocery Co., of Brattleboro, had sales in 1920 of \$800,000 and hotel sales of \$100,000. Their gross profit was 8 per cent and their net profit 2 per cent.

Now, gentlemen, in view of the chairman's statement at the opening of this hearing that the committee would gladly hear anyone who wished to present his views, individually or otherwise, I would like to tell you some things which occur to me to be good reasons why the decree should not be modified. I shall now present the case of the consumer. I can speak with assurance for myself as a consumer, and I think by reason of special opportunity or observation throughout the State of Vermont I can speak with some assurance for the consuming public of that State.

The consumer is, after all, the one who is most vitally concerned in this matter. He believes, and with reason, that if the meat packers are permitted to deal in unrelated food products they will, by reason of their huge resources, control the primary food market to his great detriment, and that it will lower without doubt his present standard of living.

Now, gentlemen, I will concede that it is true that mere size does not of itself constitute a threat, but if I am in the presence of two men and one is a great deal larger than the other, and if I am to be sat upon by either one of them, I should prefer to be sat upon by the chairman of this meeting rather than, for instance, Chief Justice Taft of the United States Supreme Court.

That is exactly the case with the consumer in Vermont. He is afraid that he will be sat on by the huge and relentless monopoly in control of the primary market of the stuff he eats. And I can tell you, gentlemen, that that is no fancied imagination. I know that is true because I hear it on every side, and I have, as I say, an opportunity to hear these things.

There is at the present day in the State of Vermont a rumbling and murmuring which at some time may break out in some definite form if things go on. And that I assume is true everywhere. But, as I say, we are a small State and we almost all know each other there. There are not enough people in the State of Vermont to make a good sized city, surely not a city of the size of Washington.

Let me give you some of my own personal experiences, and experiences I know about. I know a prosperous farmer in Norwich, Vt., who has a very nice dairy farm. He produces milk. He lives right along the New Hampshire line and within 2 miles of Dartmouth College and supplies that college with milk. Every year he culls out his herd and fattens certain cows which he thinks are not the most profitable for the production of milk.

Some months ago he had a cow which he had fattened at considerable expense, and he told me that all he could get as an offer for that cow was 3 cents a pound, and he sold her for that.

Now, gentlemen, I keep a cow usually. We countrymen like milk and we keep a cow. We have plenty of room. I have a pretty good Jersey cow which I have had for two years and she went farrow. Here, just a few weeks ago I told my man to sell that cow because I did not wish to keep her any longer. She was not giving very much milk and she was in very good flesh. He told me he did not believe I wanted to sell her, because all he could get was a cent and a half a pound. I called up the cattle buyer and asked him what he was going to give me for my cow. He said, "I can not give you but a cent and a half a pound." "Well," I said, "that is a ridiculous thing. Can't you pay more than that?" He says, "No; I can not. There is no market for it here and I shall have to ship it down to Brighton markets." The Brighton markets are controlled by the meat packers. I sold that cow for \$12.22, a cow which would have cost a farmer when fresh in milk \$75 to \$90.

A VOICE. Mr. Chairman, may I interrupt to ask how old that cow is?

Mr. STEVENS. I could not tell you exactly. She was a young cow when I bought her, about 4 years old, and I had her about two years, and that would make her about 6 years old. I hated to sell her at any price.

The CHAIRMAN. Do you know that the packers were responsible for your only getting \$12.22 for your cow?

Mr. STEVENS. I do not know that any more than that I know the sun is going to rise to-morrow. But I do know this: While the average man has not very much knowledge of astronomy, he does know that the sun rises in the morning and sets at night. And if you ask him if he knows the sun is going to rise to-morrow he will probably say yes, and yet he can not be absolutely sure of it. I do know this, that some years ago when I was a boy Vermont produced a considerable amount of beef, of fattened creatures. We have a great deal of pasture, of waste land now, that might be used profitably for that purpose if the people had a reasonably good market. Gradually that business has all gone out of existence; nobody follows it any more. I know there is no market locally for beef. I know that the local grocer in my little village will not handle native beef. I can not absolutely say that that is because the meat packers do not want him to do so, but I believe that to be true. Certain it is that he does not handle native beef and there is no market, locally speaking. So, if my logic is not entirely faulty, the meat packer is responsible for that situation, and I think I am reasonable in saying that.

The CHAIRMAN. That opens up a pretty big door of meat-packing questions. We felt that we would not go into that at all because it is not pertinent here.

We are considering unrelated commodities. But the very fact that the big meat packers monopolized the meat industry, if they did, is no more reason to say they will monopolize another industry than to say that the man who killed John Jones is going to kill me.

Mr. STEVENS. Well, if he was a wild Indian I believe that would be true. I am only speaking of this, Mr. Chairman, to explain to you why I—and you wanted the reasons—why the consumers believe that the meat packers if allowed to go into the handling of these unrelated lines will do exactly as they are doing now and have been doing in the meat business. So it seemed to me to be a pertinent thing.

In addition to that, since the sale of my own cow at that price, another man, a farmer, had a fat cow; and all he could get for that cow was 1 cent per pound. That condition has caused a tremendous grumbling and of dissatisfaction among the farmers, and I do not wonder at it. The farmer believes, as I believe and as almost everybody else believes, that that situation is because the meat packers have a grip on the situation here.

So much for that end of it, the producer's end of it. On the other hand, I can not go to the local store and buy sirloin steak for less than 50 cents a pound and rump steak for less than 60 cents a pound and tenderloin steak for less than 70 or 75 cents a pound. And that is up in the country where beef creatures grow. We can not buy hamburg steak, which I understand is a conglomeration of all kinds of things, for less than 40 cents a pound, and yet I could not get but 1½ cents a pound for my cow.

Mr. Baker related last evening an experience of his in the purchase of shoes. It reminded me that I was in Boston a few weeks ago and wanted to buy a pair of shoes that would fit my feet. I bought a pair and paid \$15, and in addition 50 cents war tax; but, unlike Mr. Baker, my experience was that I could not wear them. They hurt my feet so badly I could not wear them, and since then I bought a pair of shoes for \$8 which are more comfortable.

When I recollect that as a producer I got only \$12.22 from a cow and as a consumer paid \$15.50 for a pair of shoes I could not wear, I felt I was done up by somebody somehow. If I had skinned that cow and sold the hide at the present market value as of the 12th of November, 1921, "light active cows," and that is what it was, the price of her hide would have been 13 cents.

I submit, Mr. Chairman, that that is pretty fairly good evidence, at least it satisfies me, that the meat packer is responsible for this whole situation.

The CHAIRMAN. Does he control hides?

Mr. STEVENS. He certainly does in Vermont.

The CHAIRMAN. Does he get any more than 13 cents for the hides he sells?

Mr. STEVENS. Does he?

The CHAIRMAN. I am asking you.

Mr. STEVENS. I don't know whether he does or not.

The CHAIRMAN. Do you know whether or not the meat packers have a number of hides they want to sell and are anxious to sell?

Mr. STEVENS. No; I do not.

The CHAIRMAN. And you do not know whether he is responsible for the price of hides?

Mr. STEVENS. I believe he is.

The CHAIRMAN. But you do not know it?

Mr. STEVENS. Oh, no; no more than I know the sun is going to rise to-morrow morning, but I believe it; and not only myself but hundreds of thousands of others believe the same thing. We think we are right, but we may be wrong.

I think it was Solomon who said that "Where there is no vision the people perish." I think the consumer, which includes the wholesale grocer and everybody else who eats and consumes, has a vision in this matter; and if they do not have a vision and do not visualize actually the horror of a situation where any one concern or a few concerns have a monopoly of the primary market in food products, they, the people, would perish. I believe that is just as true now as it was when Solomon lived.

Mr. Chairman, if I have an exaggerated idea of the situation, you will pardon me, I hope, but I believe that next to the Conference on Limitation of Armament, which is sitting in this city to-day, this conference here on the question we are considering is next in importance. I do not believe the average citizen or the average wholesale grocer or the average retail grocer conceives yet of the actual danger of modifying this decree to the extent of allowing the meat-packing interests to get control again.

The last war was the direct result of monopoly. There is no doubt about that. The German Kaiser wanted to monopolize the power of the world, the government of the world, and that was what the war was over; the gathering of power and of more power in the hands of one person.

I should hate to take the responsibility of having placed in my hands power to control the primary food markets of this country. I do not believe I would have the strength of character necessary to resist an abuse of that power, and I do not believe there is any other man in this room who would have it. If you will bear with me, let me relate another incident from the standpoint of the consumer: I believe that the meat packer, and when I say meat packer I refer to Swift & Co., because no other meat packer comes into Vermont—

The CHAIRMAN (interposing). What is it there, the New England Dressed Beef Co.?

Mr. STEVENS. No; not in Vermont. It is Swift & Co. Neither Armour & Co. nor any of the other packers come there at all. Vermont is the territory of Swift & Co. I believe that Swift & Co. control the retail grocer, and I will tell you why—

Mr. BREED (interposing). Do you mean the retail grocer or the retail meat man?

Mr. STEVENS. I mean the retail grocer and meat man. They handle the business together. I will call him the provision man. As I have told you, I can not in Vermont go to the local provision man and buy a steak at less than from 50 cents to 75 cents a pound. Across the line in New Hampshire, not far away, about 5 miles, was another meat dealer. A few months ago that other dealer would sell me meat, exactly the same kind of meat, western meat, from 15 cents to 20 cents a pound less than I could buy it in my own village. So we used to take advantage of that occasionally. But after a while that ceased to be, and the price charged by the other man was exactly the same. Now, I deduced from that that he had heard from Swift & Co., that other man only 5 miles away; that he had heard from Swift & Co., from whom he draws his supplies, that he must not undersell in price.

The CHAIRMAN. Have you anything to base that on more than supposition?

Mr. STEVENS. Absolutely nothing more, but I believe it to be a reasonable supposition. For good roast lamb we have to pay 50 cents a pound in the local store. There is a farmer who occasionally kills a lamb. He brings that to my door, of the same quality, and it is very excellent, for 30 cents a pound. There you have a difference of 20 cents a pound, and the farmer is more than satisfied to get that; in fact, is glad to get it.

Mr. Chairman, another reason why I believe the meat packers control the situation, and in this case I say meat packer, is because no local meat man stays long in the business. Occasionally a farmer will start out with a car filled with meat. He will kill creatures and go around for a time, but he never goes around a great while. He soon stops. Then there will be an interval and then some other man will take it up a little while, and then he in turn stops. That is a very different condition of things than existed some 30 or 35 years ago, when I was a boy or a young man.

So you may feel that a great deal of what I say is prejudice, but it is not. I have no prejudice in the matter at all. It is a very serious conviction that I am under. I think I feel a good deal as the boy did who was kicked by the donkey. His father took him to do about it. He said, "What is the matter? That donkey is gentle. He won't hurt anybody. What were you doing?" The boy said, "I was only trying to carve my name on him."

Now, the consumer has that feeling, that the meat packer is trying to carve his name on him, and we do feel like kicking.

Vermont is a rock-ribbed Republican State; we have a few Democrats there, and they are just as good citizens, just as worthy citizens, as the Republicans. We preserve them carefully, and nurture them affectionately, so that we may have, like the packers, a reasonable show of opposition when we go out and gobble up our offices. Now, I know nothing under the sun that would turn a Christian into a pagan or a Vermont Republican into a Democrat or a Georgia Democrat into a Republican quicker than to turn his stomach over to the merciless and relentless control of a meat monopoly or a grocery monopoly or a food monopoly.

I don't know that there is anything else that I can say that will be at all helpful to this committee.

The CHAIRMAN. I want to ask you a few questions, Mr. Stevens. Have you anything, Mr. Hall?

Mr. HALL. No.

The CHAIRMAN. Mr. Stevens, is it your idea that it is the intent of our antitrust law, when it finds a man is violating it, if it does find he is violating it, to prohibit him from engaging in that business or to enjoin him from doing the unlawful act?

Mr. STEVENS. Do you mean the Sherman Antitrust Act?

The CHAIRMAN. Or the Clayton Act, either one.

Mr. STEVENS. Well, I think the purpose of that act is to punish violations of the act.

The CHAIRMAN. Do you think it is the purpose of that act to prohibit him entirely from engaging in that business, or merely to enjoin his unlawful activity in that business?

Mr. STEVENS. I believe it is for the purpose that it was put on the statute books for, to keep him from unlawfully and unreasonably combining so as to control.

The CHAIRMAN. Just answer the question now if you care to.

Mr. STEVENS. Well, I will be glad to.

The CHAIRMAN. Do you think that it is the intention of the Sherman antitrust law if it finds a man violating it to put him out of that business entirely?

Mr. STEVENS. No.

The CHAIRMAN. Merely to enjoin the unlawful acts?

Mr. STEVENS. Just a moment, please. I don't know that I just understand your question. Put him out of what business? The business of violating the act?

The CHAIRMAN. The business in which he is engaged.

Mr. STEVENS. No; I think it is to keep him from violating it.

The CHAIRMAN. Absolutely. I agree with you. Well, this decree puts the packers entirely out of this line of business, doesn't it?

Mr. STEVENS. Yes, but they consented to it. They agreed to it.

The CHAIRMAN. It does not alone enjoin them from the unlawful acts in this business, but it puts them entirely out of it, doesn't it?

Mr. STEVENS. Yes, by their own consent, by a solemn agreement between themselves and the Government.

The CHAIRMAN. Yes. Mr. Stevens, you gave some statistics. May I ask from what they were taken?

Mr. STEVENS. Well, which ones do you refer to?

The CHAIRMAN. With reference to exports.

Mr. STEVENS. I gave you the case and number that it was taken from, Mr. Chairman.

The CHAIRMAN. I wanted to be sure of that.

Mr. STEVENS. I think that is on record.

The CHAIRMAN. All right. Now you also stated, or in a letter which you read, referred to the court record of convictions of the packers. Can you refer me to any of those?

Mr. STEVENS. No, I can not. That is a statement I read. I say this, however, that I did have brought to my attention a short while ago,—and I wish I had it with me—a newspaper clipping of a court procedure reported in the public print, where Swift & Company,—I think it was either Swift or Armour—had pleaded guilty to adulterating certain cereals—meat products that they were handling.

The CHAIRMAN. But do you know of any court records of convictions of violating the anti-trust laws?

Mr. STEVENS. No, I do not. I can not refer you to anything that I know of my own knowledge.

The CHAIRMAN. I think that is all.

Mr. DAILY. Just except the telegram that you submitted, with reference to the rice industry. I think it stated there that they had gotten control of the rice market?

Mr. STEVENS. Yes.

Mr. DAILY. Do you know whether that is true?

Mr. STEVENS. I don't know.

Mr. DAILY. You are just relying on what the telegram states?

Mr. STEVENS. All I know is this, that Mr. Low of the Montpelier Grocery Company told me that he could not buy from anybody during the war,—he could not buy from anybody but Armour and that he had to pay the advanced price, and it went up five or six cents a pound.

And right in this connection, gentlemen, I think I should say this: While it may be true that the packers do not—speaking nationally—control perhaps more than a certain percentage of a certain line of business, yet in certain localities—for instance in Vermont—they absolutely control it 100 per cent. So that in one locality it will be under absolute control, and in another locality it may not be under much control at all.

The CHAIRMAN. What do you mean they control, Mr. Stevens?

Mr. STEVENS. Well, they control the meat business.

The CHAIRMAN. You don't know what they control in the grocery line, do you?

Mr. STEVENS. No; I am speaking now of the meat business.

The CHAIRMAN. Well, that is an entirely different question.

Mr. STEVENS. Well, it is germane to the whole issue. Is that all you wanted?

The CHAIRMAN. Mr. Smith, do you want to ask any questions?

Mr. SMITH. Do you know why Swift alone did business as a packer in Vermont?

Mr. STEVENS. No, Senator, I don't know. But I have a pretty good idea of why.

Mr. SMITH. Armour did not come in? None of the other packers came in there?

Mr. STEVENS. No.

Mr. SMITH. None of the other five?

Mr. STEVENS. No.

Mr. SMITH. Do you know who did the business in New Hampshire?

Mr. STEVENS. No, I do not. I think it was Swift. I know they do business across the line. My office is right on the border line between New Hampshire and Vermont. I know they do business there.

Mr. SMITH. Do these retail meat men handle Swift's meat?

Mr. STEVENS. Nothing else.

Mr. SMITH. And they won't handle the meat of the farmer who kills his cow and brings it in?

Mr. STEVENS. No. I am speaking now of my own knowledge.

Mr. SMITH. Yes.

Mr. STEVENS. That the local meat men will not handle anybody else's meat.

Mr. SMITH. And that is the situation that exists in Vermont with reference to meat?

Mr. STEVENS. Yes, sir.

Mr. SMITH. And they fear it with reference to the allied products?

Mr. STEVENS. They certainly do.

Mr. SMITH. Do they handle a combination, these men, of groceries, as well as the meats?

Mr. STEVENS. Yes, they do. Most of the small country stores, you know, carry general lines.

Mr. SMITH. Yes. Then if Swift & Co. can control the meat they buy, if they were in the allied products you would fairly say the influence would compel them to buy from Swift & Co. what else they had, too?

Mr. STEVENS. Well, I do. I think if 2 and 1 make 3, 2 and 2 make 4. That is the way I reason this thing out.

Mr. SMITH. This gentleman suggested that because a man killed John Jones you would not know he had killed John Smith, but you would lock him up when he killed John Jones, wouldn't you, to keep him from killing John Smith?

Mr. STEVENS. We would under ordinary circumstances, unless, as I say, he is a wild man.

Mr. SMITH. That is a quotation; that was suggested to me by the gentleman just back of me; I thought it was so good I wanted you all to have it.

The CHAIRMAN. Mr. Stevens, do you know of your own knowledge that none of the other packers have sold anything in Vermont?

Mr. STEVENS. Oh, no, I don't say that, that they never sold anything in Vermont. I know of my own knowledge that they do not now.

The CHAIRMAN. All over the entire State they do not sell anything?

Mr. STEVENS. No, so far as my knowledge goes, and I think I have pretty good knowledge of the situation in Vermont. I think I can substantiate that for you if you would like to have me.

The CHAIRMAN. Well, frankly, I don't see how you could know that Armour or Wilson or Cudahy or Morris have not within the past six months sold anything in Vermont. I don't see how it is possible.

Mr. STEVENS. Vermont isn't very big, you know.

The CHAIRMAN. I know it isn't.

Mr. STEVENS. And we hear what is going on, especially do I hear when I am around the State, as frequently as I am around the State, and around the institutions of the State; I have pretty good opportunity to get a knowledge of those things, but if he has got a place there I don't know it, and nobody in Vermont does.

The CHAIRMAN. Oh, you mean he has no branch house in Vermont?

Mr. STEVENS. Yes, that is what I mean.

The CHAIRMAN. Oh, he may sell it through his peddler cars, might he not?

Mr. STEVENS. Oh, he might.

The CHAIRMAN. And he might sell it through salesmen traveling there?

Mr. STEVENS. Yes, he might, but he doesn't.

The CHAIRMAN. And he might sell it through mail orders?

Mr. STEVENS. Yes.

The CHAIRMAN. Do you know that he doesn't do that?

Mr. STEVENS. Oh, he doesn't do that. Not mail orders, no.

The CHAIRMAN. He doesn't do what?

Mr. STEVENS. Mail orders.

The CHAIRMAN. How do you know that he doesn't do it through his peddler cars or traveling salesmen?

Mr. STEVENS. Under oath I couldn't say it, not absolutely, no, but I know that they would have more sense than to attempt to do it by mail order.

The CHAIRMAN. Well, I am asking you by his salesmen and peddler cars, how do you know that he doesn't do that?

Mr. STEVENS. Well, as I say, I don't know absolutely that he doesn't sneak in once in a while and do it, but I have never known of it. I have never known of it, I mean, in recent years.

The CHAIRMAN. In other words, your answer is that you don't know of it, but you can not say that he does not?

Mr. STEVENS. Yes, I can say that he does not, and I do say that he does not.

The CHAIRMAN. That is all.

Mr. SMITH. Now, these institutions that you buy for, do you know whose meat they buy?

Mr. STEVENS. They buy Swift & Co.'s.

Mr. SMITH. Why don't they buy Armour's?

Mr. STEVENS. Well, they are not able to. We do not find him. Now, I am a member of the Vermont State Board of Control. That board of control has a good deal of power over the departments of the State. For instance, no department can purchase anything of a value exceeding \$500 without the consent of the board of control. So that I think I have pretty good opportunity to know.

Mr. SMITH. You are called on to investigate, are you not?

Mr. STEVENS. Certainly, and frequently.

Mr. SMITH. It is a part of your official duties, isn't it?

Mr. STEVENS. Yes, that is a part of my official duties; it is a part of my official duties to visit every institution in the State of Vermont that is in any way assisted by the State financially.

The CHAIRMAN. Anything further, Senator?

Mr. SMITH. No.

The CHAIRMAN. Mr. Breed?

Mr. BREED. No.

The CHAIRMAN. Mr. Daily?

Mr. DAILY. No.

The CHAIRMAN. Mr. Gray?

Mr. GRAY. Mr. Chairman, I would like to ask a question or two for my own personal information, as I am interested. The gentleman, Mr. Stevens, has made some very broad statements. First, I would like to know his identity and who he is representing here.

The CHAIRMAN. He has stated that in the record already.

Mr. GRAY. I was behind him, and I did not get that.

The CHAIRMAN. He has stated that in the record quite fully, already, Mr. Gray.

Mr. GRAY. Then I would like to ask him this: He made the statement, I believe, that the grocers would not handle, or the retailers would not handle the products of the local butchers. Is that so?

Mr. STEVENS. Well, I made the statement that I know that our local men won't; that is what I said.

Mr. GRAY. Your local men won't. You have butchers in the State of Vermont?

Mr. STEVENS. Oh, there are butchers in the State of Vermont, I suppose.

Mr. GRAY. How do they sell their product?

Mr. STEVENS. Private butchers?

Mr. GRAY. Private butchers or public.

Mr. STEVENS. Oh, a man will come and kill my hog if I want him to, but I don't know in my locality of any man that butchers as a business and sells meat except, as I say, occasionally a farmer who is not by profession or by inclination a butcher will butcher a beef creature or a lamb, or something of that kind, and bring it around to my door. But he soon stops. That is only a spasmodic sort of thing.

Mr. GRAY. Just on and off?

Mr. STEVENS. Yes.

Mr. GRAY. I see.

The CHAIRMAN. I think that is all. Thank you very much, Mr. Stevens.

Now, Mr. Breed, it is up to you.

Mr. BREED. All right, then; do you want us to go on now? Are there any other independent people here that want to go on?

The CHAIRMAN. Is there any one else outside of the representatives of the Wholesale Grocers Association who desire to go on at this time? If not, you may proceed, Mr. Breed.

Mr. BREED. Mr. Chairman, I have been asked to appear at these hearings, having been for about 15 years counsel for the National Wholesale Grocers' Association; that is, our firm has—Breed, Abbott & Morgan, of New York. This organization consists of wholesale grocers located in every State of the Union, and I will ask the president and one or two other witnesses to testify to general facts with respect to the character of the organization, the work it does—O, Mr. Lichty, do you want to get away?

Mr. LICHTY. I would like to get away to-morrow; yes.

Mr. BREED. Then I will withdraw in favor of Mr. Lichty.

The CHAIRMAN. Very well.

STATEMENT OF GEORGE E. LICHTY, OF WATERLOO, IOWA.

The CHAIRMAN. Will you give your name?

Mr. LICHTY. My name is George F. Lichty, of Smith, Lichty & Hillman Co. at Waterloo, Iowa. Our grocery house is located at Waterloo, Iowa. We have been continuously in the wholesale grocery business for 32 years. Before that I was engaged in the retail grocery business for 11 years. In fact, I have spent all of my lifetime in the grocery business, in various phases, as retailer's clerk, retail grocer, salesman on the road for a grocery house, and wholesale grocer.

I am here representing myself principally, my institution. I received a telegram from the secretary of the Iowa, Nebraska & Minnesota Wholesale Grocers' Association, asking me to represent them. Here is my telegram of authority [reading]:

ST. PAUL, MINN., December 1, 1921,

GEORGE E. LICHTY,

Lafayette Hotel, Washington, D. C.:

This your authority to represent Iowa, Nebraska, Minnesota Wholesale Grocers' Association in hearing on packers' consent decree, or any other matter in which we are interested.

JOHN MEHLHOP, Jr., *Secretary.*

To explain something with reference to this association, will state that they have about 120 members of their association in three States. Located in the three States, they serve from four of the principal cities in their jurisdiction to the retail grocers in eight other States.

The wholesale grocers of Omaha extend their service west as far as Salt Lake and Ogden, with branch houses at Cheyenne.

Sioux City wholesale grocers go through South Dakota into the hills—that is, into the Black Hills country and into Wyoming, into the Laramie and Casper localities.

The Twin City grocers cover the State of Minnesota, North and South Dakota.

The Duluth grocers have chains of stores and shipping points extending all the way from Lake Superior west as far as Spokane, covering that area thoroughly.

So that the grocers from those four cities get into the eight States of North and South Dakota, Montana, Idaho, Washington east of the mountains, Wyom-

ing, Colorado, and Utah. So much for the territory that I am trying to cover.

Mr. Chairman and Mr. Hall, I thought best to give you some idea as to the function and the influence that the wholesale grocer is having, as a wholesale grocer, and I therefore have reduced this statement to writing and will submit it.

The CHAIRMAN. Go ahead, Mr. Lichty.

Mr. LICHTY. The function of the wholesale grocer or jobber, as he is sometimes called, is threefold:

First, he acts as an assembler of the products of manufacturers and producers scattered all over the world.

Second, as a merchandise financier—warehousing and financing the goods which are produced seasonably and distributed over a period of nonproduction.

Third, as a distributor in small units of the products which he has assembled meet economically in larger quantities.

He is the connecting link between the producer and the retailer, who distributes finally to the consumer.

He is in no sense a commission man; he purchases his merchandise outright, and only in a small percentage of cases is he a manufacturer of any of the products which he sells.

He acts as the combined or common distributor for 4,000 or 5,000 different manufacturers and does this work for each of them more economically than each could do it for himself. Otherwise he would distribute for himself.

He divides among the thousands of items the overhead, the selling cost, the warehousing cost, and a large part of the physical handling cost which would be duplicated for every item in case the manufacturer distributed direct to the retail merchant.

The fact that the wholesale grocer is to be found in all consuming centers of any size in the country is the best proof that he is a necessary and economical factor in the present scheme of distribution.

From the wholesale grocer merchandise is distributed to the consumer through the retail grocers. The retail grocery business is largely a neighborhood business; the consumer buys from day to day from the retailer around the corner. Limited as he is in finances and in warehouse room, this retailer must be supplied from week to week, even from day to day, with small quantities to meet the consumers' constant and varied demands.

This is the service of assembling and distributing which the wholesale grocer performs. The goods which he has gathered together from all over the world (coffee from Brazil, tea from China and Japan, oil from Italy, fish from Holland, etc.) are assembled ready to supply this demand at a minute's notice. When you take into consideration the fact that three or four hundred thousand retail grocers are daily dependent on this service, you can readily understand that without it the consumer would soon face inconvenience, if not actual starvation. And I wish to add that during the war that was demonstrated, that the wholesale grocers were the reservoir of the country, and performed a service for which they were complimented by the Food Administrator, Mr. Hoover.

Second, the wholesale grocer acts as a financier and warehouseman for the smaller producer. Seasonal goods (canned foods, dried fruits, etc.) the wholesaler buys in quantities during the season of plenty, usually in carload lots, and distributes to the retailer over a period of six or eight months, a few cases at a time.

The canner is often able to produce his pack only because of the assurance that some wholesaler is willing to pay for it and warehouse it the minute it is completed, as he himself often lacks the money to finance it, and almost always lacks the warehouse to protect it.

Third, as a distributor, in small units, of goods he has purchased in carload lots he effects an enormous saving in transportation charges, of which, through competition, the consumer receives the benefit.

These three services, as an assembler, a distributor, and warehouseman, he performs, in my opinion, most economically and most efficiently for the public.

I estimate that the business of the average wholesale grocery will range from \$500,000 per year to \$5,000,000 per year, but this would not include many small local jobbers, whose business is even less, but it would include the majority of grocers interested in the issues in this matter.

I believe that there is still another duty performed by the wholesale grocer that was brought out yesterday, and that is of merchandise banker. The more thought I have given to that the more I am confirmed that the wholesale grocer

is the essential banker of many manufacturers, and practically of all of the medium and small sized canners. I know that the wholesale grocers' contracts are used as collateral with bankers, often holding the original contracts in their possession and retaining for themselves duplicates, copies of the contract, for their office handling. I know that as soon as a carload of merchandise is shipped, that the sight draft and bill of lading is attached and forwarded to the resident bank where the wholesale grocer is doing business, and that the wholesale grocer, having usually two options—one of taking certain discounts 10 days from date of paper, or on presentation of the draft, as the contracts may read, and the other, taking a smaller, or no discount, and payable at a latter date—that when remittances are made that they invariably and always go back to the banker holding these contracts as collateral. I happen to know that; I have been interested in a bank that transacted business that way.

The wholesale grocer performs a duty in his own town, as set forth by one of the people yesterday, that I wish to emphasize, and that is with regard to the number of people employed. The wholesale grocer is an institution in the town that is equivalent to a factory. I will speak of my business, because I think I know all about it. I employ 14 salesmen traveling into about 38 to 40 counties in Iowa, and two counties in southern Minnesota. I have the usual office organization and the warehouse organization, and the transportation to and from stations for local shipments in and out. I have a side track at my warehouse that takes in the carloads, but railroads will not receive outgoing shipments unless they are delivered at their depots, therefore I must haul to the depots.

In this organization I have about 90 people on the pay roll. Figuring on the basis that has been set forth by Government statistics, by the people who get out city directories, I believe that there are at least four and one-half persons dependent on every person on my pay roll. That would practically make 400 people that I am feeding through the pay roll system from my house.

The number of wholesale grocers in the United States, Mr. Chairman, and Mr. Hall, has been variously stated, and I believe that I can give you some intelligent information based on actual conditions. During the war I was called to Washington by Mr. Hoover, and was given the retail division of distribution. During the time that that division and other parts of the Food Administration were being perfected, we worked out a license system. Through that license system we had reason to know something of the number of retailers and something of the number of wholesalers or brokers and the various kinds of food-producing institutions. The Lever Act required that all persons doing a retail business of \$100,000 and over should go under license; that all wholesale grocers, the men who pretended to a wholesale grocery business, or wholesale dealers, went under the Lever Act. The Lever Act was rather loosely drawn, but Mr. Hoover and his associates at once whipped it into a condition so that we had something to work on.

We therefore gave to the people who were doing a mixed business—a wholesale and a retail business—the opportunity of keeping the retail business separate from their wholesale business. The man who hung out his sign, or put on his stationery "Wholesale and retail grocer" did not count with us, that is, in the wholesale department, except that he was doing a wholesale business. If he was doing \$100,000 worth or over of retail business, then he made out two license sheets. He was obliged to take out two licenses, and make two reports.

Of the wholesale grocers that we actually found at that time, there were a few less than 3,100; 3,100 of the wholesale grocers. We had the chain stores who were also obliged to take out licenses, but they took theirs out as retailers.

The large department store handling groceries was a retailer. The fellow who did only a wholesale business and sold to dealers only, if it was only one or one hundred thousand dollars, was obliged to take out a license, and he was enumerated in this aggregate of a fraction less than 3,100.

Then the statement with reference to 5,950 wholesale grocers being in the United States should be analyzed about like this, at this time. Not over 4,000 exclusively wholesale grocers who sell to the retail trade; about 1,950 institutions who are buying their goods in a wholesale way, and pay, and are on practically the same basis as the other 4,000 wholesale grocers. In this town I know of two institutions who are not wholesale grocers, who buy goods just as cheap as I do, who are on the manufacturers' list, and who sell at retail.

Mr. BREED. Those institutions are classified as retailers?

Mr. LICHTY. They are classified as retailers, in this list, and never should belong in the statement made by one of the preceding witnesses as wholesalers.

Mr. BREED. They are wholesalers and retailers?

Mr. LICHTY. They are privileged to buy goods at wholesale, and they sell them at retail.

Mr. BREED. I see. Then they are wholesale retailers?

Mr. LICHTY. Well, I don't know as I would give them that definition. They will call themselves wholesalers when they buy goods, and when they sell to consumers they are a retail concern. Now there is no law against sign writing or against stationery that reads thus and so, that I know of.

Mr. BREED. I did not intend to interrupt you, Mr. Lichty.

Mr. LICHTY. Well, now, I believe with the information that we received in the years, particularly during 1918, that are germane to the subject, that I believe was the best test and the most reliable information that we have had—these fellows, every one of them, had to go under license, and they every one of them had to make reports.

Another analysis of the situation might be something like this: During the year 1919 and during the year 1920 there were a number of wholesale grocery houses started, especially in the smaller outlying communities where this car lot business of the packers did not extend. That was particularly so in the Southwest, and distant communities. Later on when this attack of sugaritis, as the chairman named it the other day, attacked the fellows in the interior, there was a great clean-out. A lot of those fellows had been consolidated into other institutions. Stocks had been exhausted, and so had the capital, and they are no longer in the wholesale grocery business, and I believe, honestly, gentlemen, that to-day that the same statistics, if they were to be reviewed, would not show 5,950 of the so-called real wholesale grocers, and these fellows who buy at wholesale prices and who sell at retail, and otherwise—I believe it would come down nearer to 5,000. I know of three instances within 50 miles of my place of business where there were institutions of that kind; two of them are out of business, and the third one was being absorbed when I left home.

If we take a population of about 400 persons to the jobbing house—and I will be generous and say that it is 300 persons—I will cut that just 25 per cent to the average jobbing house (and mine is about in the average class), and figure on 4,000 institutions, you have 1,200,000 employees and their families dependent. Now to say nothing of the foods that are manufactured and distributed by these people that would not be distributed if this wholesale grocery business was to go over to the packers.

The wholesale grocery business is a low profit business. Mr. Stevens gave you some idea as to conditions in Vermont. In the Middle West, in the three States that I represent I believe that there never was a time in the most prosperous years that we ever have had, when the average gross profits went to 12 per cent, as mentioned by Mr. Stevens for one of his people. It has usually been stated that the average gross profit of the wholesale grocer in the Middle West was 10 to 10½ per cent. Out of that 10 to 10½ per cent he must stand depreciation, shrinkages of all kinds and the expense of doing business, bad accounts, and from the remainder pay dividends and personal compensation.

Mr. BREED. Does that include freight?

Mr. LICHTY. Freight should be added to the cost if the fellow is a good merchant.

Mr. BREED. And storage?

Mr. LICHTY. No; not warehousing after you get the stuff under your own roof. That is a part of the cost, as I have always figured it. When merchandise gets into my place of business, the cost of putting it there is the cost.

Now there is to my mind a storage charge that should be charged against it, but I have never done that, and neither have I been able to find any one who could intelligently inform me how I should figure a storage charge on each and every commodity that I handle, and how I could properly distribute the costs of handling, either in or out. You have got to work it on a gross tonnage, and do a certain amount of guessing. It is not possible to do that. Experts have tried to do those things, and there never has been a satisfactory answer.

The wholesale grocer is not a high salaried individual. Many of them do not even charge personal compensation. One of the best wholesale grocers that I know of—he and his partner own their business, and neither one of them obtain any salaries from that institution. And you will find that that is very

often the case. They seldom charge rental, or investment upon their warehouses. That is something that should be done.

They work on the basis of turnovers, except in goods that are produced in seasonal times and that must be produced at that time to carry through the season of nonproduction.

We buy our canned goods on contract. Those contracts are usually made before the planting has been done, in case of vegetables, and certainly long before fruit trees or berry bushes are in blossom. The price is made, and wholesale grocers, as soon as they feel the condition is ready for it, sell these goods for future delivery, as many of them as they can. These goods are sold, and when shipment is made the sight draft or bill of lading, as I described a moment ago, usually is a method of collection.

Mr. BREED. Have you said anything about net profit? You talked about the cost of doing business. Did you say anything about the profit?

Mr. LICHTY. I did not. I will get back to that, however, Mr. Breed.

The remainder, or unsold portion of their purchase must be carried and distributed through the remainder of the year and until the new crop is in.

We will assume canned vegetables. Canned vegetables are produced during the summer time, and usually arrive in possession of the wholesale grocer during the months of September and October. His surplus stock is carried through until it comes to an overlapping time, which is again the next September and October. Now he has sold some of those goods but a great many of those items must be carried through if he expects to have a supply until the next season's production is delivered to him, so that this surplus stock is carried practically ten months, and should reasonably have a storage charge and an interest charge, and that is one of the reasons why canned goods must be sold on a higher profit than sugar or salt or flour or the quick turnover stuff, say like oatmeal. If the dealer did not take that into consideration he could not live.

The wholesale grocer has in his cost book—I will refer to the fellow of our caliber—not less than 7,000 items. I happen to know that, because not long ago we were having a revision of our cost books, and I counted the number of our pages, or rather I didn't count them, because they were numerically numbered, but I took the number of pages, and the average number of the items on each page in the cost book, and I found that we had over 7,000 items. Now that includes subdivisions, subdivisions in quality, subdivisions in size.

While we are talking about canned goods, we will say, here are canned peaches. There are the sliced lemon cling, the Crawford, the pie peaches, and in all of the different sized cans, and different sized cases, so that there are in all 7,000 items entered in the average cost book of the average wholesale grocer.

This cost book shows food items that are assembled from practically every corner of the world. In my statement given to the stenographer I mentioned a few of them, but you must remember that there are a thousand and one other things that are ingredients of the commodities that wholesale grocers handle that become a part of the stock.

As to the net profit of the wholesale grocery business, with the exception of two years, in my 32 years' experience I don't believe that there were any more than two years where the net profits averaged through the country as much as 2 per cent on the turnover. Those two years were 1918 and 1919.

Mr. STEVENS. Is that the average all over the country?

Mr. LICHTY. Yes, that I believe to be the average all over the country. I was in a position at one time to know something about this. The years 1912 and 1913 I was the president of the National Wholesale Grocers' Association, and I had occasion to see many wholesale grocers, and in discussing their troubles—and incidentally, 1913 was full of them—I seldom found an institution that had a net profit of over 2 per cent. Since then I have frequently asked friends and others about their net profit, and invariably it was two per cent or less, with the exception of the two years. Those were speculative years that we could not get away from, notwithstanding the control on 84 items. The Food Administration, I might add, controlled 84 items, and those 84 items, practically every one of them, were handled by the meat packers.

Personally I am not afraid of the packers if they get into the wholesale grocery business and warehouse their goods, and do the things that I have got to do. I am fearfully alarmed, however, gentlemen, that if they get into the wholesale grocery business that it will not be their object to remain in the wholesale grocery business, but become the producers, and thereby become the monopolists of the business. It is a fact that on some of the items that they are now handling, that were permitted when this Consent

Decree was entered into—and I will refer to such items as butter, eggs, live and dressed poultry, cheese, canned milk, vegetable oils of different kinds, olive oil, soy bean oil, and cotton seed oil—are largely controlled by the meat packers at this time.

I happen to know that in our State the wholesale grocers at one time became very much alarmed as to what had become of their cheese business. Investigation showed us that in Wisconsin, where we must seek our supplies, that the meat packers had control of more than 65 per cent of the cheese production. A lot of us thought we were buying from independent producers, and awakened to find that we were buying it from the packers. The packers were our competitors, and sold cheese with the fresh meat sales force, and delivered it with the peddler cars, and put us out of the cheese business, our cheese business shrinking about 85 per cent in about three years.

And the canned milk business has almost assumed the same situation. While it is perfectly legal for them to sell these commodities, it occurs to me that it is a tendency toward absolute control, if they should acquire the source of production. This same thing has been found in other lines.

I believe that if the sauerkraut business was thoroughly analyzed, that the meat packers during the two or three years past, before entering into the decree, controlled that item. And I will have more to say about it a little later on.

I am alarmed at the possibility of them trespassing in production. When they do that, and combine production with distribution, and with the benefits that they have now in refrigerator car system, quick service, the wholesale grocers can not hope to compete with them, and it means automatically that this business will go to the meat packers.

To give you an idea of what this peddler car system means in a cold country, which, incidentally, turns mighty hot in order to make corn in July and August—refrigerator service is absolutely necessary in cold weather. The meat packers, under the arrangement prior to this decree, shipped in refrigerator cars daily over the territory covered by ourselves. Refrigerator cars in cold weather, get that, gentlemen. That was to prevent the freezable commodities from being frozen. They peddled this stuff out through my territory, and I could only get weekly service, where these fellows were getting daily service.

In the hot weather, covering the same routes, covering the same territories, some of these commodities must be protected from extreme heat. An ordinary freight car is as hot as an oven, and on the commodities that they were shipping at that time they had the preference, because of the fact that they were shipping in refrigerator cars, and usually the salesman's argument was "We need a little more tonnage to make up the minimum." And, incidentally, I know where minimum cars came into my own town, where there were as high as three cars, and the same story was used in every instance. They filled three cars to the roof, and those commodities included fresh meat, canned fruits and vegetables, canned meats, soap, roasted coffee, talcum, soap powders, rice, oatmeal, breakfast foods. The range of items was almost as wide as in our cost books. These were all shipped in the same kind of cars, and all subjected to rapid transit. A loaded car could leave Chicago on the Illinois Central Railroad going west at 4 o'clock in the afternoon, and at 12 o'clock the next day they were distributed. That is almost as quick as I could take the orders in my own city and run them through my warehouse and have them distributed. Almost as rapid.

Mr. SMITH. Could you get that same service for your goods?

Mr. LIGHTY. Not at all, sir. In the wintertime I was obliged to wait for the heated cars for perishable items. In the summertime I did not have any refrigerators, and therefore that went entirely to the packers.

There is one phase of the competition of the packers that always annoyed me a great deal, and that was the fact that with their immense capital they were able to clean up factories, buy the output, and after doing that in three or four instances it invariably affected the market so that values advanced. They then could unload, and they had the opportunity to buy these goods at the low prices, and if I went in on the market to buy at the prevailing market price I could not compete with them.

When they sell goods too low they disturb production—absolutely kill it. When they sell them too high they disturb the consumer. That condition has prevailed many times.

The wholesale grocer performs a duty in his locality besides feeding his own pay roll and those dependent upon them—he performs the duty of community builder. Mr. Crane set that out so very distinctly and clearly that I will not go into it in detail, except to ask this: That when home-service affairs are required, where the collections are taken up to take care of our unfortunates and our distressed; when it is necessary to have the taxes to support our schools and our libraries and our county fairs and our jails and poor-houses, we help to pay the bill, and the packer does not, and yet he gets the benefit of that market, and comes in there as a tramp peddler and serves our people in a way that is distressing to the people of the community—the consumers.

Mr. SMITH. Would it serve you for me to call your attention to an answer you made a moment ago, in which you showed the putting up of prices and the putting down of prices?

Mr. LICHTY. No; go ahead.

Mr. SMITH. Do you regard, as the result of your experience, something like a uniform price—a stability of price as desirable for all classes?

Mr. LICHTY. The stability of the markets is better for all classes than fluctuating markets. On fluctuating markets there is someone—either the producer, the farmer, or the canner—who gets the worst of it on the declines, and going the other way he never travels with that crowd. He is sold out. He does not have anything to sell. The big fellow gets possession of the stock, and he then markets to suit himself.

Mr. SMITH. I just wanted to hear you discuss that feature.

Mr. LICHTY. Yes, sir. The wholesale grocer in his community, in most of the communities, and especially in the smaller centers, is somewhat of a personage there. He is connected with the banks and the schools and the churches, and so on, and, as I stated a moment ago, he lends his energy, his personality, and his finances to helping his home town, and that I believe to be the great stability of this country—is the building up of small and medium sized towns. Too many people in one locality or in several localities are dangerous.

Now, in listening to the testimony of Mr. La France and Mr. Slessman relative to the control, or rather the distribution of sauerkraut by the packers, I want to call your attention to one particular proposition. That is, both gentlemen mentioned barrel sauerkraut or cask—in bulk—whatever the container is. That is sold to the canner, I assume, and he in turn puts it into tin cans and distributes it. The sauerkraut business of Mr. Slessman grew very rapidly, and in 1914 Armour wanted to buy about 150 cars from him. Armour was not in the sauerkraut business, as Mr. Slessman stated, I think, until 1912. To my own knowledge I never knew him to be in it until about 1911. Libbey, McNeill & Libbey were in the sauerkraut business a little before that.

But to give you a little idea of the rapid growth of this sauerkraut business, which is parallel with other vegetables, Armour & Co. in 1914 wanted to buy 150 barrels, which, at the lowest estimates, based on carload rates, would be 2,000,000 cans of sauerkraut; and from one institution.

Mr. La France stated that Armour could distribute sauerkraut better and faster, he thought, on account of him calling on meat markets. Every wholesale grocer in the country, I believe, calls on meat markets, for the reason that he has certain commodities that the meat-market man sells, and nearly all of the retail grocers these days have meats as one of the departments. In my business I have meat-market items, and sauerkraut is surely one of them. Canned corn, peas, and tomatoes, the staple canned goods, are all meat-market items. Wrapping paper and twine and these little butter planes. They used to be made of wood, and now made of a combination, wood pulp. And wax paper, salt, spices, all of those things are sold by market men, and are all jobbed and sold by wholesale grocers.

Naturally, if we pass up that kind of trade we would lose a very respectable amount of our business. Therefore I want to disabuse your mind that Armour was the only fellow that was serving the meat-market man. In our locality the wholesale grocer is just as actively engaged in selling goods to the meat-market man—and I believe the same is true all over the country—where he sells grocery commodities, and he is encouraged to get into the grocery commodities.

The competition in selling goods to the consumer, by the chain stores and department stores, is a fact; they are in absolute competition with us. They sell to the consumers. Eliminating the retailer, we sell to the consumer by keeping the retailer in the game. We have had that competition ever since I

know anything about the grocery business. Big department stores have sold groceries. We have always had that competition. They have sold goods. They have made some inducement to the retailer to buy from them, but yet the wholesale grocery business has prospered.

Now I don't believe that the meat packers coming in here, if they went legitimately into the wholesale grocery business, as I stated awhile ago, would make very much difference, but it is the fact that they could get control of markets, and with these preferential conditions, like the peddler car, it puts them in an entirely different plane.

It has been said by some fellows who claim that they know, that the ambition of the packer eventually was to get into the chain store business. I don't know as it has ever been announced by them, because they don't usually give out their plans very far ahead. They are a little like an old fellow that I worked for one time. Nearly every day he defined the word "previous" to me. "Some", he said, "there's two kinds of previous; one is previous before, and one is previous after." They are the "previous after" kind about telling their plans to the public. After the thing is over they tell their plan.

Mr. Beckman told you that chain stores purchase some of their goods from wholesale grocers. They are obliged to do so. The chain store people can not assemble a lot of the retail stuff that we are obliged to assemble. Now of these items in the various classifications, there are some it is absolutely impossible for the chain stores to sell for the reason that they serve their trade on a cash and carry basis, and they do not get a certain kind of the consumer into their place of business. There are in this town a number of chain stores, and I will venture to say that there are many and many consumers that have darkened the doors of chain stores, people who do not want the kind of goods that they think are sold by the chain stores. It may be a prejudice, but the other fellow has the service, he renders the service of delivery, he has the telephone business—in fact I know that some chain store people do not even have a telephone; they do not want to be bothered.

Mr. BREED. Who do you mean by "the other fellow"?

Mr. LIGHTY. I mean some of the people in the chain store business does not have the telephone.

Mr. BREED. When you say the "other fellow furnishes the service", is that the retailer?

Mr. LIGHTY. I mean the retailer.

Mr. Campbell made the statement that the elimination of the grocery business from the packers on account of this consent decree affected the price of meat. I contradict that statement, and ask him to prove it. If so, why was the price of butter, butter substitutes, lard, lard substitutes, cheese, eggs, poultry, soap, soap products, vegetables, cotton seed oil, peanut oil, soya bean oil, all reduced? Why didn't they go up at the same time? Is the packer loading his costs onto the meat department, or isn't he? Is he fairly distributing the cost of doing business?

Livestock has gone down. Now I am a sort of a tin-horn farmer myself, and know a little something about that. In three weeks the hog price went down \$6.50 a hundred, and I had a thousand hogs on hand. That was just about the time the Consent Decree affair happened. At a farm in which I am interested we try to keep livestock to eat up the by-products of the farm, the straw, the corn stalks, and the fodder. We find a peculiar situation. We can not breed all the cattle that we want to on account of the area being small. We go into the St. Paul or into the Omaha market and buy youngsters. We buy young cattle weighing 550 to 600 pounds. We buy those from the packing house yards, and invariably pay a commission man who represents a packer. We bring those youngsters to the farms and fatten them. And since the early summer of 1920 I have been doing that, and I have lost money on every shipment that I have handled, and yet a lot of that stuff didn't cost me anything, a lot of the feed didn't cost me anything, because it was by-products. At the present price of corn I couldn't break even. I sold as nice a bunch of young steers as you ever saw, since the first day of September, at \$8.10 a hundred. I paid for them, before I put anything into them, \$6.50 a hundred, and the transportation on them.

I have a car of hogs on this farm now that were bought at about 110 pounds gross weight. I paid for those hogs \$5.10 per hundredweight. I fed them, and have taken good care of them. I think I could get \$5.50 now. And yet the price of meat has gone up, according to the evidence of Mr. Campbell. He will have to show me.

The CHAIRMAN. I think he referred to the meat at retail.

Mr. LIGHTY. He made the statement of the price of meat, and I am making the statement of the price of meat.

Mr. GRAY. Did he mean the retail price of meat?

Mr. LIGHTY. Did he mean the retail price of meat—I don't know, but whatever he meant I mean; either wholesale or retail.

Mr. GRAY. Mr. Campbell I think said, that if the packers were restrained from the handling—

Mr. LIGHTY (Interposing). I refer to the records. He didn't say so, Mr. Gray. The records are very plain, and will tell you the story.

The CHAIRMAN. The record will speak for itself, whatever is there.

Mr. LIGHTY. Yes; he did say that the price of meat did go up.

Mr. BREED. May I ask if the gentleman represents Mr. Campbell?

Mr. SMITH. Who is the gentleman—Mr. Gray?

Mr. BREED. The gentleman who just spoke.

The CHAIRMAN. Well, he will go on the witness stand after a while. After a while he will go on and will state who he represents.

Mr. BREED. Well, I will be glad to know if Mr. Campbell is represented here by counsel or otherwise.

The CHAIRMAN. Do you represent Mr. Campbell as counsel or otherwise, Mr. Gray?

Mr. GRAY. Only to refer to—speaking just occasionally of something that might have been misquoted. I do not represent Mr. Campbell.

Mr. LIGHTY. We experienced a peculiar competition in our market recently from the packers that was very annoying. It came from a different angle than anything I had ever been up against before. I found that a lot of people in our country were buying the packers' short-time notes that were bearing 8 per cent, at a basis of about 90 to 92. That made practically a 10 per cent return. I knew that these notes had been put out, and why they should be called short time—they were 10-year maturities—I don't know.

Mr. BREED. Did you say packers' short-time notes, Mr. Lichty?

Mr. LIGHTY. Yes, packers' short-time notes. Armour notes were put on the market at 8 per cent, payable inside of 10 years, at 8 per cent interest. I have a stockholder in my institution, a widowed lady whose husband was in at our organization. Her husband at one time was president of our institution, when I was secretary and treasurer. Meeting her one evening in my home she told me of the good deal that she had made, and I asked her about it, and she said she had bought Armour's notes at 92. "Why," I said, "that is funny; Armour's notes at 92." "Why," she said, "these are 10-year notes; these are short-time notes, and they bring me over 10 per cent." I never stopped to figure it out, but I know it is something over 8 per cent, offhand. And then I paid some attention to these matters, and I found that there were a lot of people who had turned low interest-bearing securities into money, Government securities, and were rushing into the Armour securities. They were transferring their investment. I asked the lady, "Why didn't you say something about having some money?" "Well," she said, "I sold some bank stock, and I wanted to invest it. I didn't know whether you wanted it." "Well," I said, "I will pay you 8 per cent for the money." "Well," she said, "that is not as much as I am getting from Mr. Armour." And that was one of my own stockholders, who put about \$20,000 into Armour's notes, took the money out of the community and put it into Armour's notes, on the short-note basis, 10-year maturity. It seemed mighty funny that people in our country, an agricultural community, should rush their finances into Chicago.

The CHAIRMAN. Well, what is the wrong of that?

Mr. LIGHTY. What is there wrong about that?

The CHAIRMAN. Yes, what is there wrong about that?

Mr. LIGHTY. Why, if she loaned me the money at 10 per cent—

The CHAIRMAN. Didn't she have the right to put her money into these notes?

Mr. LIGHTY. Yes.

The CHAIRMAN. Didn't Armour have the right to issue these notes and sell them.

Mr. LIGHTY. Yes, but if she loaned me the money at 10 per cent she would be taking usury. Armour & Co. had depreciated their securities and were not therefore liable to usury.

Something has been said here on the controversies between canners and wholesale grocers. I will say to you gentlemen that I believe I appointed the

first committee, on the part of the wholesale grocers, that led to the conference on many subjects, and that has reverted to the benefit of the public. I was elected president of the National Wholesale Grocers' Association in St. Louis in June, 1912. There was a strained situation between canners and wholesale grocers at the time, which was quite similar to the incident that has been referred to. Now, those committees got together, and out of that committee they worked out and standardized the net weights of content of tin cans so far as fruits and vegetables were concerned. Those committees functioned right along for a number of years, and there seemed to be little to do, and they drifted apart. The question of contract has been annoying, and possibly may be settled.

I guess that is about all. I am ready to answer any questions.

The CHAIRMAN. Mr. Hall?

Mr. HALL. No.

The CHAIRMAN. Mr. Lichty, you are also an officer of the Waterloo Canning Co., aren't you?

Mr. LICHTY. I am.

The CHAIRMAN. What position do you occupy in that company?

Mr. LICHTY. President.

The CHAIRMAN. What do you can?

Mr. LICHTY. Corn only.

The CHAIRMAN. I have been thinking about a proposition like this, Mr. Lichty, and I would like to get your ideas on it. What would you say if the packers were permitted to go back into these unrelated lines, but were restrained from utilizing their refrigerator cars in the handling of them, what would be your position of such a proposition as that? Just for the benefit of all of you concerned here, gentlemen, it has been represented, you know, that they ought to be in these lines. I have stated the limits for the request for the modification. Of course, we might favor a modification even much more limited than the request which has been made, and I am trying to get information on these various ideas of a limited modification, or a general modification. We want to cover it as much as we can. What is your idea on it, Mr. Lichty?

Mr. LICHTY. Well, my idea on its is this, Mr. Chairman, personally—I am not representing, as the lawyer will say, my constituents; I am simply giving you my personal belief. Well, I will answer the question in this way. We are to-day in competition with one of the biggest packers in the country; that is, Wilson & Co. They own Austin-Nichols & Co., and we do not fear Austin-Nichols. We are in competition with them daily, and I think in every town and city that I visit with my sales force we meet Austin-Nichols.

Mr. BREED. What kind of a concern are Austin-Nichols & Co.?

Mr. LICHTY. Austin-Nichols & Co. are strictly wholesale grocers. Their business is shipped out over the same railroads and in the same manner as any other wholesale grocer doing business at Chicago or at Minneapolis, where they are located, would have to do.

Mr. BREED. Do you know how many branch houses they have?

Mr. LICHTY. Well, I would say that including the big plants in New York and Chicago, probably 10 or 12.

Mr. BREED. They are one of the largest wholesale grocery houses in the United States?

Mr. LICHTY. The parent house is the largest. Why, I think that the very fact that we are in competition with them, as we are with their big house in Chicago, would lead me to say that if Armour or Swift or any other packer wants to go into the wholesale grocery business as Austin-Nichols are in the wholesale grocery business, I can meet them and exist.

The CHAIRMAN. And practically the only difference is that Austin-Nichols does not have this so-called preferential car service?

Mr. LICHTY. They do not have the preferential car service.

The CHAIRMAN. The transportation service.

Mr. LICHTY. They are doing business under a separate corporation. The Austin-Nichols capital, I assume, is limited, the same as ordinary wholesale grocers are.

Mr. HALL. Just let me put a question here. I thought you stated that you fear the packers more by reason of the fact that they might get into the retail business?

Mr. LICHTY. No; you misunderstood me.

Mr. HALL. I misunderstood your statement.

Mr. LICHTY. I fear more that they would get into the ownership of the producing plants.

Mr. HALL. Then I misunderstood your statement.

Mr. LICHTY. I fear that the packers will get into the production, and when they take the manufacturers' profit and the distributors' profit combined, and probably trim it down to some extent, they will put us out of business.

The CHAIRMAN. Any one else?

Mr. SMITH. How does the capital of Austin-Nichols & Co. compare to the capital of Armour & Company and Swift & Company?

Mr. LICHTY. Well, on the original investment it is decidedly smaller. I would say probably 1 per cent. Not over one and a half. On the basis of today's quotations I would say it is about one-tenth of 1 per cent. Austin-Nichols stock last night was quoted at 10½; 65½ for their preferred stock. And that in 8 per cent stock.

Mr. SMITH. So that a corporation of that kind would not control the almost limitless wealth of these five packers?

Mr. LICHTY. No, Senator.

Mr. SMITH. It would not be in a position to control original production?

Mr. LICHTY. It could not.

Mr. SMITH. You spoke of the number of wholesalers. Just what was it you finally estimated the wholesale houses at, legitimate, straight wholesale houses?

Mr. LICHTY. The legitimate wholesale houses in March, April, and May, 1918, were less than 3,100. Since then why it must be estimated, to some extent, but my honest opinion is that there are not 4,000 of them today.

Mr. SMITH. What was your estimate of the number of employees averaged by these wholesale houses?

Mr. LICHTY. Well, I think that our institution would be a fair average. We are neither large nor small. We serve 38 to 40 counties.

Mr. SMITH. You have what?

Mr. LICHTY. We serve 38 to 40 counties.

Mr. SMITH. Yes; that was not my question. The number of employees, Mr. Lichty?

Mr. LICHTY. Well, we would be about the average; our average I think is about 400. Not employees, but dependents. We have 90 employees.

Mr. SMITH. And about 400 dependents?

Mr. LICHTY. About 400 dependents.

Mr. SMITH. That would make then about 1,000,000 dependents in all?

Mr. LICHTY. Yes, a million and a quarter.

Mr. SMITH. Yes, a little over a million.

Mr. LICHTY. Yes, direct dependents. There are engaged in the retail grocery business, we found during the Food Administration by our mailing lists, 366,000 retailers at that time, and about 65,000 market men.

Mr. BREED. Mr. Lichty, when you said you would not fear Austin-Nichols & Co., a wholesale grocery house controlling the market price of these food products, did you mean provided the decree remained in force which prevented Wilson & Co. from utilizing any of their special privileges for the benefit of Austin-Nichols & Co.

Mr. LICHTY. I mean Austin-Nichols & Co. as now operated.

Mr. BREED. With the decree in force?

Mr. LICHTY. With the decree in force.

Mr. BREED. Who acquired Austin-Nichols & Co. originally?

Mr. LICHTY. Do you mean in this last—

Mr. BREED. What packer?

Mr. LICHTY. Wilson & Co.

Mr. BREED. And who is it generally understood now owns the control of Austin-Nichols & Co.?

Mr. LICHTY. Wilson & Co., I assume.

Mr. BREED. And would Wilson & Co. be obliged to divest themselves of that ownership under the terms of this decree?

Mr. LICHTY. Do you mean the one in existence now?

Mr. BREED. Yes.

Mr. LICHTY. Well, I don't know. I don't know whether Wilson & Co. as a corporation, or the individual stockholders of Wilson & Co.; I don't know that.

Mr. BREED. Well, in any event Wilson & Co. were not able to use its special car privileges and the power of its money, you would not fear Austin-Nichols & Co. in competition, as I understand it?

Mr. LICHTY. No, not at all.

Mr. BREED. You have read this decree, have you?

Mr. LICHTY. I read it carefully at the time, but I don't remember the details.

The CHAIRMAN. You would have a hard time doing so.

Mr. LICHTY. I think so.

Mr. BREED. You understand, do you not, that under the terms of this decree Mr. Wilson as an individual is not prohibited from owning a stock interest in any one of these unrelated lines or corporations doing that type of business, provided he does not own more than 50 per cent.

Mr. LICHTY. That is the way that I read it at the time.

Mr. BREED. Then Mr. Wilson could continue to own anything less than 50 per cent in Austin-Nichols & Co.

Mr. LICHTY. That is the way I understand it.

Mr. BREED. But Wilson & Co. could not utilize any of their privileges for the benefit of Austin-Nichols & Co. if this decree stands.

Mr. LICHTY. That was surrendered in the consent decree, as I understand.

Mr. BREED. If it were modified, and Wilson & Co. were authorized to go into the business, then is where you will begin to fear the power and competition of Austin-Nichols & Co.?

Mr. LICHTY. I think so, yes.

Right there, Mr. Breed, and gentlemen of the commission, I think lies the danger of amending this decree. We have talked about this commission business a good deal here. I am fearful that if this is amended so as to put the packers on to a commission business, that there is nothing preventing the individuals owning stock in factories that will produce the supplies for the packers.

Mr. BREED. What individuals do you refer to?

Mr. LICHTY. I mean the individual stockholders. We will say Mr. Wilson and others associated with him in the packing interests. Now here we will say is a chain of canners to be bought. And a canning factory, from a packer's viewpoint, does not take very much money. Suppose those fellows should decide to have a canning factory. As long as they do not own over 50 per cent in this canning corporation, as I understand, they could take individuals out of their organization, and have a canning plant. Am I right about that?

Mr. BREED. Well, that is your understanding?

Mr. LICHTY. That is my understanding of the decree as it now stands.

Mr. BREED. In other words, you mean as long as any one individual packer did not own more than 50 per cent of any one of these corporations doing business in these unrelated lines?

Mr. LICHTY. Yes. It would not be very hard work to get some fellows who did not have packing house stock to put in some of the balance of the stock.

Now to get to this commission proposition, gentlemen; that seems to me to be a catchy proposition that was put up in order to attract the attention of the commission. I really believe that.

The canners can not finance their season's pack, as I stated, without having control of the pack, or control of contracts as collateral. They must have ready cash. If merchandise is placed with Armour & Co., or with Smith, Lichty & Hillman Co. on a commission, there is just one thing about it. Armour & Co. and Smith, Lichty & Hillman Co.—and you will pardon me for classing myself with them—will do the thing that is natural, and that is, sell the stuff we own; we will sell our own stuff first, and then we will sell the consigned stuff next. That method will break 50 per cent of the canners, I believe, in one season. They must have control of their merchandise to turn into money or collateral. Canners are not financed as a rule so that they can possibly go through a season's pack, no matter how favorable, without borrowing largely.

The CHAIRMAN. Did the number of wholesale grocers increase or decrease, do you think, while the packers were handling unrelated lines?

Mr. LICHTY. I think they decreased.

The CHAIRMAN. Have you any statistics on that?

Mr. LICHTY. No, I have not, but I know of where there were consolidations; where three in a town became two, and so on.

The CHAIRMAN. Did the business of the wholesale grocers increase or decrease during this period, do you know?

Mr. LICHTY. The tonnage of the wholesale grocers shrank, but the totals in dollars and cents increased on account of the increased values.

The CHAIRMAN. Is your firm connected in any way with the Western Grocery Co.?

Mr. LICHTY. Not at all, sir.

The CHAIRMAN. The reason I ask is that they are in your part of the country out there.

Mr. LICHTY. Yes, they are in that locality.

Mr. BREED. You spoke about consolidations, Mr. Lichty. Can you say whether or no after Wilson & Co., or Mr. Wilson acquired the control of Austin-Nichols & Co., that Austin-Nichols & Co. then began to acquire other wholesale grocery houses and consolidate with them?

Mr. LICHTY. Well, I know so little of their organization; I know that they bought a splendid plant in Chicago; they bought the W. M. Hoyt plant.

Mr. BREED. Was that an old established grocery house?

Mr. LICHTY. That was a household word for 60 years in the west.

Mr. BREED. So that at least you know that after that date Austin-Nichols & Co. acquired one of the oldest grocery houses in Chicago?

Mr. LICHTY. Yes, sir.

Mr. BREED. Do you know of any other houses which they acquired?

Mr. LICHTY. Well, whether it was before or since the Wilson interests became interested with Austin-Nichols I can not say, but I understand that they have three or four houses up state in New York, and several in Connecticut, They have one located midway between Minneapolis and St. Paul.

Mr. BREED. What one is that?

Mr. LICHTY. That is one of the Austin-Nichols' warehouses. They took over a small concern—it seems to me it was called the Twin City Wholesale Grocery Co. I would not say that positively. I can go to the place, but I don't remember the connection. We meet them in competition in northern Iowa and southern Minnesota.

The CHAIRMAN. Mr. Daily?

Mr. DAILY. Mr. Lichty, do you know whether or not it is the desire of the packers to reenter the unrelated lines?

Mr. LICHTY. I had a conversation with the sales manager of one of Armour's subsidiary companies.

The CHAIRMAN. What company?

Mr. LICHTY. The Armour Grain Co. He told me that he had no official notice, or no other notice that led him to believe that they wanted to get back into the business. We were discussing the question, and, incidentally, before I go farther, I want to say that when Armour & Company went out of the wholesale grocery business, the products of the Armour Grain Co. were offered to the wholesale grocers, and a large percentage of the grocers forgot the difficulties and the misunderstandings and the bickerings and the scraps, and sold Armour's goods. They are doing it to-day. And this sales manager told me that they had sold over a million containers of cereal products so far in 1921.

Mr. BREED. You don't know then of your own knowledge that there is any desire on their part to go back into the business?

Mr. LICHTY. Only what I received from him; this is the nearest and most direct information that I have.

Mr. DAILY. It has been stated here that these suggestions for modification of the decree have come from outside interests. Have you any opinion as to why these philanthropic efforts are made?

Mr. LICHTY. I have very decided, but I would not want them to go into the record.

Mr. DAILY. All right, Mr. Lichty. Now, Mr. Lichty, you spoke in the early part of your statement this afternoon about cheese.

Mr. LICHTY. Yes, sir.

Mr. DAILY. Evidently you have made some investigation of the cheese industry.

Mr. LICHTY. We did, sir.

Mr. DAILY. You indicated that the packers controlled about 65 per cent of the production.

Mr. LICHTY. Yes.

Mr. DAILY. Do they do that outwardly, that is, are their names up over the doors, or how is it done?

Mr. LICHTY. No; the method that was displayed to us was that storage men in the cheese producing localities, and people who were buying the milk from the farmers, needed financial help, and that Armour & Co. was on the spot to grant it. The first indication was that a few of us felt our cheese business slipping, and we sent a reliable man into the community around Sheboygan, Neenah, and through the cheese producing section of southern Wisconsin. He

came back with his story. I then had it verified by a man who has been buying cheese from me for many years, and he said it was a fact, and when he got into details he wanted to be very careful that I would not mix him up with the information, for the reason that he bought cheese for the packers. And he was a very reliable dealer, a buyer who buys on commission for wholesale grocers.

The CHAIRMAN. They can still handle cheese, can they not?

Mr. LICHTY. Oh, yes.

The CHAIRMAN. They are not prohibited by the decree?

Mr. LICHTY. No. But wholesale grocers have lost their cheese business.

Mr. DAILY. Do you understand, Mr. Lichty, that the influence of the meat packers dominates the cheese market?

Mr. LICHTY. I really believe it does. The cheese prices in the Wisconsin district are made every Tuesday morning.

The CHAIRMAN. Who makes them, the cheese board?

Mr. LICHTY. The cheese board; with all of these influences from the packers radiating in their cheese board they could not help but be interested. They would not suck their thumbs and let the other fellow set the price.

Mr. DAILY. Is that controlled from Chicago, or in Wisconsin?

Mr. LICHTY. I don't know.

Mr. DAILY. In Wisconsin there is nothing to indicate to a stranger that he was dealing with the meat packers?

Mr. LICHTY. Not at all. They have storage houses there, but then in dealing with the cheese producers you don't know, unless you are posted, whether you are dealing with the packer or not.

Mr. DAILY. When the meat packers had the right to handle canned foods, were they very active? Did their volume amount to very much?

Mr. LICHTY. Well, as to percentages I am not acquainted, but I believe that the Federal Trade Commission's figures are the most authentic figures. But I know that their volume increased rapidly, alarmingly. The increase in their business started in last sixteen, the summer of sixteen, and seventeen, eighteen, nineteen and twenty, and up to the time of the decree it was most alarming.

Mr. DAILY. Did they specialize in any kind of canned foods?

Mr. LICHTY. The staple canned vegetables, such as corn, peas, and tomatoes, in popular sizes, and the No. 10 sizes of fruits.

Mr. DAILY. Were they large handlers of California canned fruit?

Mr. LICHTY. They were.

Mr. DAILY. Have you any idea of the buying capacity of any one of those Big Five meat packers in California canned fruits?

Mr. LICHTY. Well, I always understood that of recent years Libby or Swift—

Mr. DAILY. Well, I don't mean Libby. Libby is outside.

Mr. LICHTY. Well, the Swift interests, during the open season for packers, handling groceries—Libby was handling a lot of California goods of his own production. That was so accredited to them. I don't know whether Swift owned the factories or whether Libby owned them.

Mr. DAILY. It is a fact, is it not, they do handle a very large volume of California canned fruits?

Mr. LICHTY. Oh, I think so.

Mr. DAILY. How about Alaska salmon?

Mr. LICHTY. The packers were given the credit for being the largest factory in the canned salmon business.

Mr. DAILY. What, if any activity did they take in the production or sale of Hawaiian pineapple?

Mr. LICHTY. Well, I would say that they were not quite as active there, except the Libby interests.

Mr. DAILY. How many packers are there on the island?

Mr. LICHTY. Why, I don't know at this time. I was over there in thirteen—I think it was, or fourteen.

Mr. DAILY. Not more than fourteen?

Mr. LICHTY. I was going to say thirteen.

Mr. DAILY. Are there that many?

Mr. LICHTY. I don't know how many there are. I am not sure.

Mr. DAILY. You would think, would you not, that the pineapple industry would readily lend itself to immediate control based on the small number of canners that are there now?

Mr. LIGHTY. I would think it would be very easy to get control and monopolize the pineapple industry.

Mr. DAILY. Do you know whether or not any effort is being made at the present time to either absorb or to gain control of any of the present factories on the island?

Mr. LIGHTY. I don't know, sir.

Mr. DAILY. Have you an approximate idea of the number of canneries in the United States?

Mr. LIGHTY. Well, I would say about 3,000, including everything.

Mr. DAILY. Generally speaking, are they large individual companies?

Mr. LIGHTY. They are not. The great majority are small.

Mr. DAILY. What would you say would be the average pack for an average packer in cannong seasonal vegetables or seasonal commodities, let me put it that way; in other words, at what point do you begin to classify a canner as a big canner in point of production?

Mr. LIGHTY. Well, in point of production I would say he gets in that class at seventy-five to one hundred thousand cases. You were speaking of vegetables, were you?

Mr. DAILY. Well, anything in the canned foods lines.

Mr. LIGHTY. Well, I would say he is at 75,000 cases.

Mr. DAILY. Do you think that there are more canners packing 75,000 and upward than there are a lesser quantity?

Mr. LIGHTY. Oh, the great majority can less than 75,000.

Mr. DAILY. From your knowledge and experience do many of the canners engage specialty men to market their products?

Mr. LIGHTY. At this time I don't believe there are over 10 to 12 of them doing that.

Mr. DAILY. Not over 10 to 12 out of the 3,000 in the United States?

Mr. LIGHTY. To my knowledge not over 10 or 12. That is, I mean, of the seasonal canners. I don't mean Campbell's, who are making soup the year round, or the big bean fellows, who can can the year round; I mean the canners of green fruits and vegetables.

Mr. DAILY. Well, that is in response to my question. Now, you spoke about the impracticability of working on a commission basis. Is it the idea in discussing this question of handling canned goods on a commission basis, that these goods be sold by the meat packers to the retail trade direct from the cannery?

Mr. LIGHTY. Well, I don't know what Mr. Campbell had in mind when he suggested the commission basis. I don't know whether he intended to sell them in large blocks to other wholesale dealers, or whether he intended to peddle them out the same as packers were selling groceries prior to the consent decree agreement.

Mr. DAILY. Assuming that it would be possible for them to sell retail grocers' future contracts to secure a distribution equal to the present system, about how many retail accounts would they have to handle?

Mr. LIGHTY. Well, to take care of the product of canned goods in any particular line, from the information of the Food Administration itself, I would say 350,000 would be the minimum.

Mr. DAILY. Three hundred and fifty thousand retail accounts?

Mr. LIGHTY. Yes, sir.

Mr. DAILY. Mr. Lichty, in the production of seasonal commodities, such as corn, tomatoes, and peas, are they all produced in one section of the United States, or are they produced in different sections of the country?

Mr. LIGHTY. Over quite a large area.

Mr. DAILY. Over quite a large area?

Mr. LIGHTY. Yes.

Mr. DAILY. Is it not true that they are produced in certain sections?

Mr. LIGHTY. Yes.

Mr. DAILY. And do not those sections largely supply the territories which are reachable by fair freight rates—in other words, they are not in every instance competitive with each other, these producing sections?

Mr. LIGHTY. That is right. I will explain, starting with peas. Peas are produced in New York, Ohio, Indiana, Michigan, and Wisconsin largely. A great proportion of the pea pack originates in those States. Corn in Maine, Maryland, New York, Ohio, Indiana, Illinois, Iowa, Nebraska, and Minnesota. Some in Michigan, southern Michigan.

Tomatoes, the Maryland district. Baltimore is the capital of the eastern tomato canning. It jumps west then into Indiana. The next big tomato district is southwest Missouri and Arkansas. Then from there on to the Pacific Coast. California and Utah pack a great many tomatoes.

Mr. DAILY. When they were operating with these unrelated lines did the meat packers buy from the canners in the various sections? Or did they confine their purchases to some particular section?

Mr. LICHTY. Well, during the activities of the war they bought wherever the goods were offered; they did not respect localities.

Mr. DAILY. Would you consider them a material factor in the matter of price regulation at that time? In other words, was their purchasing power of such a character as to influence the price?

Mr. LICHTY. Yes, decidedly so; especially in 1917. Late 1916, after the pack was in the cans, and early seventeen their activities crowded the price up very rapidly indeed.

Mr. DAILY. Do we ordinarily, Mr. Lichty, have an exportable surplus of canned foods in this country—I mean generally speaking, not any particular kind of canned food, but generally speaking?

Mr. LICHTY. We have surplus in some lines, and in some other lines it is almost impossible to create a market for them.

Mr. DAILY. I ask whether we have it, generally speaking, every year?

Mr. LICHTY. Do you mean in these seasonal commodities?

Mr. DAILY. Yes; including fruits.

Mr. LICHTY. Well, I would say that in fruits there is more of a likelihood to be a surplus than in vegetables, but there are many years when the vegetable supply is short, and there would be no exportable surplus.

Mr. DAILY. Is it not a common practice in the trade to make use of stories about export orders to influence prices?

Mr. LICHTY. That is played upon part of the time, I think; yes, sir.

Mr. DAILY. That is all, Mr. Chairman.

The CHAIRMAN. Anything else, Senator?

Mr. SMITH. No.

Mr. LICHTY. Mr. Chairman, I notice one thing that I omitted. There has been much said about this rice proposition. I would like to refer you to the records of the Food Administration for the packers' dealing in rice. I think that you will find something like this, that they handled 165,000 bags of rice in their wholesale grocery trade. They had many thousands of bags under contract that were diverted to export, that never appeared in the record, because that rice was exported.

Mr. SMITH. There was a question I wanted to ask that escaped me. To what extent has the entrance of the packers into the cheese business affected the cheese business by the wholesale merchants?

Mr. LICHTY. Well, I think it has reduced it from 50 to 75 per cent, 85 per cent, that is who are right in contact with the peddler car lines.

Mr. SMITH. It has cut down the wholesaler's part 50 to 75 per cent?

Mr. LICHTY. Yes, sir.

Mr. BREED. Did you finish what you had to say about rice, Mr. Lichty?

Mr. LICHTY. Not quite.

Mr. SMITH. Excuse me.

Mr. LICHTY. The packers distributed about 165,000 bags at 100 pounds each. The percentages given out by Mr. Campbell will have to be adjusted, for the reason that he figured the rice in the rough, and in 1917, when Armour owned that big block of rice, the 165,000 bags, it went into the domestic trade, and the big quantity that you will get the information concerning from the Food Administration records went into export and to the allied armies; that will show in the exportation records.

Now, the total production of rice in the United States that year was about 9,000,000 bags of 100 pounds each. According to Mr. Campbell's records, the way he computed, which was on the rough basis, it would make it 16,500,000 bags. The biggest production that we had was in 1918, when the rice growers lent all of their efforts to a big production as a war measure. We in the Food Administration had to take into consideration that Cuba and Porto Rico were dependent on us for rice. We had to keep them well fed, or fed with the rations that they were in the habit of getting, in order to keep them raising sugar that we needed so badly. Cuba and Porto Rico used nearly 3,000,000 bags of rice out of this total production of 9,000,000 bags, so that they can not be figured except as customers, and not as consumers of the United States. And

yet those records never entered into our domestic records in any manner whatsoever.

The CHAIRMAN. Wasn't there any rice imported in that year?

Mr. LICHTY. Imported?

The CHAIRMAN. Yes.

Mr. LICHTY. Very little rice, because the only rice that came into this country came from the Dutch possessions. There were several cargoes practically marooned down at Norfolk. They were held there for months and months, and finally the Government took possession, and never a bag of that rice was given to the consumers in the United States, but was passed on to Europe, for the principal reason that it is not the kind of rice that the American people are in the habit of consuming. The Java rice is a heavy, chalky rice, and does not look like nor eat like our own production.

I might add that the rice situation was not relieved until after the signing of the armistice, and then these vessels that were held in Java were loaded with rice and came through the canal and were held here until released by the Government and then passed on, and they became in a measure a relief proposition to the European condition.

There has been much made out of the small quantity of rice that Armour & Co. handled. The Food Administration will give you some alarming figures when you go into it. I do not pretend to quote them, because I do not—

The CHAIRMAN (interposing). Well, what books in the Food Administration would that be obtainable from, Mr. Lichty; what record?

Mr. LICHTY. I think Mr. Hoover will give you that. Some of those records are filed away—some of those records are dead and buried, and how to get at them I don't know. But I know that such things occurred.

Mr. BREED. Did the ownership of this large amount of rice by Mr. Armour have any effect upon the market price?

Mr. LICHTY. Somebody about his place was pretty wise early in 1917, about the time the war broke out. Armour & Co. contracted for immense quantities of rice, and these fellows in the South, in the rice-producing districts, sold, and they appealed to the Food Administration for protection under those contracts, claiming that all of a sudden the cost of production had risen so rapidly and there was more or less conference about making a new price on those. Armour & Co. got some of that rice at ridiculously low prices, and if they got deliveries under their contracts and sold it to the foreign markets, the profits were immense. The Food Administration stepped in, however, and put a ban on the profits of the wholesale price on rice. They put a ban on it, and the profits, as I remember, at which the wholesalers could sell to retailers, was 10 per cent. That was so that there would not be domestic speculation. And that is why only 165,000 bags of Armour's rice got into the consuming public of the United States. He could sell it for more money elsewhere. And that is one reason why I am extremely anxious that that rice transaction should be taken up.

Mr. BREED. What effect did this large ownership of rice by Armour have upon the price?

Mr. LICHTY. Prices jumped up right away 3 and 4 and 5 cents a pound in a few months, possibly a few weeks.

Mr. BREED. In your opinion is it necessary for any one to have control of a market in order to effect an increase in price?

Mr. LICHTY. Mr. Breed, it has been said time and again that a 10 per cent purchase of any commodity in sight would advance the price 25 per cent. That, I think, is a standard statement to make pertaining to almost any commodity.

Mr. BREED. Then if a 10 per cent purchase of any one of the commodities were made by any interest having the money to do so, and it were done quietly over a period of time, who would benefit by the increased price?

Mr. LICHTY. Well, when there is no food administration the buyer would benefit. When the Food Administration was functioning we only gave them a certain percentage. Unfortunately, they are out of business.

Mr. GRAY. May I ask one question, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. GRAY. You spoke of the refrigerator car service, Mr. Lichty, and the advantage that the packer had over others in distribution through the refrigerator car. I believe you said in your testimony that you did not have that advantage. Or could not obtain that advantage of a refrigerator car service?

Mr. LICHTY. Yes.

Mr. GRAY. Would you use that advantage if you had it of having a refrigerator car service for the distribution of your products to your trade?

Mr. LICHTY. Why, most decidedly, if my competitor would use it.

Mr. GRAY. Did you ever ask it of the railroad company?

Mr. LICHTY. For iced cars for groceries?

Mr. GRAY. Either iced or without.

Mr. LICHTY. I have asked them for heated cars in winter and have been restricted to one car a week over a given area, and that is in existence now. Before I left home my traffic man brought up the program: "Here I have arranged cars that will leave Waterloo on such and such a day, north, south, west, east, northwest," and so on.

Mr. GRAY. I am just asking that, Mr. Lichty—

Mr. LICHTY (interposing). We would be very glad to use it in cold weather and in very warm weather. We would be very glad to ship certain commodities that deteriorate in a hot freight car, that way.

Mr. GRAY. I am asking that to ascertain the facilities afforded by the railroad companies in distribution, that is all.

Mr. LICHTY. Once a week is all we get in this.

The CHAIRMAN. Anything else? We will meet again in the morning, then, at 10 o'clock.

(Whereupon, at 4.45 o'clock p. m., Friday, December 2, 1921, an adjournment was taken until 10 o'clock a. m. the following day, Saturday, December 3, 1921.)

SATURDAY, December 3, 1921.

The committee met at 10 o'clock a. m. in room 704, Department of Commerce, pursuant to adjournment on yesterday, Hon. Herman J. Galloway (chairman) presiding.

Judge Hainer not present today.

The CHAIRMAN. Gentlemen, we will resume our hearing. Senator Smith, did I understand that Mr. Tate had left a brief written statement which he wants filed?

Mr. SMITH. Yes, sir.

Mr. BREED. Who is Mr. Tate?

Mr. SMITH. Mr. Tate is a wholesale merchant from Kansas.

The CHAIRMAN. And appears representing his concern?

Mr. SMITH. Yes, sir.

The CHAIRMAN. And as a member of the Southern Wholesale Grocers' Association?

Mr. SMITH. He appears personally from the State of Kansas, but is a member of the Southern Wholesale Grocers' Association. However, he does not appear representing that association.

The CHAIRMAN. His statement may be put in the record.

STATEMENT OF J. W. TATE, OF GALENA, KAN.

I am an officer of the Galena Wholesale Grocery Company. I speak for my own company and for the wholesale merchants of Kansas. I believe I also express the views of a large majority of the people of Kansas, both the producers and the consumers. I feel I can safely say our people are opposed to modifying the consent decree against the meat packers, so as to allow them to enter the business of handling products unrelated to meat products.

The opposition is based upon the ground that we believe the packers will so dominate the business in a few years that they will practically absorb it, driving out the large majority of the wholesale merchants. We believe they will destroy the competition which now exists among over 4,000 wholesale merchants in buying and selling and substitute control of food products by a very few big packers. Our reason for this belief is they have pursued this course in the business which they now conduct. They have practically created a monopoly in their own hands in the sale of meat and products immediately akin to meat.

If they are allowed to go into the business of handling unallied products we believe they will take over one after another until they absorb and control such a number of commodities now handled by wholesale merchants that the wholesale merchants will be forced out of business, and producers and consumers will be reduced to the necessity of relying upon the sale to and purchase from business controlled by so few a number of firms that they will naturally agree on prices

to be paid for goods and prices at which they sell, which will remove all competition and leave the public in their hands and the food supply of the country subject to their control.

We think that their power to do this has been shown by what they have already done. We think this power has also been illustrated by other concerns when they have obtained an overwhelming control of business of a particular character.

The packers will be able to establish plants and eliminate from the trade a large number of manufacturers. They will be able then, with their car service and their special railroad privileges, to force the retail merchants to largely buy from their agencies. I do not mean that they will undertake to distribute direct from themselves to the retail merchant, but they will create distributing agencies of their own similar to the wholesale merchants, but very few in number, and without any reduction of expense they will remove the competition which now exists in the trade through the large number of wholesale merchants.

They can easily absorb the distribution of fruit and vegetables, the distribution of rice and many other commodities, and having absorbed them they can force the retail merchant to buy all of his commodities, which they handle, from them.

We believe they will follow this policy on account of the policy they have followed in the past, and we are intensely opposed, not only as wholesale merchants, to being driven out of business, but I am sure the overwhelming majority of our consumers and producers in the State of Kansas will entertain the same view when the subject is discussed and they understand it.

I present to you what I think is the view of the people of Kansas and I urge for them that the Attorney General will not consent to any modification of the decree against the packers which will enable them once more to enter the handling of wholesale grocery products unallied to meats.

(Signed) J. W. TATE.

The CHAIRMAN. I believe Mr. Bridges wanted to be heard next.

Mr. BRIDGES. Yes, sir, Mr. Chairman, if you please.

The CHAIRMAN. State your name and whom you represent.

STATEMENT OF MR. L. F. BRIDGES, OF THE DRIED FRUIT ASSOCIATION OF NEW YORK

The CHAIRMAN. What is your position?

Mr. BRIDGES. I am the president of this association.

The CHAIRMAN. How large a membership have you?

Mr. BRIDGES. One hundred and fifty. But I explain all that in my statement.

The CHAIRMAN. Very well, you may proceed.

Mr. BRIDGES. My name is Leo F. Bridges. I am president of the Dried Fruit Association of New York, of which organization I have been president for three years. The Dried Fruit Association has already protested against the modification of the decree through its board of directors after consulting with the membership of the association and finding that the organization was unanimous in its position.

This association of New York is composed of 150 members who are manufacturers, wholesalers, jobbers, and brokers in dried fruits, beans, nuts, canned goods, and kindred products having their places of business in New York City and New Jersey. The association was formed in 1906 primarily as an organization of dealers in dried fruits, and I believe that normally the membership handles 15 per cent of the dried fruits consumed in the United States.

We are opposed to the modification of the consent decree because we believe that if it is modified the meat packers will be able to monopolize to a large extent the products which our membership handles. Furthermore, we believe that the enormous resources at the control of the meat packers would permit them to secure more easily the control of some of the principal lines which we handle than is the case with certain other lines. The principal dried fruits are raisins, prunes, figs, dates, peaches, and apricots. All of the dates and most of the figs and a considerable quantity of the raisins consumed in the United States are not grown in this country but are imported. The dates are imported from Persia; the figs are imported from Turkey; the raisins are imported from Spain and Turkey, although there is also a large production of raisins in California. Many of the nuts which we consume are also imported. We obtain our Brazil nuts from Brazil; filberts come from Spain, Italy, and Turkey; almonds come from France, Spain, and Italy; walnuts come from

France, Spain, Italy, and South America. Pecan nuts are imported from Mexico.

It is a known fact that the meat packers have foreign agencies throughout the world and that they have every means of reaching sources of supply in foreign countries. With their large capital it would be an easy matter for them, if permitted, to secure the entire foreign production of such a product, for example, as figs; and there never has been a time when that could be more easily done than at the present when foreign conditions are so disturbed and the purchasing power of the American dollar so great. Through having control of the supply of figs, it would be within their power to control absolutely the price which the American public would have to pay.

As the testimony in this proceeding already shows, the meat packers, prior to the entry of the consent decree, were handling large quantities of canned goods, and I feel that there is no need for my repeating what previous witnesses have stated as to the inroads which have been made by the packers upon the canned goods of the country. They were also handling at this time certain dried fruits, particularly prunes and raisins. For example, in the year 1919 I have learned that Armour & Co. placed an initial order for 150 cars of prunes and attempted to buy from the California Raisin Association 800 cars of seeded Muscatell raisins which represented 25 per cent of the California raisin production of that variety. I might state in this connection that seeded raisins are not produced in any other country but the United States at the present time.

Mr. BREED. What effect did the placing of that order have?

Mr. BRIDGES. The order was never really placed. But the effect had it been placed would undoubtedly have been to advance the price of raisins and a considerable advance, no doubt.

I understand that the Raisin Association declined to accept this order because Armour & Co. desired the raisins packed under Armour & Co.'s private brands, but that the Raisin Association was willing to sell Armour & Co. as large a quantity as was wanted under the labels of the association. Armour & Co., however, is not interested in promoting any brand but its own. It was very evident at this time that Armour & Co. in particular was seeking to increase its business in dried fruits and that it was making rapid progress along these lines. If the bar of the consent decree were removed, there is no doubt in my mind but that the meat packers would again take up the handling of these lines and that within a short time they would obtain the control of a very large part of the country's consumption in these food products.

Wholly beyond the danger to the business of independent competitors through the growth of such large organizations, it seems to me that there is a further vital element which should be considered. It is not in accordance with the principles upon which this country was founded and upon which the business of its citizens has been built to foster or permit the growth of a monopoly, however efficient that monopoly may be. There is the greatest danger to our political life in the existence of a few large organizations with unlimited capital and resources in their hands holding control of the nation's food on which the very existence of our people depends. Even if the men in whom such great power is concentrated were endowed with the wisdom of Solomon it would not be proper to give them such mighty control over the welfare of their fellow citizens.

Our country stands for equal opportunity to all, for freedom of competitive endeavor and for an equal right to each citizen to carry on a business independently and not subject to an overshadowing monopoly.

The CHAIRMAN. Mr. Bridges, did you get or have any statistics as to what proportions of any of these unrelated lines were handled by the meat packers before this consent decree was entered?

Mr. BRIDGES. I have no statistics except what I have already read.

The CHAIRMAN. Do you know of any unfair practices aside from any you may have enumerated that the meat packers indulged in in the handling of these unrelated lines?

Mr. BRIDGES. I know only common gossip.

The CHAIRMAN. Nothing of your own knowledge?

Mr. BRIDGES. Not of my own knowledge.

The CHAIRMAN. Does your association, or do the members of your association, sell to the wholesale grocers?

Mr. BRIDGES. Yes; and we also have wholesale grocers in our membership.

The CHAIRMAN. What proportion of your membership is represented by wholesale grocers?

Mr. BRIDGES. I should say, roughly, about 15 per cent.

The CHAIRMAN. And what fruits are handled largely by your membership other than the wholesale grocers therein?

Mr. BRIDGES. Those fruits which I have already enumerated—raisins, prunes, apricots, dates, figs, and also currants which are imported.

The CHAIRMAN. What fruits are grown in the State of New York that you handle?

Mr. BRIDGES. Evaporated apples only.

The CHAIRMAN. And those are produced in other States as well and purchased by your members and handled?

Mr. BRIDGES. In other States and in other countries.

The CHAIRMAN. In other words, your members purchase from the producers or growers?

Mr. BRIDGES. Yes, sir.

The CHAIRMAN. And then process those fruits?

Mr. BRIDGES. No; they are processed by the packers, the fruit packers. To explain that more thoroughly I would say that California fruits are all processed in California, and foreign fruits are processed in the country in which they are produced. Dates only of all the fruits that are purchased are processed in this country, I mean that are purchased abroad, are processed in this country after they arrive here. That is, when they are repacked in smaller containers.

The CHAIRMAN. Just what is the function of your membership other than the wholesale grocers numbered among them?

Mr. BRIDGES. The functions of our membership, the brokers, of course, are intermediary between the fruit packers and the wholesale grocers and chain stores and the like. The jobbers, as I call them, are intermediaries between the large producer and the small wholesaler. For instance, the small wholesaler who is not able to buy in carloads nor to put up letters of credit for foreign importations, will buy from these jobbers who are in a position to do so and can break quantities.

The CHAIRMAN. Have you any grower members?

Mr. BRIDGES. No grower members.

The CHAIRMAN. Do you have any canners that are members of your association?

Mr. BRIDGES. We have canners that are associate members only.

The CHAIRMAN. Your fear is a fear of monopoly in the future?

Mr. BRIDGES. Yes, sir.

The CHAIRMAN. Mr. Hall, any questions?

Mr. HALL. Fear of monopoly in production only?

Mr. BRIDGES. Fear of monopoly in the matter of production as well as in distribution.

Mr. HALL. In distribution also?

Mr. BRIDGES. Yes, sir.

Mr. HALL. That is all I wish to ask.

The CHAIRMAN. Senator Smith, any questions?

Mr. SMITH. No, I thank you.

The CHAIRMAN. Mr. Breed, any questions?

Mr. BREED. Do I understand that if the meat packers made direct purchases of these fruits in foreign countries that the brokers in your organization would be practically eliminated?

Mr. BRIDGES. Yes, sir.

Mr. BREED. Do you know whether the meat packers have any foreign representatives or subsidiary corporations?

Mr. BRIDGES. I have heard that they have.

The CHAIRMAN. Do you think that it would be difficult or a hard thing for the meat packer to obtain any particularly substantial control of those products in foreign markets?

Mr. BRIDGES. I do not; money talks.

Mr. BREED. What was your answer?

Mr. BRIDGES. I do not think it would be hard for them to obtain control. Money talks, you know, and with their resources it would not be a hard proposition.

Mr. BREED. That is all I wish to ask.

The CHAIRMAN. Mr. Daily, any questions?

Mr. DAILY. Mr. Bridges, do you feel qualified to give any testimony as to the prices of canned fruits?

Mr. BRIDGES. No; I do not.

Mr. DAILY. Then that is all I wish to ask.

The CHAIRMAN. Thank you very much, Mr. Bridges. Who will be the next witnesses?

Mr. BREED. I will make a statement, if I may.

The CHAIRMAN. You may proceed.

STATEMENT OF MR. WILLIAM C. BREED, ESQ., OF THE FIRM OF BREED, ABBOTT & MORGAN, ATTORNEYS AT LAW, NEW YORK CITY, AND REPRESENTING THE NATIONAL WHOLESALE GROCERS' ASSOCIATION.

Mr. BREED. Mr. Chairman and gentlemen, I am a member of the firm of Breed, Abbott & Morgan, attorneys at law, New York City. We appear here for the National Wholesale Grocers' Association, for whom we have acted as counsel since practically the date of their organization in 1906. That organization, as you no doubt know, consists of wholesalers, known as jobbers of food products, and located in every State of the Union. I understand that the desire of the committee is that lawyers should not unnecessarily delay the progress of the testimony, but that the committee will give counsel for the different interests here an opportunity to present briefs, and perhaps to make an argument on questions that have come up.

The CHAIRMAN. We will also permit you to make oral arguments and follow same by briefs.

Mr. BREED. Therefore, Mr. Chairman, I shall content myself at this time, practically speaking, with offering a number of documents which may be evidence of a character helpful to you in passing upon this very important economic problem.

Following me the president of the National Wholesale Grocers' Association and one or two other witnesses will testify.

The notice which the committee very kindly issued to the trade of the United States asks for views concerning modification of the consent decree in the case of the United States *v.* Swift & Co., et al.

At the outset so far as the National Wholesale Grocers' Association is concerned I would like to say this organization had nothing whatever to do with the obtaining of this decree of the court in the action brought by the Government against the packers and which was consented to by the packers.

It is true that some wholesale grocers, as well I believe as some members of other trades, while the decree was under consideration by the Attorney General, may have been asked certain facts by the Attorney General, and I believe one or two members of our organization did respond to that invitation.

I would like also to make it perfectly clear that the National Wholesale Grocers' Association, and I believe this is true generally of the wholesale grocers throughout the United States, has no difference of opinion with respect to the so-called Big Five packers. They have never had any difference of opinion in a large way with respect to distribution or otherwise with the meat packers until about the time when the meat packers began to go into grocery lines. By that I mean the production, manufacture of canned goods and the purchase of raw food products; and then undertook to use their private refrigerator and peddler car systems to distribute these so-called unrelated food products to the retailer who was the customer of the wholesale grocers.

I think that may be said to be about the first real difference of opinion between the meat packer and the wholesale grocer. The wholesale grocer for many years has distributed meat food products of the packer and under the packer's brands. The meat packer, in other words, has used the wholesale grocer in many instances as distributor of his various products made out of meat or known as meat food products.

In July, 1919, however, the National Wholesale Grocers' Association, believing that the meat packers were allowed by the railroads of the United States preferential service in the ownership and use of their refrigerator and peddler cars for the distribution of food products which the meat packers either bought or manufactured and canned, began a proceeding before the Interstate Commerce Commission against the railroads of the United States charging such preferential service.

Mr. Thorne, who was the special counsel of the National Wholesale Grocers' Association in that proceeding together with one of my partners, Mr. Dana T. Ackery, will give you the facts which I think you will desire to have, particularly bearing upon the so-called preferences, advantages and special privi-

leges which these wholesale grocers asserted that the meat packers utilized and enjoyed constituting unfair competition.

The CHAIRMAN. Have you any copies of the record in that case available?

Mr. BREED. Yes; and that record will be presented also.

Mr. CLIFFORD S. THORNE. There are about 5,000 pages in the record, Mr. Chairman; do you want it printed?

The CHAIRMAN. We do not want it printed, but would like to have you file it here and let us read it.

Mr. BREED. We will be glad to do that, and will know of the energy and healthy mentality of the committee if they can read those 5,000 pages.

The CHAIRMAN. We have read more than that.

Mr. BREED. I would now like to refer to a few historical facts preceding the decree of the court of February, 1920.

In July, 1918, the Federal Trade Commission made its first report to the President of the United States based upon an investigation of the meat packing industry which had, as I understand, preceded that time for a period of more than a year and which investigation was made at the request of the President of the United States.

In December, 1918, hearings were begun before the Committee on Agriculture of the House of Representatives on H. R. 13324, a bill to regulate the packers.

In January, 1919, hearings were begun before the Committee on Agriculture and Forestry of the United States Senate, on Senate bill 5305, to regulate the meat packing industry.

In July, 1919, as I have said, the National Wholesale Grocers' Association began its proceeding before the Interstate Commerce Commission against the railroads claiming that the meat packers enjoyed a preferential service.

In July and August, 1919, the Attorney General, at least publicly, had taken up the subject of investigation of the meat packers, and according to the public record of September 17, the Government was proceeding before the Federal grand jury in Chicago on an investigation of the meat packers.

The CHAIRMAN. What is the public record to which you refer?

Mr. BREED. A newspaper article.

The CHAIRMAN. All right.

Mr. BREED. And also the Government either had begun or was just about to begin a grand jury investigation of the meat packers in New York. This also according to the newspaper report.

In December, 1919, there was a public announcement in the press, and I refer particularly to an article which I have in my hand published in the New York Times of Saturday, December 20, 1919, in the editorial column, headed "The Agreement with the Packers." I think that might be offered in evidence, but I would not care to have it written in just at this place, as it would destroy the continuity of my statement, but would suggest that it be put near the end of my statement.

The CHAIRMAN. That may be done.

Mr. BREED. In January, 1920, there were also public press reports, numerous ones of which I have here, stating details of the proposed decree reported to have been agreed to by the meat packers, and that Attorney General Palmer appeared before the Committee on Agriculture and Forestry of the Senate and also before the Committee on Agriculture of the House as early as Wednesday, January 7, 1920, and submitted the stipulation, which is without date but signed by the Big Five meat packers, showing that they were willing to enter into a decree containing the stipulations referred to.

These two latter dates, namely, the first published date that we saw of this proposed decree, December 19, and the Attorney General's testimony in early January, I refer to because of Mr. Campbell's statement that he had no opportunity to produce on behalf of the California canneries before the court making such decree any testimony in the action brought by the Government against the meat packers. There is no question that at least two months prior to the date of the entry of that decree, which decree was entered February 27, 1920, the entire public of the United States was thoroughly informed in a broad way of exactly what was proposed by the meat packers and accepted by the Government in connection with the adjustment of this very important economic question which had been discussed publicly as the result of the Federal Trade Commission's examination and published report and the hearings before the Committee on Agriculture and Forestry of the Senate and Committee on Agriculture of the House.

As I have said and as we all know, the date of the decree itself was February 27, 1920. I should now like to refer to a few historical facts for the record which happened after the date of the entry of the court's decree.

I first call attention to the fact that the hearings were continued upon the so-called packers' control bill before the Senate Committee on Agriculture and Forestry and also before the House Committee on Agriculture; and they were continued from time to time until the report of the joint conference committee which immediately preceded the passage of the packers' control bill on August 15, 1921.

The records of the hearings before those committees, and the records of the conference committee report show that all reference to matters such as prohibition against the meat packers operating stock yards, stock yard market newspapers, unrelated products, and so forth, which were covered by the decree that the packers consented to February 27, 1920, were eliminated either from the provisions of the bills under discussion or in conference, and the fact of the existence of the consent decree was repeatedly referred to, so that the packers' control bill when finally passed on August 15, 1921, contained no reference to these items.

And if I may be permitted to express a general opinion of law I would say that the packers' control bill, contrary to Mr. Campbell's advice, relates only to the subjects which are referred to in the title of the bill and the body of the bill, essentially meat and meat food products, and does not give power to the Secretary of Agriculture to regulate or control the packers if this decree is modified and they are allowed to go into unrelated lines.

The CHAIRMAN. We would like to have you gentlemen discuss that in your arguments, if you see fit.

Mr. BREED. We will be glad to do so. We wish very much that this committee could find some way of invading senatorial dignity and asking the conference committee of the two Houses of the Congress what the real truth was, as I am sure you would find that the facts which I have stated are correct.

I would also call attention to the fact that the hearings in the proceeding brought by the National Wholesale Grocers' Association against the railroads of the United States, in which the meat packers had made special application to intervene, continued after February 27, 1920, the date of the decree, and that the records of those hearings will show that the meat packers' attorneys called attention to the fact that the decree of the court having been consented to by them with respect particularly to their going out of unrelated food lines, thereby made the subject before the Interstate Commerce Commission so far as the carrying by the packers in their refrigerator and peddler cars of these unrelated food products were concerned, "an academic question." I believe those were the words used by the meat packers' counsel.

It now appears that after the decision of the Interstate Commerce Commission in that case, and after the passage of the packers' control bill, eliminating subjects to unrelated food products, that we now are before your committee on the question of a modification of their consent decree, which certainly was a fact in both of those proceedings considered by both parties.

I want now to state in behalf of the wholesale grocers that we consider the meat packers, as such, perform a very great and vital economic service to the public and citizens of the United States; perhaps one which could be performed in no other way and in no better manner or in no more economical manner.

I also personally believe that the meat packers entered into and agreed to the decree of the court of February 27, 1920, in all honesty and with the intention to settle the economic question that was then under such widespread public discussion. And I shall read from the brief before the Interstate Commerce Commission in the case of the National Wholesale Grocers' Association v. Director General of Railroads, and so forth, being a brief filed on behalf of Armour & Co., Morris & Co., Wilson & Co., Swift & Co., intervenors, page 12:

"It was in order to make publicly of record such an absolute and unqualified denial of any effort to monopolize the food products of the country as could not be disputed by any intelligent mind that the packers, defendants in the equity proceedings, consented to the entry of the decree in that case."

That is a public record and I believe expresses as concisely, clearly, and forcibly the position of the big packers as of that time as could be done.

I would also like to say at the request of the officers and directors of the National Wholesale Grocers' Association, with many of whom I have talked, that if the meat packers have changed their mind with respect to their will-

ingness to comply with the terms of the decree which they entered into with such patriotism and fervor, we would all be greatly helped and aided if they would come here before this committee and state their present views on the subject in a perfectly open and frank fashion, and I am sure they would receive the honest and serious consideration of every person who has appeared here.

Mr. Vernon Campbell not only stated before your committee, but he appeared before the Committee on Agriculture of the House and the Committee on Agriculture and Forestry of the Senate and made practically the same statements as made to you, only he did not hesitate there to brand the wholesale grocer in more scathing terms and, among other things, he stated before the Committee on Agriculture—

The CHAIRMAN (interposing). Give the page, please.

Mr. BREED. Page 108 of the hearings before the Committee on Agriculture of the House of Representatives. Statement of Mr. Vernon Campbell, of San Jose, Calif.

The CHAIRMAN. What bill is it?

Mr. BREED. H. R. 5084, May 23, 1921.

The CHAIRMAN. You may proceed with your statement.

Mr. BREED. He stated that he appeared for the California Cooperative Canneries, and that he objected to this decree as the most vicious thing that ever came before the American people, and this question was finally asked him by Mr. Voigt:

"Mr. VOIGT. The men that are back of this decree, that is the power you are complaining of, are the wholesale grocers of the United States?"

"Mr. CAMPBELL. Of course. Their interest is not the interest of the consumer or the producer."

I refer generally to his testimony given at that time as showing his bias and his failure to disclose any facts which have been developed in this proceeding indicating his connection with the meat packers.

As bearing on the history of this matter I think I should also refer to and would like to have put into the record the statement made by the Attorney General before the Committee on Agriculture and Forestry of the Senate in hearings on bill 2199 and 2202, being in part 4 of the printed hearings of that committee, page 37, beginning with the words "Attorney General" near the top of page 37, and closing just ahead of the question by Senator Norris near the bottom of page 39:

"The ATTORNEY GENERAL. I had the feeling that in view of the long-time investigation of the packers, the way in which that question had been mauled and hauled around in the country, that they were entitled either to a vindication or the Government was entitled to a judgment; that the time had approached for a show-down in the courts.

"I was, of course, immediately faced by the question of whether the proceedings should be in the criminal courts or on the civil side. The Sherman antitrust law, as you gentlemen, of course know, is both a criminal and a civil statute. It provides a penalty and provides a civil remedy. I have never conceived that the Attorney General of the United States is always a prosecuting officer. I have felt that he was the counsel for the Government and through it the people for whom the Government is built to serve. I believed it was his duty to do with respect to those clients as he would in private life; that is, decide which course, if more than one were open, would be in the public interest and would bring justice to all parties.

"Without having definitely decided whether we would proceed in the criminal courts, or in the civil courts. I instructed my assistants to develop some further facts in relation to the case before a grand jury. They went to Chicago and called some witnesses, not with any definite idea of getting an indictment but with the purpose of getting out some further evidence that we needed. Of course, it has not been as easy matter to decide in a case of this kind whether the civil or the criminal processes shall be invoked. The Sherman antitrust law has been upon the statute books 30 years without any Attorney General having succeeded in putting anybody in jail under it, and the prospect of the criminal prosecution was not bright.

"While the case was pending before the grand jury in Chicago, and about the time that I had issued orders to have a grand jury investigation in the city of New York to develop some further evidence that we felt we needed, I received intimations that these packers desired to see me with reference to

Justice; that they desired to present their side of it to the Department of Justice; that they felt they had never been accorded a proper hearing—I quote the message—before the Federal Trade Commission; and that before I acted they would like an opportunity to present their side.

“I replied to that message that if the five great packers desired to see me with the idea of dissuading me from taking any action against them, if they desired to see me for the purpose of arguing with me as to the merits of the controversy, I did not care to meet them. I had gone into that; I had satisfied myself that the Government had a case, and that it was the duty of the Attorney General to present it in some court. I stated, however, that if they desired to come to me with the idea that they would surrender to the Government; or that they desired to see how far they could go in complying with the requirements as the Government's law officer should lay down, that I should be perfectly willing to see them, as I should be willing to see any defendant or prospective defendant in a civil or criminal prosecution which the Government might have in mind. I told them that if they desired to come, they should come through their principals in order that we might discuss the matter as a business proposition and not as a lawyers' proposition.

“Frankly, I thought that would be the end. But I was advised then that they would like to send a representative, competent, who would speak for all of them, and who would discuss the matter with me from the point of view of my reply, and that point of view only, without argument as to the merits of the case, without any attempt to persuade me to stop any contemplated action, but only with the thought that they would put themselves in the position, as they put it, of law-abiding citizens and do what the Government required them to do, if they could.

“With that understanding, negotiation, if you may call them ‘negotiations,’ began. At any rate, a representative of the Company came to me, and I discussed it with him.

“Senator NORRIS. Who was the representative?

“The ATTORNEY GENERAL. Well, the first man to come to me was Mr. Dunham, who is the vice president of Armour & Co., and I think very close to Mr. Armour, who came to me with satisfactory credentials to show that he was in effect speaking for all of them.

“After that it was a matter of a couple of months, we discussed what I thought the packers ought to do; they answered as to what they felt they could do and what they could or would not do. And prepared a draft of a plan which I was willing to put into effect; and after a very great deal of hesitancy and strong objections, they finally assented to it.

“Senator NORRIS. The suit had not yet been commenced?

“The ATTORNEY GENERAL. No.

“Pending these discussions, I withheld a further proceeding before the grand jury in New York, without any agreement so to do. I hoped that possibly, would come to a point where I could call it a finished piece of business without a grand jury investigation.

“Senator RANSDELL. You mean Chicago, do you not?

“The ATTORNEY GENERAL. No; I did not. I started in Chicago, but moved to New York.

“What I had in mind, gentlemen, was this: An indictment, even if followed by a conviction, and even if that were followed by putting somebody in jail, would not of itself have brought any relief directly to the situation which had been the ground for so many complaints.

“A bill in equity under the Sherman antitrust law, bitterly contested, might not have achieved some of the things that I felt and thought everybody else who had given this question any study felt ought to be accomplished if we were going to have any real results from some disintegration of this business. Therefore, it seems to me that it was perfectly proper if I could, to require, in the circumstances, that certain things be done, which, under other circumstances, we might not be able to accomplish, and if I were able to get that much I would do more for my client, the Government of the United States, and the people, than if I blazed away in an adverse proceeding, either in criminal or civil court.

“I had particularly in mind that I wanted to accomplish five things, first, to take these packers, their subsidiaries and their principal stockholders, out of the stockyard business and keep them out, and out of the terminal railroads which entered the stockyards and keep them out, and out of the live-

stock market publications and keep them out; that with the idea of giving to the producers of cattle the relief which I understood they had long been demanding. If I understood their contention aright, it was that they were being compelled to sell their product in the market controlled by the purchaser, and that they ought to have a free market, either owned by the public or in which they themselves might be largely interested, if not in a controlling position. That I insisted upon from the beginning, and that is written in this decree in language that permits of no equivocation or doubt, and under it all of these packers and all of their owned subsidiary companies and all of the large individual defendants—individual stockholders, whose names I will give you—are put out and kept out forever from the stockyard business, the terminal railroad business, and the livestock or market publications, and their interest in those concerns are to be disposed of under such a plan as the court may determine.

"In detail, the plan is worked out so that the defendants themselves may present a plan to dispose of their interests, and if that plan is not approved by the court, then a method is made by which the court may fix the plan. This is designated for the purpose of permitting the producers themselves, if they desire, to be substituted in the ownership of the stockyards and terminal railroads for the packers.

"The second thing I desired to accomplish was to take them out and keep them out forever from the public storage warehouse business; that is done in this decree.

"The third thing I desired particularly to do was to take them out and particularly to keep them out, in order to answer the menace which we felt in the country was really competitive business, of the retail business and every line and of every kind. That is done by this decree.

"And the next thing I desired to do was to take them out and keep them out of all of the unrelated lines of business. I can not in the scope of my remarks go into detail as to how that is done, but this agreement speaks very plainly for itself in that regard.

"All those things I have mentioned I insisted upon and would not under any circumstances recede from.

"And this last is accomplished, so that the defendants, being the companies, their subsidiary companies and most of the individual stockholders, are restrained from owning any controlling interest in any business of a kind which deals in the goods which are scheduled in this decree, and those goods cover the entire range of commodities in which the packers and their subsidiary companies have heretofore dealt, outside of meat and its by-products, and outside of butter, milk, eggs, cheese, and poultry."

I would also like to say to the committee in all honesty and with the greatest sincerity that the wholesale grocers regret the position which they voluntarily find themselves in before your committee, namely, of being asked to state why they oppose modification of this decree—because, of course, they must be charged in your minds with the idea that their statements might be prejudiced—but their position is anomalous. It almost forces them into an attack upon the meat packers when as a matter of fact the meat packers have consented to an action in the Supreme Court of the District of Columbia, and we have absolutely no evidence that the meat packers are not satisfied with that decree; and the wholesale grocers are satisfied with it as settling an economic question. And yet, we, by reason of the statements made by Mr. Vernon Campbell in favor of modification, and his connection or alleged or presumed connection with the meat packers, are almost forced into an attack upon the meat packers which might seem to be based on some enmity. The wholesale grocers have no enmity against the meat packers. The wholesale grocers are, of course, opposed to regulated monopoly, such as the meat packers are, extending their monopoly into the food production field because they essentially believe in the competitive system for production and distribution of food products, and honestly believe as an economic theory that that produces the best results for the largest number of people in the United States, and gives to the consumer foods at the lowest cost.

We will, however, I suppose produce facts which will seem to indicate that this is a fight against the meat packers, and yet we have no evidence that the meat packers want to be fought, and we have no desire to fight them in any respect with this consent decree as it stands.

I would now like to offer in evidence a letter of Secretary Hoover, written February 19, 1919, when he was Food Administrator, to the President of the

United States, which is a public document, showing his position on this great economic subject and which sustains, I think, the evidence which has been brought out here that a monopoly such as that which the Big Five packers constitute should not be allowed to extend into unrelated lines.

The CHAIRMAN. Has that been published before, or put into our record here, I mean?

Mr. BREED. I think not.

The CHAIRMAN. I thought you put it in, Senator Smith.

Mr. SMITH. I put in those extracts from it that I considered bearing especially upon this subject and not the whole letter.

The CHAIRMAN. All right, the letter may go in.

(The letter referred to is here copied in full into the record, as follows:)

UNITED STATES FOOD ADMINISTRATION,
Washington, D. C., February 10, 1919.

The President has directed the publication of a confidential report made to himself by Herbert Hoover, United States Food Administrator, six months ago in order to establish the real position of Hoover and the Food Administration on the control of the Chicago packing industries. In this report Mr. Hoover again reiterated his former advice of the national danger from this growing domination of the Nation's food and strongly recommended constructive legislation at the hands of Congress rather than the doubtful stretch of temporary war powers of the Government as being the only method by which a permanent solution can be obtained.

The report follows:

SEPTEMBER 11, 1918.

DEAR MR. PRESIDENT: In response to your request, I beg to set out my observations on the recommendations of the Federal Trade Commission, with regard to the five large packing firms.

I scarcely need to repeat the views that I expressed to you nearly a year ago, that there is here a growing and dangerous domination of the handling of the Nation's foodstuffs.

I do not feel that appreciation of this domination of necessity implies wrongdoing on the part of the proprietors, but is the natural outgrowth of various factors which need correction. In an objective understanding of this situation, it is necessary to review the underlying economics of its growth.

At one time our food animals were wholly slaughtered and distributed locally. The ingenious turning to account of the by-products from slaughtering when dealt with on a large scale gave the foundation for consolidation of slaughtering in the larger centers. From this grew the necessity for special cars for live-stock transport and the large stockyards at terminals. The creation of those facilities were largely stimulated and to a considerable extent owned by the packers. Added to this was the application of refrigeration processes for the preservation of meat, which at once extended the period of preservation and the radius of distribution from the slaughter centers, enabled larger slaughtering nearer the great western producing area, and further contributed to the centralization of the industry. This enlarged scope, particularly the refrigeration operations, require not only the expensive primary equipment, but a network of refrigerator cars, icing stations, and cold storage at distribution points. This special car service in products is of the nature of the Pullman service: it must traverse railroad lines independent of ownership, and, moreover, it is seasonal and varies regionally in different seasons. For each railway to have foreseen and to have provided sufficient of this highly specialized equipment is asking the impossible, and, in any event, no particular railway could be expected to provide sufficient of these cars to answer the shifting of seasonal and regional demands outside its own lines.

Thus, the provision of a large part of the stockyards and car services has naturally fallen in considerable degree to the larger and more wealthy packers who have used their advantages as in effect a special and largely exclusive railway privilege with which to build up their own business.

From the stage of establishment of a multiplicity of marketing facilities, such as cold storage, warehouses, branch offices, etc., grew direct dealings with retail dealers and finally resulted in a large elimination of the wholesale traders.

Through this practical railway privilege, the numerous branch establishments, the elimination of wholesale intermediaries and with large banking alliances,

this group have found themselves in position, not only to dominate the distribution of interstate animal products, but to successfully invade many other lines of food and other commodity preparation and distribution. Their excellence of organization, the standing of their brands, and control of facilities now threaten even further inroads against independent manufacturers and wholesalers of other food products. They now vend scores of different articles, and this constantly increasing list now approaches a dominating proportion of the interstate business in several different food lines.

It is a matter of great contention as to whether these five firms compete amongst themselves, and the records of our courts and public bodies are monuments to this contention.

Entirely aside from any question of conspiracy to eliminate competition amongst themselves and against outsiders, it appears to me that these five firms, closely paralleling each other's business as they do, with their wide knowledge of business conditions in every section, must at least follow coincident lines of action and must naturally refrain from persistent, sharp, competitive action toward each other. They certainly avoid such competition to considerable extent. Their hold on the meat and many other trades has become so large through the vast equipment of slaughter houses, cars, and distributing branches, and banking alliances which each of the five controls, that it is practically inconceivable that any new firms can rise to their class, and in any event even sharp competition between the few can only tend to reduce the number of five and not increase it. Of equal public importance is the fact that their strategic advantage in marketing equipment, capital and organization must tend to further increase the area of their invasion into trades outside of animal products. Furthermore, as these few firms are the final reservoir for all classes of animals, when the few yards where they buy become erratically oversupplied with more animals than their absolute requirements, it remains in their hands to fluctuate prices by mere refusal to buy—and not necessarily by any conspiracy. In other words, the narrow number of buyers undoubtedly produces an unstable market which reacts to discourage production. It can be contended, I believe, that those concerns have developed great economic efficiency, that their costs of manufacture and profits are made from the wastes of forty years ago.

The problem we have to consider, however, is the ultimate social result of this expanding domination, and whether it can be replaced by a system of better social character, and of equal economic efficiency for the present and of greater promise for the future. It is certain, to my mind, and these businesses have been economically efficient in their period of competitive upgrowth, but, as time goes on, this efficiency can not fail to diminish and, like all monopolies, begin to defend itself by repression rather than by efficiency. The worst social result of this whole growth in domination of trades is the undermining of the initiative and the equal opportunity of our people and the tyranny which necessarily follows in the commercial world.

The Federal Trade Commission's recommendations fall into three parts:

(A) That the Railroad Administration take over all animal and refrigeration car services.

(B) That they take over the stockyard terminals.

(C) That the Federal Government itself take over the packers' branch houses, cold storage warehouses, etc., with view, I assume, to the establishing of equal opportunity of entrance into distribution among all manufacturers and traders.

As to the first part of this recommendation, on car service, I am in full agreement and may recall to you that soon after its installation we recommended that the Railway Administration should take over and operate all private car lines in food products. This has, to some degree, been accomplished through their car service division.

These arrangements are purely under war powers, and if the reforms proposed are to be of any value, they must be placed upon a permanent basis and not merely for the war. There can be no doubt that the car services, in order to obtain the results desired and the greatest national economy, must be greatly expanded and must be operated from a national point of view, rather than from that each individual railway. Moreover, they are highly technical services beyond the ordinary range of railway management and need to embrace all cooled cars as well as meat cars. Whether this service on a national scale should be conducted by the Government or by private enterprise, under control as a public utility, seems to me to require further thought and in any event to depend upon the ultimate disposal of the railway question.

As to the stockyards, I am in agreement that they should be entirely disassociated from the control of the packers. A distinction must be drawn between the stockyards as a physical market place and the buying and selling conducted therein. In the first sense, the complaints largely center around the exclusion not of buyers and sellers, but of the prevention of competitors from establishing packing plants either upon land of the yards, or of obtaining track and other connections therewith. The solution of this problem in permanent form will also depend upon the ultimate solution of the railway problem. If the Government should acquire the railways, it would appear to me that it should, as a part of the system, acquire the yards. If the Government returns the railways to their owners, it would appear to me that these ends could be accomplished by appropriate regulation under the Interstate Commerce Commission, and this should be done *ad interim*. As to the wrong practices between buyers and sellers, these would not be corrected by the Government owning or controlling the physical yards; they are, in fact, now under war regulation by the Department of Agriculture.

As to the recommendation that the Federal Government should at once take over the packers' branch houses, cold storage and warehouse facilities, I find much difficulty. I do not assume that the trade commission contemplates the Government entering upon the purchase and sale of meat and groceries at these establishments. Nor does it appear to me that the individual separate and scattered branch houses of the packers furnish any proper physical basis for free terminal wholesale markets. In discussion with the independent packers, I find no belief that the packers' branch houses would serve as a basis of universal market service, and I find much differences of opinion as to public markets as a solution. Any of the great packers' equipment in this particular would in any event require a great deal of extension to effect such objectives, and we are in no position to find the material and labor during the war.

We do need an absolute assurance to the food trades of such terminal facilities as will allow any manufacturer or dealer in any food product equal opportunity to handle and store his goods pending their final distribution. The usefulness of either public, wholesale, or retail markets in the promotion of these ends is a matter of great division of opinion. The most predominant feeling in the independent trades is that if sites can be made available, adjacent to railway facilities, the trades themselves would solve the matter. In any event, the whole public market question is peculiar to each city and town, and my own inquiries find little belief that the present branch houses of the packers would serve this purpose. Furthermore, my own instinct, in any event, is against Federal ownership of such facilities, and our own inquiries rather indicate that if transportation questions, together with factors mentioned later on, are put right, this problem will solve itself. Altogether, I do not consider that the prime object of maintaining the initiative of our citizens and of our local communities is to be secured by this vast expansion of Federal activities.

There are certain matters relating to the development and control of the packing industry which are not referred to in the report of the trade commission, which appear to me of first importance. One effect of the great centralization of this industry has been the stultification or decline in slaughter near many large cities and towns. I believe this has been initially due to the inability to recover by-products to such advantage as under the centralization, a disability that does not now generally exist, for most of these products now have an outlet. It has also been partially due to the cheaper animals from the cheaper lands of the West—and this disparity in costs of animal production has greatly diminished with settlement of the country. It is also partially due to at least the fear that the packers would direct their power of underselling against such enterprises. If proper abattoirs could be extended near the larger towns, possibly with municipal help and the operations therein protected from illegitimate competition, I believe they would not only succeed, but would greatly stimulate the local production of meat animals. One effect would be a great stabilization of prices by a wider based market than that now so largely dependent upon a small group of buyers.

Another phase of the question lies around the fact that I feel the solutions propounded by the trade commission will not entirely solve the problem of the invasion of many other lines of food handling besides animal products. This portion of their business is more largely supported by their larger credits and their elimination of the wholesale grocer, rather than

upon railway privilege. As to whether such goods can be vended more economically direct than through the wholesaler is a matter of much contention. It seems to me, however, that this whole phase of absorption of other food industries requires consideration. It appears to me at least worth thought as to whether these aggregations should not be confined to more narrow and limited activities, say those involved in the slaughter of animals, the preparation and marketing of the products therefrom alone. Such a course, might solve the branch house problem, and it is not an unknown legislative control, as witness our banks, railways and insurance companies.

One other cause also chokes the free marketing of food in the United States, which will not be reached by the ultimate action on the above lines, and that is the present insufficient standardization of our food products, and this would contribute to strengthen the independent manufacture.

In summation, I believe that the ultimate solution of this problem is to be obtained by assuring equal opportunity in transportation, equal opportunity in the location of manufacturing sites and of terminal sites, and the limitation of the activities of these businesses.

In this situation, I believe that the fifty minor meat packing establishments and the hundreds of other food preservers could successfully expand their interstate activities and that local slaughter would increase with economic gain to the community, and all through continued competition constantly improve our manufacturing and distributing processes to the advantage of both producer and consumer. The detailed methods, except in the manifest case of car and stock yard control, require much more thought.

The activity of the Food Administration is necessarily founded on securing the largest service and the least disruption and danger to distribution during this period of national strain. To take such a radical step as to seize the packers' branch houses for the war would effect no permanent values and would surely disrupt distribution at this time. The packers are today performing their economic duties of preserving and distributing the meat supplies to our own population and the Allies, as distinguished from the social results of their organization, and the only outstanding question from a purely win-the-war point of view is whether the packers are today imposing upon their competitors and whether their remuneration is exorbitant. These are matters which can be remedied during the war by regulation and taxation.

I would, in any event, separate the whole problem into a question as to what should be done as a war emergency and what should be done as a permanent solution of the whole question. I do not feel that the Government should undertake the solution of the problem by the temporary authority conferred under the war powers of the Railway and Food Administrations, which must terminate with peace, but rather that it should be laid before Congress for searching consideration, exhaustive debate, and development of public opinion, just as has been necessary in the development of the public interest in our banks, insurance companies, and railways.

Yours, faithfully,

HERBERT HOOVER.

His Excellency the PRESIDENT OF THE UNITED STATES, *Washington, D. C.*

MR. BREED. I now put in evidence a letter written by the Hon. John W. Weeks, addressed to the Hon. William S. Kenyon, United States Senate, which is a public document, taken from part 2 of the hearings of the Committee on Agriculture and Forestry of the Senate, on Senate bill 2199 and Senate bill 2202, of September 3, 1919. The letter is dated Lancaster, N. H., August 22, 1919.

(The letter referred to is here copied in full in the record, as follows:)

MOUNT PROSPECT, LANCASTER, N. H., *August 22, 1919.*

HON. WILLIAM S. KENYON,

United States Senate, Washington, D. C.

MY DEAR KENYON: I am well aware how ineffective it is for one who has not heard all the evidence to pass on any pending matter, and, moreover, it is almost an impertinence for a farmer living in the extreme northern end of New Hampshire to make a suggestion relative to legislation, but after I finish my day's work I have little to do except to look over the papers, and I am following some of the activities of my friends in Washington with interest.

One of the things now receiving a great deal of newspaper attention and in which we are all more or less interested is the question of food supplies, and in that connection the activities of the packers are receiving the usual denunciations and defense. I have rather positive views on that subject, which

may or may not accord with yours, but, in any case, I want to very briefly send them to you.

Such investigations as I have made of the packers' activities in the past leads me to the conclusion that they handle the meat business of the country most efficiently, and that if there were not such organizations as the packers with their methods of distribution the consumers would probably pay more for their meat products and in many cases not get as good meats as they do under present conditions. I doubt if that general proposition can be successfully controverted, and personally I think it would be a pity to interfere with a system that enables a citizen in the most remote section to get the benefit of this great business with almost as much regularity and with very little more cost than the citizen in the large center, but there, I think, the packers ought to stop. Unfortunately they have not done so and, as I see it, are gradually reaching out and either temporarily or permanently controlling other food products. They did it during the war without any question, purchasing the output of many canning factories, the products of which had nothing whatever to do with the meat business, and selling it to the Government in many cases or to others in some cases.

I am told for example, that the Cudahys are building enormous canning factories in the Hawaiian Islands and purpose controlling the canned pineapple industry, which is a very important one there, as you know. I do not think that that kind of activity should go on. It would be unthinkable and certainly unbearable to permit a half-dozen men or a half-dozen firms to obtain control of the food supply of this country, even assuming that it would, on the whole, be efficiently managed. Undoubtedly the packers will contend—and the contention has a great deal of merit—that having such distribution facilities for their meat products those facilities should be worked to their full capacity to get the highest efficiency and a resulting lower cost, and that for that reason they should go into the manufacture and distribution of other products than meat. But there is grave danger of trouble resulting from such a monopoly which is too great to warrant its being permitted even if there is a lessening of efficiency as a result.

If you could work out a solution of this difficulty which would divorce the packers from handling of any food products not related to the legitimate packing industry, my impression is that you would leave that part of the high cost of living problem in the best possible shape.

I am sure you will pardon this intrusion and will file my letter in the good old waste basket if you do not see anything in it which merits your consideration.

Sincerely yours,

JOHN W. WEEKS.

Mr. BREED. On the economic question of course nothing that any of these witnesses can produce can equal the facts contained in the report of the Federal Trade Commission on this subject. That report is the result of investigation and contains innumerable facts showing the character of the monopoly of the Big Five meat packers; the methods which have been used by them, and the methods which were being used by them in getting into these unrelated lines.

We hope this committee will take cognizance of that report of the Federal Trade Commission, and also hope that members of the Federal Trade Commission will appear here, as they should, and produce pertinent facts.

The CHAIRMAN. The Federal Trade Commission expects to appear before the committee.

Mr. BREED. I would merely like to read into the record from the summary and report of the Federal Trade Commission on the meat packing industry, being their letter to the President of the United States dated July 3, 1918, the following sentences:

"It appears that five great packing concerns of the country, Swift, Armour, Morris, Cudahy, and Wilson, have attained such a dominant position that they control at will the market in which they buy their supplies, the market in which they sell their products, and hold the fortunes of their competitors in their hands."

The CHAIRMAN. At what page is that to be found?

Mr. BREED. At page 24 of the report and summary and part 1, dated June 21, 1919. I quote further from the report:

"We have found that it is not so much the means of production and preparation, nor the sheer momentum of great wealth, but the advantage which is obtained through a monopolistic control of the market places and means of transportation and distribution. If these five great packing concerns owned no pack-

ing plants, killed no cattle, and still retained control of the instruments of transportation, of marketing, and of storage, their position would not be less strong than it is."

I continue quoting from the report of the Federal Trade Commission:

"The actual and potential powers of these corporate groups and individuals are far greater and much more menacing to the welfare and true prosperity of the Nation than this enumeration of industrial possessions would indicate. The greater menace lies in the fact that the Big Five have entrenched themselves in what may be called the strategic positions of control of food distribution. These strategic positions, which serve not only to protect the controls which the big packers have already acquired but insure their easy quest of new fields, are"—

Then it says:

"Stockyards, with their collateral institutions, such as terminal railroads, cattle loan banks, market papers, private refrigerator-car lines for the transportation of all kinds of perishable foods.

"Cold-storage plants for the preservation of perishable foods.

"The branch-house system of wholesale distribution.

"Banks and real estate."

The CHAIRMAN. Those are merely conclusions and opinions of the Federal Trade Commission, are they not?

Mr. BREED. They are their statements in their summary of their report, facts as I understand backing up these statements being included in several volumes constituting the Federal Trade Commission's report.

The CHAIRMAN. You do not know what is in the files of the Federal Trade Commission to substantiate this statement, do you?

Mr. BREED. I did not get that question, Mr. Chairman.

The CHAIRMAN. Do you know what is in the files of the Federal Trade Commission on which these conclusions are based?

Mr. BREED. I only know what is contained in the reports that are published. I have no information about details that they have in their files, nor that which may be in the files of the Attorney General on the same subject. I do know, however, that the files of the Attorney General's office and also of the Federal Trade Commission should contain much of importance on these matters. And in that connection I would call attention to the following list of prosecutions of the meat packers, which were conducted largely by the various Attorneys General of the United States and running over a period of the last 20 years.

SOME PROSECUTIONS OF THE MEAT PACKERS.

1902-3.—United States *v.* Swift & Co., Cudahy Packing Co., Armour & Co., Morris & Co., and others. Proceedings resulting in an injunction, restraining defendants from engaging in combination and conspiracy in restraint of trade and commerce in fresh meats among the States. Proceedings brought in United States District Court for the Northern District of Illinois. Injunction granted.

1905.—United States *v.* Armour & Co., Swift & Co., Morris & Co., Cudahy & Co., J. Ogden Armour, Charles W. Armour, Louis F. Swift, Edward F. Swift, Edward Morris, Ira N. Morris, Edward A. Cudahy, and others. Indictments returned by United States grand jury against the above-named defendants in the United States District Court for the Northern District of Illinois. Individual defendants pleaded immunity on the ground that they were compelled to give evidence against themselves before the Commissioner of Corporations. The jury found for the individual defendants. The corporate defendants were held for further trial. Cases against them continued and adjourned from time to time. *Nolle prosequi* entered on February 25, 1913. (See 142 Fed., 808.)

1905.—United States *v.* Swift & Co. et al. Injunction granted in 1903, immaterially modified by the United States Supreme Court. (196 U. S. 375.)

1907.—United States *v.* Armour Packing Co., Swift & Co., Morris & Co., Cudahy Packing Co. Defendants convicted in the United States District Court for the Western District of Missouri for violations of the Elkins Act of 1903, in obtaining unlawful concessions in certain freight rates. Affirmed in the United States Supreme Court. (209 U. S., 56.)

1910.—United States *v.* Louis F. Swift, Edward F. Swift, Charles H. Swift, Francis A. Fowler, Edward Tilden, J. Ogden Armour, Arthur Meeker, Thomas J. Connors, Edward Morris, Louis H. Heyman. Indictments filed against these defendants in United States Circuit Court, Northern District of Illinois,

eastern division, charging a combination in restraint of trade and interstate commerce, and the maintenance of understanding, agreement, and arrangement among themselves whereby they fixed, regulated, and controlled the prices of their products.

March 22, 1911, defendants' motions to quash indictments denied by court.

March 22, 1911, pleas in abatement filed by defendants. Motion to strike from files denied. Demurrers to the pleas in abatement sustained. (188 Fed., 1002.)

May 12, 1911, demurrers to indictments overruled. (188 Fed. 92.)

March 26, 1912, verdict of jury, not guilty. Defendants discharged.

1910.—United States *v.* Louis F. Swift, Edward F. Swift, Charles H. Swift, Francis A. Fowler, Edward Tilden, J. Ogden Armour, Arthur Meeker, Thomas J. Connors, Edward Morris, Louis H. Heyman. Indictments returned against above defendants charging them with engaging in a conspiracy in restraint of trade in the slaughtering of live stock, and charging them with a conspiracy to eliminate competition which would otherwise exist between the Swift, Armour, and Morris defendants and the National Packing Co. (a corporation owned and controlled by Armour, Morris, and Swift interests) in the purchase of live stock and the sale of fresh meats and the use of uniform and agreed methods in fixing a basic price upon which to market and sell the meat, the exchange of information regarding the sale of meats and the fixing of a margin of profit to be obtained by each packing house when sold.

February 23, 1913, nolle prosequi entered on motion of United States attorney. Defendants discharged.

1915.—Prosecution in Texas State court against Swift, Armour, and Morris for combination and conspiracy in restraint of trade in the operation of cotton oil mills. Defendants found guilty and enjoined from joint operation.

1919.—United States grand jury investigation of the meat packers at Chicago.

United States grand jury investigation of meat packers at New York.

1920.—United States *v.* Swift & Co. et al. Decree entered by consent of the defendants from handling certain unrelated lines and requiring their withdrawal from certain activities. (Now the subject of this hearing.)

The CHAIRMAN. In how many of them were there convictions, do you know?

Mr. BREED. I think the record I have introduced may show. I would also call attention to the statement made on page 9 of the same report of the Federal Trade Commission, dated July 3, 1918 [reading]:

"Cases of this nature involving violation of law have been placed in the hands of the Department of Justice for appropriate action. It should be remembered also in considering the results of this investigation that these corporations are now operating under a Federal injunction issued in 1903; that they have been informed by the Attorney General, in 1912, at the dissolution of the National Packing Company, that they would be objects of close scrutiny and inspection, and that a committee of their confidential employees reported on April 10, 1916, that 'as matters now stand criminal prosecutions are sure to follow.'"

It is with some reluctance, in fact, I did not intend to offer this except as you brought up the question, but I now refer to a list which I have in my hand. We all know that the Sherman antitrust law and the Clayton Act and others are on the books, and that they contain very wide provisions with respect to protection of the rights of the public as against aggregations of monopoly and unfair restraints of trade. I would call attention to the fact, referred to by one of the witnesses here, I believe Mr. Stevens, that very few of these prosecutions resulting in the obtaining of injunctions have accomplished a great deal for the benefit of the people of the United States, and that the only accomplishments which I know of of a material character, restraining or preventing the extension of monopoly and the improper use of its powers, have been those contained in decrees consented to in equity actions brought by the Attorneys General of the United States, or other attorneys general, and a list of some of the prominent items of which I would merely like to call attention to, for example:

LIST SHOWING A NUMBER OF CONSENT DECREES WHICH HAVE BEEN ENTERED IN ACTIONS FOR VIOLATION OF FEDERAL ANTITRUST STATUTES.

United States *v.* Central West Publishing Co.
United States *v.* American Thread Co.

United States v. General Electric Co.
 United States v. American Coal Products Co.
 United States v. Aluminum Company of America.
 United States v. Burroughs Adding Machine Co.
 United States v. Pacific Coast Plumbing Supply Association.
 United States v. Philadelphia Jobbing Confections Association.
 United States v. American Lithographic Co. et al.
 United States v. Bulkley-Dunton Co. et al.
 United States v. Kern (Philadelphia Music Roll Dealers' Association).
 United States v. Albany Chemical Co.
 United States v. Corrugated Paper Manufacturers' Association.
 United States v. Goodwin-Gallagher Sand & Gravel Corporation.
 United States v. Robert E. Miller.
 United States v. American Association of Wholesale Opticians.
 United States v. Interlaken Mills et al.
 United States v. Grant F. Discher.
 United States v. Sumatra Purchasing Corporation.
 United States v. Ironite Co. et al.
 United States v. Adolph Kluge et al.

It seems that greater results for the benefit of the people of the United States have come through actions brought against different monopolies, so-called, through equity actions and decrees of courts entered in such actions, some by consent and some partly by consent and partly by action of the court, than in any other manner.

I would, however, add that of all the monopolies against whom equity actions have been brought, such as oil, tobacco, steel, corn products, and others, there is no monopoly that had to do with a subject so close to the people's welfare as the monopoly of the meat packers having to do with food, which enters into the daily necessities of life of the people.

Mr. Chairman, I did not know whether the Federal Trade Commission were going to appear here, but among the questions that were raised in the Congressional investigations and which were merged in one of the provisions of the packers' control bill, was whether there were any complaints pending against the packers before the Federal Trade Commission which would be affected by taking the jurisdiction over the packers away from the Federal Trade Commission and turning it over to the Secretary of Agriculture.

I have gathered from the records of the Federal Trade Commission as published during the past few years and open to all of us, just a small list of the complaints of alleged violation by the meat packers of the Federal Trade Commission Act and of the Clayton Act. Here they are, and I offer them if the committee feels they will be of any benefit in informing them as to the possible tendency of the meat packers to, perhaps, overstep the line in their eagerness for business in these unrelated lines.

The CHAIRMAN. Do you wish to have them included in the record?

Mr. BREED. Frankly, Mr. Chairman, we do not like to be in the position of attacking the meat packers without knowing their position. These are facts which, anyway, if the Attorney General is considering acting in behalf of the Government and moving before the court to modify the decree, we would like to have him consider before he takes such action; and yet we do not like to enter into any apparently unnecessary fight with a competitor in business, such as the meat packers are and whom we believe have their rights the same as we have, and they are not represented here—unless Mr. Campbell represents them.

The CHAIRMAN. Do you want this to go in the record or not?

Mr. BREED. Well, I will offer it.

(The paper referred to and offered by Mr. Breed is here copied in full in the record, as follows:)

December 24, 1919: Complaint against Armour & Co., charging it with the use of unfair methods of competition in allowing its customers advantages, such as free advertising, services of specialty salesmen and the payment of dealers' license fees, only on condition that they agree to purchase all or a large percentage of their supplies of butterine and oleomargarine from the respondent, and entering into contracts to that effect, tending to lessen competition and create a monopoly, in alleged violation of section 5 of the Federal Trade Commission Act and section 3 of the Clayton Act. No decision.

December 30, 1919: Complaint against Armour & Co., charging that by acquiring control of the properties of the Lookout Refining Co., refiners and

dealers in cottonseed oil, lard substitutes, cooking oils, etc., and the affiliated Chattanooga Oxygen Gas Co., manufacturer of ingredients used in the preparation of lard substitutes and compounds from cottonseed oil; and the Harris Tannery Co., later known as the Sylva Tanning Co., Sylva, N. C., engaged in the tanning of hides, and the sale of leather, has eliminated these concerns as competitors in their respective lines of business, restrained interstate commerce and tended to create a monopolistic condition in favor of Armour & Co., in alleged violation of section 5 of the Federal Trade Commission Act and section 7 of the Clayton Act. No decision.

November 24, 1919: Complaint against Armour & Co., charging that by taking over control of Harold L. Brown Co. (Inc.), Eau Claire Creamery Co., Loudon Packing Co., A. S. Kinnimonth Produce Co., Pacific Creamery Co., and Smith, Richardson & Conroy, it has materially lessened competition and tends to create a monopoly in the interstate sale of meats and meat products, poultry, butter, cheese, eggs, catsup, chili sauces, canned vegetables, condensed milk, and other similar products, in alleged violation of section 5 of the Federal Trade Commission Act and section 7 of the Clayton Act. No decision.

September 2, 1919: Complaint against Armour & Co., charging that respondent did, during 1917, acquire and now owns all or a large part of the capital stock of E. H. Stanton Co., engaged in a similar business to that of respondent, and prior to the acquisition of this stock by the respondent, in direct competition with it, the effect of which may be to substantially lessen competition between the two companies, to restrain commerce of the nature engaged in by the companies in certain sections of the country, or tend to create a monopoly, in the purchase of capital and livestock, and in the sale of meat and meat products in alleged violation of section 7 of the Clayton Act. No decision.

December 31, 1918: Complaint against Armour & Co. and Farmers Cooperative Fertilizer Co., charging the former with acquiring control of the latter, which it has continued to operate under its old trade name; stifling and suppressing competition in the manufacture and sale of fertilizing materials by concealing such community of interest, making it possible for Armour & Co. to acquire certain trade which would be denied to it were the ownership referred to generally known, in alleged violation of section 5 of the Federal Trade Commission Act. Order to cease and desist April 15, 1919.

June 28, 1918: Complaint against Armour & Co., charging it with stifling and suppressing competition in the manufacture and sale of dairy products by concealing its control of and affiliation with Beyer Bros. Co., a creamery company, while directing the efforts and business of said company; discriminating in the prices paid for butter fat or cream; and by proposing and offering to purchase butter fats or cream in certain localities at prices unwarranted by trade conditions and so high as to be prohibitive to small competitors, in alleged violation of section 5 of the Federal Trade Commission Act.

November 24, 1919: Complaint issued against the Western Meat Co. and the Nevada Packing Co., charging that the Western Meat Co., by acquiring the capital stock of the respondent, Nevada Packing Co. and by an interlocking of directorates, has materially lessened competition and tends to create a monopoly in the interstate sale of meats and the products and by-products arising out of the slaughtering of live stock, in alleged violation of section 5 of the Federal Trade Commission Act and section 8 of the Clayton Act.

November 24, 1919: Complaint issued against Western Meat Co., charging that the respondent, by taking over the Nevada Packing Co. and by interlocking directorates, has materially lessened competition and tends to create a monopoly in the interstate sale of meats and the products and by-products arising out of the slaughtering of live stock, in alleged violation of section 5 of the Federal Trade Commission Act and section 7 of the Clayton Act. No decision.

December 24, 1919: Complaint issued against Wilson & Co. (Inc.), charging it with using unfair methods of competition in allowing its customers advantages, such as free advertising, services of specialty salesmen, and payment of dealers' license fees, only on condition that they agree to purchase all or a large percentage of their supplies of butterine and oleomargarine from the respondent, and entering into contracts to that effect, tending to lessen competition and create a monopoly in alleged violation of section 5 of the Federal Trade Commission Act and section 3 of the Clayton Act.

November 24, 1919: Complaint issued against Wilson & Co., charging that the respondent, by taking over the Paul O. Reyman Co., has materially lessened com-

petition and tends to create a monopoly in the interstate sale of meats and products and by-products arising out of the slaughtering of live stock, in alleged violation of section 5 of the Federal Trade Commission Act and section 7 of the Clayton Act. No decision.

November 24, 1919: Complaint issued against Wilson & Co. (Inc.), charging that the respondent, by taking over the Morton Gregson Co. has materially lessened competition and tends to a monopoly in the interstate sale of meats and the products and by-products arising out of the slaughtering of live stock in alleged violation of section 5 of the Federal Trade Commission Act and section 7 of the Clayton Act.

February 28, 1920: Complaint against Swift & Co., Libby, McNeill & Libby (of Illinois), and Libby, McNeill & Libby (of Honolulu), charging that respondent, Libby, McNeill & Libby, in effect a subsidiary of the respondent, Swift & Co., by acquiring control of the Thomas Pineapple Co., and certain other Hawaiian fruit companies, has materially lessened competition and tends to create a monopoly in the interstate sale of pineapple, in alleged violation of section 5 of the Federal Trade Commission Act and section 7 of the Clayton Act.

December 24, 1919: Complaint issued against Swift & Co., charging it with unfair methods of competition in that the respondent allows its customers advantages such as free advertising, services of specialty salesmen, and payment of dealers' license fees, only on condition that they agree to purchase all or a large percentage of their supplies of butterine and oleomargarine from the respondent, and enters into contracts to that effect, tending to lessen competition and create a monopoly, in alleged violation of section 5 of the Federal Trade Commission Act and section 3 of the Clayton Act. No decision.

November 24, 1919: Complaint issued against Swift & Co. and the United Dressed Beef Co., charging that the respondent, by causing the subsidiary, United Dressed Beef Co., to take over J. J. Harrington & Co. (Inc.), has materially lessened competition and tended to create a monopoly in the interstate sale of meats and the products and by-products arising out of the sale of live stock—in alleged violation of section 5 of the Federal Trade Commission Act and section 7 of the Clayton Act. No decision.

November 24, 1919: Complaint issued against Swift & Co., charging that the respondent, by taking over the Moultrie Packing Co., and Andalusia Packing Co., in the name of its employees, and controlling interest in England, Walton & Co. (Inc.), has materially lessened competition and tends to create a monopoly and by-products arising out of the sale of live stock and in the business of conducting tanneries and the production of various grades of leather and by-products—in violation of section 5 of the Federal Trade Commission Act and section 7 of the Clayton Act. No decision rendered.

November 17, 1915: Complaint issued against Cudahy Packing Co., charging that the company maintains price discrimination, the effect of which may be to substantially lessen competition or tend to create a monopoly in alleged violation of Section 2 of the Clayton Act; (2) to unfair methods of competition by fixing a schedule of resale prices and by making a price to those who do not uphold the schedule so high that they can not make a fair and reasonable profit on reselling, in alleged violation of section 5 of the Federal Trade Commission Act. Order to cease and desist, July 31, 1918.

November 24, 1919: Complaint issued against Cudahy Packing Co. charging that it took over the Nagle Packing Co., D. E. Wood Butter Co., A. C. Dow Co., Inc., thereby materially lessening competition and tending to create a monopoly in the interstate sale of meats and the products and by-products arising out of the sale of livestock and butter, oleomargarine, cheese and eggs, in alleged violation of section 5 of the Federal Trade Commission Act and section 7 of the Clayton Act. No decision.

May 17, 1918: Complaint issued against Morris & Co., charging it with unfair competition in the sale of meats, chickens, and other similar products in interstate commerce and to the United States for use of its soldiers and other persons concerned in the conduct of the war, by selling or offering for sale and exposing for sale meats and other food products in the United States to its officers and men in training camps for their messes, or to others for use of or by its officers and men, with the knowledge that such food products were to be used as food by the United States and others. That such food products were spoiled and unfit for human consumption, in alleged violation of section 5 of the Federal Trade Commission Act. (Wholesome meat substituted and complaint dismissed without prejudice.)

November 24, 1919: Complaint issued against Morris & Co. charging that by taking over the control of the Crescent City Stockyard and Slaughter House Co., Bluefield Produce and Commission Co., Holland Butterine Co., Providence Churning Co., Eckerson Co., Jacob Mally Co., C. A. Straubel Co., Sherman, White & Co., has materially lessened competition and tends to create a monopoly in the interstate shipment and sale of provisions and produce and the products and by-products arising out of the slaughtering of livestock, oleomargarine and oleo products, cheese, eggs, poultry., in alleged violation of section 5 of the Federal Trade Commission Act, and section 7 of the Clayton Act. No decision.

December 24, 1919: Complaint issued against Morris & Co., charging the use of unfair methods of competition, in that the respondent allows its customers advantages such as free advertising, services of specialty salesmen and payment of dealers' license fees, only on condition that they agree to purchase all or a large percentage of their supplies of butterine and oleomargarine from the respondent, and enters into contracts to that effect, tending to lessen competition and create a monopoly, in alleged violation of Section 5 of the Federal Trade Commission Act and Section 3 of the Clayton Act. No decision.

April 1, 1921: Complaint against Austin, Nichols & Co. (Inc.), charging violation of the Clayton Act, as follows:

That prior to and anticipating the decree in the government suit enjoining the packers from engaging in unrelated lines of business, Wilson & Co. entered into an agreement with a principal stockholder representing all the stockholders of Austin, Nichols & Co., Inc. (the New York Company), by the terms of which agreement it was provided that the properties of Austin, Nichols & Co., of New York, the Fame Canning Co., the Wilson Fisheries Co., and the Whiteland Indiana Vegetable Canning Plant would be consolidated and operated through a new corporation to be organized pursuant to the agreement.

The new corporation, Austin, Nichols & Co., Inc., of Richmond, Va., the respondent herein, was organized August 23, 1919, and took over the control of Austin, Nichols & Co., Inc., of New York City, the Fame Canning Co., the Wilson Fisheries Co., and the Whiteland Indiana Vegetable Canning Plant.

Prior to the consolidation these companies were competing in the sale of canned vegetables and canned fish and did a business in 1919 of approximately thirty-eight million dollars, constituting a substantial proportion of the wholesale trade in these commodities in a majority of the States. Such acquisition of competing units effected an elimination of all existing competition between these several companies and that since the organization of the new company the public has not enjoyed the benefit of this competition.

The CHAIRMAN. Have you a similar list showing prosecutions against the wholesale grocers by the Federal Trade Commission during this same period?

Mr. BREED. No; I have not. But I will be glad to have one of my staff run through the reports of the Federal Trade Commission and make up such a list. I have no doubt there have been many complaints filed against wholesale grocers, and everybody else, and your question is very much in point, and it discloses just the position of delicacy which we feel here. The packers are not here, and they have stated publicly why they entered into this decree, and so far as I know they are for it. We feel it is a sort of unfair position for us to be in to go ahead and present a kind of one-sided case.

The CHAIRMAN. If you will furnish that list later, I would like to have it.

Mr. BREED. I will furnish it for you.

The CHAIRMAN. I think it would be interesting.

Mr. BREED. No doubt it will, and I will be glad to furnish it.

As bearing upon the relative positions of the meat packers' business with respect to all other businesses in the United States, and while I recognize that size means under our Supreme Court decisions very little with respect to the problem with which you are dealing, nevertheless there are intimations in court decisions that it should be taken into consideration; therefore I offer the report from the Department of Commerce, Bureau of Census, Washington, entitled "Census of Manufactures, Comparative Summary of the United States, 1919 and 1914," dated Washington, May 24, 1921. I do not think is necessary to copy into the record all of this report, but I will state that it covers 352 lines of industry beginning with A—airplanes—and ending with W—worsted goods.

The CHAIRMAN. Could you pick out the particular excerpts that you wish to call attention to?

Mr. BREED. Yes, sir. It gives the name of each industry and number of establishments in 1919 and 1914, the value of the products in 1919 and 1914, and shows that the business done by the slaughtering and meat packing industry was:

1914-----	\$1, 454, 495, 000
1919-----	3, 714, 340, 000

In other words, this was the largest individual industry of all the industries doing business in the United States of America.

The CHAIRMAN. It does not give the wholesale grocer, does it?

Mr. BREED. It does not give wholesale grocers as such, but it gives the different lines of food products. Perhaps you will be able to cull them out but we were not.

The CHAIRMAN. Very well, you may proceed.

Mr. BREED. The next industry in point of size was iron and steel, which, for 1919 represented \$2,812,775,000. And the third in point of size was automobiles, representing \$2,387,833,000.

I think these are interesting facts as bearing upon the question as to whether the greatest single individual industry in the United States should or should not be allowed to withdraw its consent not to extend into unrelated lines after it has once formally honestly come before the people and accepted a decree of the Supreme Court of the District of Columbia in an equity action of the character brought by the Government.

As bearing upon the subject of exports, about which the committee has questioned various witnesses and which under the consent decree the Big Five packers agreed to withdraw from so far as these unrelated food products are concerned, at first blush it would seem that for the meat packers to withdraw from export business in unrelated lines might open a very serious economic question. But this was undoubtedly the subject of serious concern on the part of the Attorney General and by the court which made the decree, and in support of their conclusion as shown by the decree of the court, other facts before them not being present, I would offer a list taken from the Federal Trade Commission's report, part 1, pages 198 and 199, showing a list of European distributing companies controlled by the Big Five meat packers. I would say that this list is very extensive; that the report shows and the fact is that these are almost all foreign corporations; that all the rights granted to them under the laws of the countries in which they are incorporated, which includes the full and complete right to purchase goods in the United States, are rights which no decree of any court of the United States could take away from them, or that no court of the United States could prevent these various companies from buying in this market.

I would also call attention to the fact that even Mr. Campbell admitted that after the decree was entered into by the packers, including Armour & Co., that he was able to sell to the Armour Co., which is one of the companies listed on this list in England, all the goods which he desired to sell for export. Hence the decree did not affect that sale injuriously.

(The list referred to is here copied in full in the record, as follows:)

LIST OF EUROPEAN DISTRIBUTING COMPANIES CONTROLLED BY THE BIG FIVE.

The following is a complete list, so far as reported, of the Big Five foreign companies engaged in the marketing of products and other activities in Europe:

Armour & Co.:

- Allen & Crom (Ltd.), London, England.
- Armour & Co. (Ltd.), London, England.
- Armour & Co., A. G., Frankfort, Germany.
- Armour & Co., A. S., Copenhagen, Denmark.
- Armour et Compagnie, Societe Anonyme, Paris, France.
- Armour Societa Anonima Italiana, Milan, Italy.
- Chymol Co. (Ltd.), London, England.
- Fowler Bros. (Ltd.), London, England.
- Times Cold Storage Co., London, England.
- James Wright & Co., London, England.

Cudahy Packing Co.:

- The Cudahy Packing Co. (Ltd.), London, England.

Morris & Co.:

Haarers (Ltd.), (90 per cent), London, England.
 Morris Beef Co. (Ltd.), London, England.

Swift & Co.:

Curry & Co. (Ltd.) (70 per cent), London, England.
 Garner, Bennett & Co. (Ltd.), Liverpool, England.
 Franklin Land & Investment Co., London, England.
 H. A. Lane & Co. (Ltd.) (63 per cent), London, England.
 Libby, McNeill & Libby of London, London, England.
 Roderick Scott (Ltd.) (45 per cent), Glasgow, Scotland.
 H. L. Swift Stall, London, England.
 Swift Beef Co. (Ltd.), London, England.
 Swift Packing Co., Paris, France.

Swift & Co. and Morris & Co.:

National Oil & Hide Co. (Ltd.), London, England.

Wilson & Co. (Inc.):

Archer & Co. (Ltd.), London, England.
 Nuttall Provision Co. (Ltd.), Liverpool, England.
 British American Product Co. (Ltd.), Birkenhead, England.
 Wearside Refining Co. (Ltd.) (subsidiary of British American Product Co. (Ltd.)).

Wilson & Co. (Inc.) and Morris & Co.:

London Butchers Hide & Skin Co., London, England.

LIST OF SOUTH AMERICAN COMPANIES CONTROLLED BY OR ASSOCIATED WITH THE UNITED STATES PACKERS.

The names and addresses of the South American companies reported to the commission by the big United States packers are as follows:

Armour & Co.:

Armour del Uruguay, Montevideo, Uruguay.
 Companhia Armour de Brazil, Sant' Anna de Livramento, Brazil.
 Companhia Financiera e Industrial, Montevideo, Uruguay.
 Frigorifica Armour de la Plata, Buenos Aires, Argentina.

Armour & Co. and Morris & Co.:

Sociedad Anónima la Elanca, Buenos Aires, Argentina.

Armour & Sulzberger:

Central Products Co., New York City.
 International Products Co., New York City.

Swift & Co.:

Compañia Swift de la Plata, Buenos Aires, Argentina.
 Compañia Swift Internacional (Ltd.), Buenos Aires, Argentina.
 Compañia Swift de Montevideo, Montevideo, Uruguay.
 Compañia Paraguaya de Frigorifica y Carnes Conservadas, Asuncion, Paraguay.
 Companhia Swift de Brazil, Chicago, Ill.
 New Patagonia Meat & Cold Storage Co. (absorbed by Swift de la Plata).

Morris & Co.:

Frigorifica Artigaz, Sociedad Anónima, Montevideo, Uruguay.

Wilson & Co. (Inc.):

Frigorifica Wilson de la Argentina, Buenos Aires, Argentina.

Sulzberger Products Co.:

Continental Products Co., Sao Paulo, Brazil.
 Frigorifica Wilson de Brazil, Brazil.

LIST OF AUSTRALASIAN COMPANIES OF THE BIG UNITED STATES PACKERS.

The companies which the big packers reported to the commission as engaged in business in Australasia were as follows:

Armour & Co.:

Armour & Co., of Australasia, Christchurch, New Zealand.

Cudahy Packing Co.:

Cudahy & Co. (Ltd.), Sydney, New South Wales.

Swift & Co.:

Australian Meat Export Co. (Ltd.), Brisbane, Queensland.

CANADA.

Swift interests in Canada: Swift & Co., of Illinois, in 1902 organized the Swift Canadian Co. (Ltd.), with a slaughtering plant at Winnipeg, Manitoba, which now also operates at Edmonton and at Toronto. The Toronto plant was

acquired on June 28, 1911, from D. B. Martin (Ltd.), the majority of the stock of which was owned by D. B. Martin Co., a slaughtering company of Philadelphia, Pa. The Vancouver Prince Rupert Meat Co., a subsidiary of Swift Canadian Co. (Ltd.), operates a slaughtering plant at Vancouver, British Columbia.

The selling and storage companies of the Swift Canadian Co. (Ltd.) have been reported to the commission as follows, several of them being market companies:

Alberta Cold Storage Co. (Ltd.).

B. C. Co. (Ltd.), Vancouver, British Columbia.

Dominion Market Co. (Ltd.).

Fort Garry Market Co. (Ltd.), Winnipeg, Manitoba.

Fort Williams Cold Storage Co. (Ltd.).

Forty-one Market Co. (Ltd.).

Lethbridge Cold Storage Co. (Ltd.).

Namayo Market Co., Edmonton, Alberta.

Revelstoke Market Co.

Vancouver Prince Rupert Meat Co. (Ltd.), Vancouver, British Columbia.

Swift & Co. also controls Libby, McNeill & Libby, of Canada, located at Chatham, Ontario, a subsidiary of Libby, McNeill & Libby, its Chicago canning company, and the Colonial Hide Co.

ARMOUR CANADIAN INTERESTS.

Armour & Co., of Illinois, operates in its own name a slaughtering plant at Hamilton, Ontario, the operation dating from July, 1912, when Armour & Co. in the liquidation of the National Packing Co. acquired the capital stock of Fowlers' Canadian Co. (Ltd.), which the National had bought September 29, 1902, about the time that the Swift Canadian Co. began slaughtering at Winnipeg.

Armour & Co. also owns the entire stock of the Hamilton Stock Yards Co., operating the yards in conjunction with the slaughtering plant. Armour and Morris also own 25 per cent of the capital stock of the Toronto Stock Yards Co. at Toronto, where it has been noted that Swift has a plant.

In leather, Armour & Co. owns the Dominion Tanneries (Ltd.), of Woodstock, New Brunswick, which has been reported as in liquidation; and in grain Armour interests individually are principal stockholders in the Armour Grain Co., controlling the Armour Canadian Grain Co. of Winnipeg, Manitoba, and the Hansen Grain Co., also of Winnipeg, the latter being in liquidation.

Mr. BREED. I would also call attention to the fact that when the packers consented to go out of the export business in unrelated lines as well as domestic business in those lines, they must have taken into full consideration their interests in the foreign companies and their full and complete ability to work out the export business through those companies, as well as the economic question involved in their retaining as such the right to buy in the American market for export and not buy and distribute for domestic trade.

I would also call attention to the fact at this point what was brought out by one or two witnesses on yesterday, that this decree only operates against the corporations known as the Big Five, who are shown to possess this huge monopoly on a part of the food business of the United States with these special privileges; that it carefully avoided application to any individual meat packer and does not prevent any individual meat packer, as such, or member of his family or otherwise, from becoming interested in those food-producing corporations, canning establishments, and wholesale grocery houses except beyond a 50 per cent interest.

But even there, assuming that they themselves as individuals would go into the manufacturing, canning, or producing business, the vitality of the decree is contained in its prohibitions against the Big Five allowing their special privileges, such as refrigerator and peddler car lines and other privileges, being used by these concerns that these individuals might go into.

And it would be quite as improper for these individual special facilities to be used by one wholesale grocer as against another wholesale grocer he was in competition with.

Now, Mr. Chairman, we come down to one or two more exhibits and then I am through; and I want to thank you for your indulgence and the possibility that I have drifted away from the facts and into arguments, which I really did not intend to do.

I would like now to introduce a map showing the various cities and towns in all the States of the United States in which wholesale grocery houses are located. The round circles indicate the cities having from 1 to 10 wholesale grocery firms, and the squares cities having 10 or more wholesale grocery firms. I would like to have that map marked in evidence, and we will later have it photographed, in reduced size, and give copies to the committee so that they will have the map in not quite so bulky a form.

(Thereupon, the official reporter identified the map introduced in evidence by marking it "Exhibit National Wholesale Grocers' Association No. 1.")

The CHAIRMAN. As to what date is this prepared; do you know?

Mr. BREED. This was prepared as of some date in 1919, and we are indebted to Swift & Co. for doing it.

I now offer in evidence a key to this map, which is a list showing all the cities and towns in the United States which have wholesale grocery houses; showing the number of wholesale grocers in each city, the railway facilities that they enjoy, and which is, in fact, an index to this map. I will ask that that be identified as an exhibit.

(Thereupon, the official reporter identified the said list by marking it "Exhibit National Wholesale Grocers' Association No. 2.")

The CHAIRMAN. You may continue your statement.

Mr. BREED. I will ask that there be inserted into the record merely the first page of this list, which I have copied for the purpose, and which shows the number of wholesale grocery houses and cities having wholesale grocery houses in the United States by States.

The CHAIRMAN. Isn't that information already on this map?

Mr. BREED. I think not.

The CHAIRMAN. I think it is, but I have no objection to this going into the record.

Mr. BREED. I would like to have that done.

The CHAIRMAN. But this big bulky book will not be put in.

Mr. BREED. Oh, we do not wish that done. This is the only copy of this list we have. It is open for examination by the committee, but we would like to have it back.

The CHAIRMAN. I wish you would leave it for examination by the committee, however, until the committee gets the information desired.

Mr. BREED. Certainly.

(The first page of the list, which page was introduced in evidence, is here copied in full, as follows:)

State.	Number of cities.	Number of whole-sale grocers.	State.	Number of cities.	Number of whole-sale grocers.
Alabama.....	46	163	Nevada.....	8	13
Arizona.....	41	70	New Hampshire.....	10	20
Arkansas.....	81	156	New Jersey.....	23	93
California.....	32	126	New Mexico.....	39	53
Colorado.....	17	43	New York.....	67	430
Connecticut.....	18	70	North Carolina.....	112	319
Delaware.....	5	12	North Dakota.....	11	21
District of Columbia.....	1	13	Ohio.....	70	168
Florida.....	32	121	Oklahoma.....	46	95
Georgia.....	89	308	Oregon.....	11	29
Idaho.....	7	15	Pennsylvania.....	104	357
Illinois.....	57	185	Rhode Island.....	5	27
Indiana.....	53	125	South Carolina.....	59	151
Iowa.....	26	60	South Dakota.....	11	15
Kansas.....	34	66	Tennessee.....	60	145
Kentucky.....	64	141	Texas.....	144	348
Louisiana.....	50	119	Utah.....	6	15
Maine.....	20	49	Vermont.....	10	14
Maryland.....	18	79	Virginia.....	69	184
Massachusetts.....	33	158	Washington.....	13	43
Michigan.....	44	120	West Virginia.....	26	79
Minnesota.....	27	66	Wisconsin.....	42	61
Mississippi.....	53	110	Wyoming.....	9	18
Missouri.....	52	140			
Montana.....	28	56			
Nebraska.....	16	41	Total.....	1,899	5,304

Mr. BREED. I would like to have copied in at this point the editorial which I handed the committee a few moments ago.

(The editorial from the New York Times, introduced by the witness, is here copied in full in the record, as follows:)

THE AGREEMENT WITH THE PACKERS.

Better cause of action for the dissolution of the packers' combination could not be stated than that set forth by Attorney General Palmer when he says that "in general this decree prevents the defendants from exercising any further control over the marketing of live stock. It forever prevents them from any control over the retailing of meat products. * * * But, greater than all, it establishes the principle that no group of men, no matter how powerful, can ever attempt to control the food table of the American people." It is not right, it is not necessary, it is not safe that control over practically the whole buying market and the whole selling market of food supplies, or over a very great part of them, should be lodged in the hands of one group of men.

On their part, the packers set up a good and sufficient reason for complying with the demands that they dissolve and reorganize their business when they say that they bow to public opinion, "recognizing it as one of the basic supports of commerce." The decision to break up their combination reflects great credit upon them; credit will not be withheld. It is far better for them, for the Government, and for the public that they should accept and obey the court's dissolution decree by agreement, rather than "as the result of a long, drawn-out legal battle."

The packers have done an enormous business, employing a vast capital and extending their operations to every part of the country. They have had, they have exercised, great powers. Candor compels the avowal that if they had used their power ruthlessly, always extortionately, they would long ago have had it taken from them by processes of law set in motion in response to irresistible public demand. They have been often attacked, the blazing light of publicity has been repeatedly, almost constantly, turned upon them. The great extent of their business and the large and increasing volume of their profits were by no means the chief counts in the complaint against them. They were able always to point to the very low percentage of profit in unit transactions. They say that they have conducted their business "upon the basis of economics and legality." Their position upon the side of economics is more easily defensible than it is in respect to legality. The law of the land, and public opinion stands behind the law, runs against colossal combination of this nature, and the decree dissolving the Standard Oil and the tobacco concerns has given judicial sanction to the will of the people as expressed in the law.

To escape condemnation and punishment the great trusts or combinations must be able to show that at all times they have made reasonable use of their powers, that they have never used them oppressively. The packers have not been able to exhibit quite so clean a bill. Long ago it was disclosed by their own correspondence that they did use oppressively their power of control over retail butchers. Juries may have failed to convict when actions have been brought, but acquittals or disagreements have not removed from the public mind the belief that the packers have not always made moderate and reasonable use of their powers. Their might has been too great because it has been extended over subjects that should never have been under their control. The organization of the stock yards, as explained in the Attorney General's statement, is not in itself a flagrant offense against economics or public morals. It was very comprehensive, but it may be easily demonstrated, both in theory and in practice, that concentrated control over a multitude of processes essential to the business may result in great saving. But the public believes, will always believe, that the packers have the cattle raisers very much at their mercy. There is no other great market, and this market was absolutely controlled by the combination. To mention what may seem a minor matter, it was a flagrant offense against business morals that they should have any interest whatever in market newspapers. False market quotations are an abomination, and though these packers might profess angelic purity of motives, the nature of man is such that only the most gullible would believe that with the market itself and the reports of the market transactions in their control they would scrupulously refrain from using the quotations to their own advantage in the market.

In this matter and in many others they had unreasonably, most imprudently extended their power and the scope of their operations. It was not for the public good that while they were supposed to deal chiefly in meat and meat products they, nevertheless, did not only a large business in canned goods, cereals, vegetables, groceries of all kinds, but dealt also in building and fencing materials and such wholly unrelated commodities as soda fountains and structural steel. Mr. Palmer makes a list of 126 articles dealt in by the packers which had no natural relation to the meat business.

Their most flagrant offense is to be found in their control of the market of live stock and in selling of meat products by retailers to the great public of consumers. Between the producer and the consumer there must, of necessity, be middlemen, but it is intolerable that the middlemen should control the whole line of transactions from its beginning to its end. There will be great public satisfaction that this power has been forever removed from the hands of the packers. We are told that "it is felt by Attorney General Palmer and his associates" that the decree of the court accepted by the packers "will find quick reflection in falling prices to the consumers." The public of consumers should not be oversanguine. If that result followed the dissolution of the Standard Oil and the tobacco combinations, the public has not yet observed it. Let us hope that meat prices will fall visibly as the result of the dissolution. The power of the court is continuing, the Department of Justice will have need to be vigilant, always to be on notice that it has a duty to perform. Public expectation will not be met if, after disruption, the control over all branches of the business remains substantially in the hands that before wielded it. We should suppose that, if the court's decree is really a remedial measure, there should follow promptly a reduction in the price of boots and shoes. It is in leather, if anywhere, that there has been unconscionable profiteering, for the price of leather products is high out of all proportion to that of other commodities. This is only one of many matters that may profitably be made the subject of detailed and rigid inquiry. But the public, already pretty well instructed, will indulge in no delusive hopes of an immediate drop in the cost of living. It knows that a good work has been done, that the Packers Trust was open to attack, had too much power, too many ramifications, did not always observe the law of reason, and it will be of a mind to congratulate Attorney General Palmer upon his remarkable success in reaching his triumph by agreement rather than as the result of protracted litigation.

Mr. BREED. I believe I made my concluding remarks before I finished, thanking the committee for giving me this wide range, so I won't repeat them, except to ask to have them staccatoed.

The CHAIRMAN. Mr. Thorne, you are ready to proceed?

Mr. THORNE. Yes, sir.

The CHAIRMAN. Go ahead.

STATEMENT OF CLIFFORD THORNE, CHICAGO, ILL.

The CHAIRMAN. Just state your full name, Mr. Thorne, and who you are.

Mr. THORNE. Clifford Thorne; associated with Mr. Breed and requested by him to testify on behalf of the National Wholesale Grocers' Association. My address is Lytton Building, Chicago.

In this proceeding we are confronted by rather a complex situation, different conclusions having been arrived at by different departments of the Federal Government. First we find the Interstate Commerce Commission reaching certain conclusions, the Federal Trade Commission reaching other conclusions, and the Department of Justice having secured a consent decree somewhat divergent from the conclusions reached by the commission.

The CHAIRMAN. Which commission?

Mr. THORNE. The Interstate Commerce Commission. The Interstate Commerce Commission conducted a hearing involving preferential services accorded the packers. The National Wholesale Grocers' Association filed a petition requesting this July 1, 1919. After several months' taking of testimony a decision was rendered. In the midst of that proceeding this consent decree was made. After we had introduced our testimony in chief, the principal part of it, and a recess had been taken, we were urged by certain parties to dismiss our case, and a certain group of wholesale grocers in the case did ask for a postponement indefinitely in the proceeding. We believe that the rendering of the consent decree had a profound effect upon the minds of the commission, and that it was attempted to have an effect upon the minds of the complainants, and was partly successful.

Demonstrating our contention as to the effect on the minds of the commission, we call attention to the following paragraph:

Mr. BREED. In what?

Mr. THORNE. Of the decision of the Interstate Commerce Commission in National Wholesale Grocers' Association of the United States v. The Director General et al., reported in 62 I. C. C., commencing at page 375 and reading from page 381:

"Under that decree and not later than February 27, 1922, the large packers and their subsidiaries must cease to deal in practically all of the articles in which they compete with the wholesale grocers except cheese, lard compounds, and substitutes, peanut butter, butter substitutes, and soap. These packers are not forbidden to continue to deal in dressed poultry, butter, and eggs, and in commodities which are made in part from the products of packing houses, such as soap, lard compounds, oleomargarine, and mincemeat.

"The record shows clearly that there is little if any dealing or shipment by the wholesale grocers in dressed poultry, butter, and eggs. They assert that the entry of the decree eliminated the competition to which the grocers object and will bring about a result more favorable to the complainants than any obtainable by an order in this proceeding."

Mr. BREED. Who is the "they" that they are speaking about—the packers or the wholesale grocers?

Mr. THORNE. It is the commission speaking. The packers are referred to in that last sentence.

Mr. BREED. The "they" refers to packers?

Mr. THORNE. Yes, sir.

Mr. BREED. That was a statement made by the packers, was it not, Mr. Thorne, before the commission?

Mr. THORNE. It was by counsel for the packers before the commission.

Further the Interstate Commerce Commission says:

"Complainant fears that the individuals may organize other companies and handle the same articles, or may operate these refrigerator and peddler cars by corporations organized by the individuals who do not hold more than 49 per cent of the stock. We can not accept this apprehension as equivalent to fact."

The representatives of the National Wholesale Grocers' Association were fearful that the decree might be evaded, that other corporations might be organized, as there suggested, or that some other method might be found by which it would not be effective, and we were amazed, surprised to find an effort from outsiders to have the decree modified even before it became effective. But it in a sense substantiates our fear of what might happen in the future. Therefore we proceeded with our case.

The Interstate Commerce Commission sustained the complaint of the wholesale grocers as to discriminations in rates, carload mixtures and minima, but declined to sustain the position of the wholesale grocers as to discriminations in service. The commission drew the line at the line of the industry, and held that the packers were not entitled to carload rates and minima as to these unrelated items.

The term "unrelated item" as used by both the packers and the Interstate Commerce Commission is far more carefully applied to the packing industry itself than does the consent decree use that term. For example, the packers, with reference to their carload mixtures which control their rates, consented to the exclusion of butter substitutes and cheese and soap. The packers wanted to include lard compounds and substitutes even though they only contained 1 per cent of meat.

Mr. BREED. Included in what?

Mr. THORNE. In their mixtures entitled to carload rates. This would have forced the wholesale grocers to pay from 50 to 100 per cent more for a haul of the same amount of the same material in the same train between the same points at the same time. Various exhibits were offered showing that.

The wholesale grocers offered, in lieu of the rule submitted by the packers on that issue, to apply a 20 per cent minimum. If the commodity had 80 per cent or more vegetable product in it, we claim that should not be considered a packing-house product. And we made the same claim as to canned meats and vegetables and butter substitutes, and were sustained.

The packers have recently filed a petition to reopen the case as to those questions. The commission denied the application for a reopening as to canned meats and vegetables with meat ingredients, but granted the application as to

lard compounds and substitutes, and that case is to be argued December 9 before the commission.

Now, let me again challenge attention to the fact that as to discriminations in service the Interstate Commerce Commission did not sustain the application of the wholesale grocers, but as to discriminations in rates the Interstate Commerce Commission did sustain the position of the wholesale grocers. The commission adopted the line of the industry as to rates, but denied the application to use the line of the industry in dealing with service.

The CHAIRMAN. Have you made an application to reopen this decree?

Mr. THORNE. No, sir; but one will be made probably within the next 48 hours. It has been awaiting agreement of parties and recovery of Mr. Ackerly, who was assigned by Mr. Breed to work in this case, but Mr. Ackerly's health will prevent his assistance, and we have decided to go ahead. Papers have been prepared and are ready to be filed, and a conference has been held with the commission in regard to it.

If the petition for reopening as to discrimination in service is not granted, we want to challenge attention to the situation that the wholesale grocery industry will be then confronted with if this decree is modified.

The CHAIRMAN. Won't you have any other remedy if the commission refuses to grant this?

Mr. THORNE. I don't see any other remedy except appeal to Congress.

The CHAIRMAN. Is there no appeal from the decision of the Interstate Commerce Commission?

Mr. THORNE. On questions of fact the courts accept the findings of the commission, as would a court the finding of a jury. On questions of law the courts have set aside the commission frequently. But on questions of fact never. They have held, for example, when the commission failed to take into consideration certain facts, considering it outside of their province, that they should; in such cases the commission has been reversed.

The CHAIRMAN. Well, would you say that you have any right of appeal in this case in the event of an adverse decision?

Mr. THORNE. I am exceedingly doubtful about it, sir.

The CHAIRMAN. But you would not say that you have not, would you?

Mr. THORNE. No; I am exceedingly doubtful as to the success of the appeal, because it involves a question of fact.

The CHAIRMAN. Well, would you think that you could get a review of these questions by an appellate court, in the event of an adverse decision by the Interstate Commerce Commission?

Mr. THORNE. Not a successful review as to a question of fact, sir, because of the almost universal course of decisions of the courts.

The CHAIRMAN. Would you say that you could get a review of the questions which you present and raise?

Mr. THORNE. Pardon me, Mr. Chairman, I am making a distinction.

The CHAIRMAN. I understand.

Mr. THORNE. As to the question of fact, no, sir.

The CHAIRMAN. By an appellate court?

Mr. THORNE. No, sir.

The CHAIRMAN. All right, go ahead.

Mr. BREED. Could I interrupt Mr. Thorne for one moment there?

The CHAIRMAN. Surely, if Mr. Thorne is agreeable.

Mr. BREED. In your opinion did the decree of February 27, 1920, of the court in the equity action in which the packers voluntarily agreed to go out of unrelated lines, have any effect upon the decision of the Interstate Commerce Commission in not passing favorably upon this question as to service?

Mr. THORNE. I think there can be no question but what it had a profound effect, because of the language of the decision itself, which I just read.

Mr. BREED. Now one further question. If the decree of the court of February 27, 1920, were modified so as to permit the packers to handle these unrelated lines in their refrigerator and peddler cars, would you think that that would furnish a good ground for a subsequent application to open the whole question before the Interstate Commerce Commission?

Mr. THORNE. Yes, it might.

Now, gentlemen, I want to call your attention to the line of the industry and the justification of adopting that as to rates, as expressed very accurately in the language of the commission, and then I want to show the present status of things in our industry, if this decree is modified.

The commission said the following at page 401:

"We have in several cases disapproved the imposition by carriers of conditions with which only a comparatively few shippers could comply, and the circumstances and conditions disclosed by the record in this case convince us that such a condition would be created by sustaining the packers' contention concerning mixed carloads. If the carload rates were applied on mixed carloads, including lard compounds, lard substitutes, and canned meats with vegetable ingredients in excess of 80 per cent, the packers would be benefited, but, on the other hand, others who deal only in those articles would be injured. In other words, under the suggested mixing rules, a packer could ship a comparatively small quantity of lard compounds and substitutes, or canned meats with the indicated major proportion of vegetable ingredients, and secure the carload rate thereon. This may be the tendency of any mixing rule, but we are unable to approve a mixing rule which includes commodities which are not confined to the industry, and are so unrelated to the principal commodities, fresh meats and packing-house products, as are those we have mentioned."

As distinguished from the conclusions of the Interstate Commerce Commission as to rate, we have their decision not to apply the same principle to service. I believe that I will be able to demonstrate to your mind that if this decree is modified the discriminations in service resulting therefrom that will result, whether unjust or not, technically, under the existing law, will create very great damage and injury.

Mr. BREED. To whom?

Mr. THORNE. To the wholesale grocer and to the public at large.

On the question of whether it is an unjust discrimination, the commission uses this language:

"Whether within the meaning of the interstate commerce act the transportation of the unrelated items in the packers' peddler cars unduly prefers the packers and unduly prejudices the complainants, who load or unload their freight from cars on private sidings at their own expense or through the freight houses of the carriers, must depend upon the usual test in cases involving discrimination, namely, whether the conditions of transportation are substantially similar in the two cases."

And upon that question the commission says:

"The handling of a shipment in a peddler car which is loaded in station order at the packer's plant as compared with a less-than-carload shipment, through the carriers' freight houses, is a handling under different circumstances and conditions."

In other words, the commission in substance holds that because the packer furnishes the car and it is loaded at his plant creates different circumstances and conditions from loading the shipments out of freight houses.

Now the Federal Trade Commission on the same issues found the opposite to what the Interstate Commerce Commission held. This is found in Part IV of the Report of the Federal Trade Commission on the Meat-Packing Industry. In their conclusions, after a very extended investigation, they said at pages 83 to 84:

"When the jobbers ask for as good service as their powerful competitors have they are told that they do not supply sufficient traffic to warrant its installation. The answer to the jobbers suggests the remedy. It may be said that under existing conditions there is little motive for the carriers to extend their refrigerator service. As carriers it is not important to them that jobbers lose orders for perishables if those same orders are filled by a packer and pass over their lines in peddler cars. The self-interest of the carriers can not be relied upon to remove the discrimination. If the packers were required to ship their 'added lines', their cheese, eggs, and other products requiring refrigeration in cars furnished by the carriers, whether owned or leased by them, they would be placed on a footing of equality with other shippers; there would be more traffic to support a schedule refrigerator service, and such service would be improved for the equal benefit of all. Likewise, if the packers were required to ship their nonperishables from the railroad freight house in box cars such as the jobbers are compelled to use, not only would that equality of service be secured which it is the first duty of carriers to provide but there would also be an improvement in service by lessening the delays incident to making up carloads at points of origin and transfer, in which all shippers except those now favored by special rules would be gainers."

"SERVICE DISCRIMINATIONS THROUGH SPECIAL MIXING RULES.

"The packers have likewise secured the adoption of highly favorable rules for mixed carloads of fresh meats and packing-house products against which no complaint is made, but in official classification territory especially, they have secured special rules permitting them to include in their mixture a great variety of goods, foreign to their slaughtering business, with resulting discriminations in service, as destructive to competitors as rate discriminations would be. Every shipper is interested in keeping as low as possible the minimum weight he must guarantee to secure carload rates. The competitive advantage of a low minimum is substantial. Under special mixing rules the packers may ship groceries of almost every description under minimum load requirements from 6,000 to 10,000 pounds less than a jobber can ship the same goods. The jobber's minimum for a straight load of canned goods is 36,000 pounds, and any mixture containing such goods will have at least that high a minimum; the packers can ship any quantity of canned goods in cars requiring a minimum of only 30,000 pounds, or in a fresh-meat mixture requiring only 21,000 pounds charged at the fresh-meat rate. This rate in official classification territory is a commodity rate, somewhat higher than fourth class. If the grocer includes in his mixture rice or dried beans, his minimum rises to 40,000; the packers may include these in his car without affecting the minimum.

"Another substantial advantage the packers have in the transportation of these 'added lines' of goods lies in the speed and certainty with which they are moved. The more highly organized a marketing system becomes the more important become the elements of regularity and promptness in the movement of goods. In both these respects the advantage arising from the packer's transportation service is decisive. His groceries may receive what is essentially an express service as against the slower freight service of his competitors. The regularity with which his cars move makes it possible to keep lower stocks on hand at branch houses than would otherwise be required, thus adding to the apparent efficiency of the branch house.

"Until the packers are shorn of the transportation advantages granted them by the carriers, there is no way of measuring their true industrial efficiency."

There are several other significant passages there that I think would be of interest for you to read, but I won't take time to go further into it now.

The issue that I want to present some specific facts on is, concretely, this: If the decree which was entered in the midst of our preceding is now modified, what will be the resulting effect upon the wholesale grocers and the consumers of food products? On that question first I want to present some evidence to you upon the relative importance of time in the transportation of wholesale grocery items and food products.

Mr. Stix, who is vice president of the firm of Seeman Bros., New York, the second largest wholesale grocer in New York City, a man of very large experience, testified as follows, and this is a part of the record before the commission:

"When I first went with the firm of Seeman Bros., it was a very small firm, its total annual business at that time being hardly so much as we now do in 10 days. After working in the office for a year or two I began to go out and sell goods; first on Mondays only, and then on Mondays and Thursdays. Being but a very small house, with very small financial resources, we were practically unknown. We could not hope to give better prices or quality than old established and large competitors, but I found that these competitors were doing so much business that they would frequently not deliver their orders for quite a number of days after the orders were taken.

"I made it my business to see that the orders I took were always delivered the next day, and used to get up at 4 or 5 o'clock in the morning the day after I had been out selling goods, so as to get my orders down to the store and make such prompt delivery possible. As a result of giving such service I built up a business of some \$200,000 a year, going out only two days a week, this volume being considered a fairly big volume of business for most men who were out on the road all the week. This same policy was pursued by other members of our organization, and resulted in a rapid and steady growth of our business.

"Prices and quality being equal, the retailer will always give preference to the firm that he can depend upon for regular and prompt deliveries. The whole system of modern retailing is built up on turnover. The success of a large chain store relies on this factor in great degree. Naturally, in order to get a

rapid turnover the retailer finds it necessary to carry a minimum stock, and this makes prompt service more and more necessary.

"We realize that this is so important that we make sacrifices in the way of expense and deliver a large percentage of our tonnage by automobiles instead of by teams, although cost sheets indicate that our automobile deliveries average a greater cost to us per ton-mile. We now make certain deliveries by automobile trucks that we could not very well make with our teams; but were it not for our realization of the advantages which accrue to us from prompt deliveries, the savings of only half a day to a day being a big factor, we would find it to our advantage to dispense with over half the automobiles we now use."

The CHAIRMAN. Were the packers in the business at the time that his growth was indicated there?

Mr. THORNE. Not on these wholesale grocery items; no. This has been of recent years.

The CHAIRMAN. Not in any of the periods that he indicates there?

Mr. THORNE. Probably so—the latter part. But his business was built up years ago, and the entry into these unrelated items, generally speaking, has been of recent years.

The second statement that I want to present bearing upon the relative importance of time in the delivery of these commodities is one by an original packer, Mr. J. Ogden Armour. I have a book here by him entitled "The Packers, the Private Car Lines and the People."

I read from his book the following:

"The question might be asked, Why not ship by local freight? Because meat would not arrive in good condition. Another reason for not shipping by local freight is that no dependence can be placed upon the arrival of meat thus shipped at a certain destination at any specific time. In short, this way is too slow and too unreliable for the transportation of fresh meats and meat products.

"The car-route salesman visits all the towns along his route and takes orders for shipments to be made on a specific day, stipulating that the car shall arrive at each place at a certain day and hour—to be met by the wagons of the retailers of that town. This method of delivery is carried out regularly once or twice a week, as occasion demands, insuring the consumer the delivery of his meats in the very best condition.

"We do not sell to consumers, but reach them through the meat dealers in the various towns, and our method of putting the meats in their hands enables them to get a fresh supply at a very short notice, which could not be done without the route car."

In connection with this statement by Mr. Armour I want you to appreciate the significance of the statement as related to our products. If the refrigerator route car of the packer gets this special service which we claim it gets, and then the packer can put anything he wants to in that car, then the packer automatically gets special preferential service on those other articles.

Now I could read scores of pages of record, and present to you some hundred exhibits upon that proposition which would not be as conclusive, to my mind at least, as this statement by Mr. Ogden Armour himself that they got that preferential service for their cars.

Here is one other passage from Mr. Ogden Armour's book, reading from pages 103 and 104:

"However, I make no denial of the fact that the private-car service, so far at least as the Armour lines are concerned—and I am willing to concede as much to competing lines—is so organized that its cars are not permitted to lag on the way, to loiter at division points, or in any way to fail in delivering their cargoes at their destinations in the shortest possible time consistent with sound, safe, and reasonable railroad operation. In other words, energy, diligence, and perseverance are used in a systematic way to facilitate the transportation of fruits, produce, and meats as quickly and in as perfect condition as may be.

"The perishable nature of the product demands 'rush'—"

He has that in capitals.

The CHAIRMAN. Is that wrong, any of that stuff?

Mr. THORNE. No; it is correct.

The CHAIRMAN. Well, I mean is it wrong for them to do that?

Mr. THORNE. No, sir; I do not claim for an instant that it is. I am reading this for the purpose of demonstrating that they get a preferential service on a refrigerator peddler car and the ability to handle all these other items and

put them in that car, whether they demand refrigeration or not, gives them the same preferential service on these other items.

The first question that I am trying to establish by this evidence is that they do get preferential service on that refrigerator car, and then I want to show the articles that they put in the car not needing refrigeration at all, and then show the inroads into the business that that has made possible.

Mr. BREED. And that the wholesale grocer—

Mr. THORNE. And that the wholesale grocer does not get that service. I will show you that there are 7,000 towns in the United States that they can reach with those regularly scheduled cars the we can not reach with regularly scheduled refrigerator service.

Mr. BREED. Why?

Mr. THORNE. Because the carriers do not furnish it.

Mr. BREED. To those towns?

Mr. THORNE. No, sir; I continue reading from Mr. J. Ogden Armour's book, as follows:

"The perishable nature of the product demands 'rush,' and it is believed that this is distinctly a service to the grower, the shipper using the cars, and to the public buying their fresh fruits, vegetables, and meats carried in them—a service that needs no apology. If the 'fast' fruit and meat car service were allowed suddenly to lapse and fall back to the old-time running schedules, the result would be a public outcry and protest, which would be shared in by the very people who are now sharpest in their criticism of the 'fast' private freight trains, and which would astonish the entire public."

Now, one other quotation, and then I am through with Mr. Armour's statement. This is from page 279 of his book:

"There are some kinds of shipping where a delay is not a serious matter, although it is always annoying and expensive to the shipper.

"On the other hand, there are businesses where delay in shipping is simply fatal, where any element that interferes with regular and practically instantaneous shipping must be eliminated from the situation at almost any cost, for the business can not continue under that kind of handicap. Common sense will at once indicate to any reader that the packing business belongs to this class. Not only this, but it is probably the most sensitive to this element of all industries.

"Fresh meats must be shipped regularly and promptly. The world demands its meats every day, and to place its supply at the mercy of an unreliable supply of cars in which to ship it would at once subject the consumers, as well as the packers of meats to a peril not to be countenanced. To delay the shipments of meats when ready to ship means deterioration and loss. * * *

"The only way in which the packers can possibly protect the public and themselves from the hardships incident upon delayed shipments is to have their own refrigerator cars, which are absolutely subject to their own control, and which can not be diverted to other uses. They must know that they are to have at their beck and call every day in the year enough cars to handle their business and to handle it without delay or without danger of delay."

The words "without danger of delay" are italicized.

Mr. BREED. Could I ask you if there is any limit, in law or otherwise, to the number of refrigerator cars that the packers can own, acquire, and operate?

Mr. THORNE. No.

The CHAIRMAN. Is there any limit to the number the wholesale grocers can own, acquire, and operate?

Mr. THORNE. Yes; I am going to get to that in a moment. There is a limit in number.

The CHAIRMAN. In law, I mean.

Mr. THORNE. No, sir; the packers have developed, and they deserve the credit for developing the highest type of transportation service that we have. They have developed a private car—a refrigerator car—because the carriers did not develop them, and for that they deserve credit.

The CHAIRMAN. May I ask you this question—I want to get this for the record: Is there any distinction between a refrigerator car as used for handling of meats, and those used for handling of fruits?

Mr. THORNE. The use of it for fruits and vegetables makes it undesirable for the handling of the meats. Now we have a special type of car for beef that we call the brine tank car. They are called the beef cars. The packers own a little over 91 per cent of the brine tank cars in the United States. They own about 27

per cent of the total refrigerator cars in the United States. Most of the balance of the refrigerator cars are used for fruits and vegetables.

The CHAIRMAN. And they do not require exactly the same equipment as the refrigerator cars which are necessary for the transportation of meats?

Mr. THORNE. The packers have a better devised car and they make better usage of refrigeration than the general refrigerator car.

The CHAIRMAN. Pardon me for interrupting, but I wanted to get that in the record.

Mr. THORNE. Yes. I do not criticize the packers for developing that car at all. The question is, how far are you going to permit them to use that car to go into outside and unrelated items, for if I can develop a car that is accorded preferential service over other ordinary freight cars, and then if I can be permitted to put into that car anything I want to, I am going to have preferential service on anything that I ship.

Now in order to deal on an equality with the packers, people handling these other items would have to become packers, otherwise they would not have the tonnage of perishable freight demanding the use of refrigerator cars sufficient to justify the building and maintenance of such cars.

Mr. BREED. And is that your reason why the wholesale grocer has a practical impediment that prevents him from owning and operating private refrigerator cars for his own use?

Mr. THORNE. Certainly. The same thing would apply to the manufacture of silks, hardware, or any other articles. In order for them to compete on an equality with the packer in the distribution of their commodities they would have to have refrigerator cars, and they could not afford to have refrigerator cars if they were not also packers.

The crux of the whole proposition is, first, are the refrigerator cars accorded preferential service, and, second, do the packers have regularly scheduled service for their refrigerator cars to points that other people do not have such service accorded by the carriers?

I have also here an extract from Mr. Armour's testimony before the House committee, that I shall not take time to read. This was in 1919, and is a verbatim copy of certain passages that I just read from his book.

Mr. BREED. Do you wish to have that put into the record Mr. Thorne?

Mr. THORNE. Yes.

(Following is statement of J. Ogden Armour before a congressional committee:)

"Whatever advantage we may have over our competitor in the handling of these goods lies in the high character of the goods we sell and the character of the service rendered.

"I assume that this committee needs no information from me as to the necessity for there being always on hand and available sufficient refrigerator cars to handle supplies of fresh meat which go out from the packing plants everywhere and which can be kept in prime condition only a matter of a few days and then only at the price of continuous care and watchfulness. Fresh meat you will bear in mind must be sold within a week or 10 days after slaughter.

"The question might be asked, Why not ship by local freight? Because meat would not arrive in good condition. Another reason for not shipping by local freight is that no dependence can be placed on the arrival of meat thus shipped at a certain destination at any specific time. In short, this way is too slow and too unreliable for the transportation of fresh meats and meat products.

"This car-route salesman visits all the towns along the route and takes orders for shipments to be made on a specific day, stipulating that the car shall arrive at each place at a certain day and hour, to be met by the wagons of the retailers of that town. The method of delivery is carried out regularly once or twice a week as the occasion demands, insuring the consumer the delivery of his meats in the best condition.

"We do not sell to customers, but reach them through the meat dealer in the various towns, and our method of putting the meats in their hands enables them to get a fresh supply at very short notice, which could not be done without the route car."

Mr. THORNE. Now as to the relative amount that the packers handle. Have they gone out into those other lines to any substantial extent? We find that at the time of this record being made up, before he consent decree was entered, 29 per cent of Swift's shipments during a representative period of time were grocery items, unrelated items; 20.06 per cent of Armour's were unrelated items; 22.2 per cent of Wilson's were unrelated items.

We were given access to their actual consists, the consists of their cars for a period of a week, and we found in these cars the following items: Canned fruit, trout, canned vegetables, lard substitutes, oleomargarine, butterine, cheese, pickles, olives, soap, evaporated and condensed milk, fruit butter, mustard, jelly, catsup, canned preserves, cooking oil, rice, peas, coffee, canned soup, canned pudding, flavoring extracts, crushed fruits, grape juice, paste, candy, cocoa, honey, cereals, flour, beans, salad oil, molasses, spaghetti, macaroni, peanut butter, prunes, gelatin, glycerine, sawdust, nuts, tin signs, eggs, malted milk, powdered milk, figs.

The CHAIRMAN. What are your statistics taken from, Mr. Thorne, the percentages?

Mr. THORNE. We asked Armour, Wilson, and Swift—

Mr. BREED. In the Interstate Commerce Commission proceeding?

Mr. THORNE (continuing). Yes—to grant us access to the contents of their cars for a typical week, and the last week of May, I believe, was the one that we analyzed their shipments in.

Mr. BREED. 1921?

Mr. THORNE. 1919. Just before the filing of the petition. And I think it covered several million pounds, that analysis. It went into the record without question.

The CHAIRMAN. And this was the result of your investigation, was it?

Mr. THORNE. Yes, sir. The only difference between us and the packers was with reference to the interpretation of the words "lard compounds and substitutes, and butter substitutes."

The CHAIRMAN. Now have you any figures, Mr. Thorne, showing what the packers handled of the total business in these unrelated lines?

Mr. THORNE. Yes, sir, I shall give it presently, Mr. Chairman.

The CHAIRMAN. All right.

Mr. THORNE. I want to state carefully our position now with reference to this data. The packers have taken advantage of their wonderful transportation facilities to undertake an expansion out into the entire food industry. Not content with handling 75 per cent of the interstate slaughtering business of the United States, they have attempted to expand out into all lines of the food industry. By the simple device of putting other articles into refrigerator cars they obtain this same preferential service without any additional charge for any commodity they decide to handle. Now they pay freight on these commodities, you know, but no additional charge for the preferential service accorded these commodities, whether they be perishable or not perishable, and whether they are products of the meat packing industry or not. No device could be more simple, and none more fatal to the rival shipper.

With reference to the ability of the packers getting favorable rules in the transportation of their commodities, I want to say their efforts, without criticism, have been quite effective. For example, I have a copy of a letter here from the freight traffic manager of the Michigan Central Railroad, addressed to J. S. Tucker, the chairman of the Central Freight Association, which was offered of record.

Mr. BREED. Dated when?

Mr. THORNE. I have not the date before me at this moment. It was offered of record in the case, and objected to by counsel. The commissioner presiding said: "If you don't consent to it we will ask the carriers to produce it." The objection was then withdrawn.

Mr. BREED. This letter appears in the Interstate Commerce Commission proceedings in the National Wholesale Grocers v. the Packers?

Mr. THORNE. Yes, sir. The letter is as follows:

"Please see the inclosed letter from Mr. Spink, of the Anglo-American Packing Co. It was suggested, I believe by some one, either in the central committee or Central Freight Association meeting, that the whole question of classification on packing-house products be turned over to the packers, we accepting whatever they would like to have. This is practically what has been done, although not exactly as described.

"I turn Mr. Spink's letter over to you for such action as you deem wise.

"Yours truly,

"B. B. MITCHELL, G. F. T. M."

Demonstrating the preferential service accorded these cars in which these articles are located I want to cite the following extract from the record, being the testimony of Mr. W. H. Mulvihill, traffic man of the Baltimore & Ohio. He stated the following:

Mr. BREED. This was also introduced in the Interstate Commerce Commission hearing?

Mr. THORNE. Yes, sir; Transcript, pages 2892-2893:

"Q. Are you acquainted with the instructions that are issued from time to time about how perishable freight shall be handled in refrigerator service—your instructions are that if anything can move, the perishable or the refrigerators shall move, are they not?—A. We attempt to take care of the perishables first, surely, live stock and perishables.

"Q. That is, a preference over all other classes of traffic?—A. Yes, in order to prevent claims, anything that is of a perishable nature we try to move first.

"Q. And that applies to everything that moves in a refrigerator car, does it not?—A. (No answer.)

"Q. That is, if there is a refrigerator car moving, you assume it is perishable, or if there is a stock car, a car of live stock, you consider that perishable; that is correct, is it not?—A. That is correct; they try to give everything under ice the preference, surely.

"Q. That is the general understanding, and those are the instructions?—A. Those are the general instructions.

"Q. On all of the railroads that you have ever known?—A. On all of the railroads. It has always been my experience to move the perishables and live stock first."

The CHAIRMAN. Mr. Thorne, I don't believe that we care to get any further evidence proving preferential service. It is your contention that there is preferential service, is it?

Mr. THORNE. Yes.

The CHAIRMAN. And you produced evidence before the Interstate Commerce Commission upon that question?

Mr. THORNE. Yes.

The CHAIRMAN. And the Interstate Commerce Commission decided there was no preferential service?

Mr. THORNE. No; they did not say that.

The CHAIRMAN. Well, what did they say?

Mr. THORNE. They say that under the strict terms of the act it is not unjustly preferential.

The CHAIRMAN. Well, I think that is conclusive, so far as we are concerned.

Mr. BREED. May I ask, Mr. Galloway, if the findings of the Federal Trade Commission to the contrary are also equally regarded by your committee?

The CHAIRMAN. We want to consider those also, certainly.

Mr. THORNE. Well, now, in view of the fact of a conflict between the two, then it is of no concern what the facts are, except their conclusion?

The CHAIRMAN. Well, I have asked if we could not have a copy of the record of the proceedings before the Interstate Commerce Commission, and I think that that will show it as fully as filling up this record with it again.

Mr. BREED. Mr. Galloway, there is very little of this. You have asked almost every witness—the wholesale grocer and canner and otherwise—to state what he considered to be the unfair advantage which the packer had over the wholesale grocer in the distribution of food products, and we now have a few more instances showing exactly and definitely what these unfair charges are, in the opinion of the wholesale grocers.

The CHAIRMAN. Well, my position is simply this, Mr. Breed, that as it is being presented now, we are only getting the side supporting that contention, and if we have the entire record we will have both sides of the story, and there is no necessity for a repetition of it here, as I see it.

Mr. BREED. But there is no dispute on the part of the packers with respect to this preferential service. They do not deny these facts that are offered here by Mr. Thorne. The whole point is whether you or the Government, or the Attorney General, shall move in this action to modify this decree in which the packers consented of their own volition not to exercise these preferential services, as against the handling of unrelated food products, and you are considering the question of striking out from a court decree the consent of the packers not to distribute these unrelated food products, and we submit we are entitled to answer your questions as to what these unfair advantages are, and to get it into this record, or you can not properly decide whether the Government should act to modify a decree which the packers have consented to and in which they agreed not to exercise these unfair advantages.

The CHAIRMAN. We are not sitting in any sense as a board of review of the action of the Interstate Commerce Commission, and for that reason I think

that this has gone quite far enough, unless there is just a very little more of it. If you have a very little more of it you may complete that part of it, but we are anxious to hear the other things that you have to say, Mr. Thorne.

Mr. THORNE. I don't know whether these are having any weight on your mind or whether they ought to. It seems to me, Mr. Chairman, that if in the very midst of this proceeding this decree was entered, and that I am trying to present accurately a few of the salient facts showing what will be the situation if the decree is modified, in the distribution of these commodities, that it ought to be pertinent. I am presenting to you salient facts and the other side, if they care to, can offer anything to the contrary. There is nothing to prevent them from doing so.

The CHAIRMAN. We are going to have the whole record, and if we are going to have that, what is the use of repeating this, Mr. Thorne? That is my idea.

Mr. THORNE. Well, I was only presenting a few more important facts bearing upon that question, and then I was going to stop.

Between Chicago and Cleveland there is a schedule service of practically one day, a refrigerator service. I have in front of me records of shipments of grocery items between those two points.

On October 18, 1918, a car of pickles took 17 days—

Mr. BREED (interposing). Shipped by whom?

Mr. THORNE. Shipped by a wholesale grocer. I have here the record of 2,000 cars between those points. I am just citing a few examples. I have the original document itself, if you care to look at it.

A car of soap shipped October 3, 1919, by a wholesale grocer, on the Pennsylvania, took eight days to get there.

Canned vegetables shipped October 2, 1919, on the same road, took 10 days; a car of onions, 21 days; a car of sirup, 17 days; a car of canned corn, 35 days; a car of sirup, 12 days; a car of tea, 18 days; a car of corn sugar, 11 days.

Mr. BREED. Are these all shipped by wholesale grocers between these points?

Mr. THORNE. Yes, sir.

Mr. BREED. Were they shipped in refrigerator cars?

Mr. THORNE. No, sir.

A car of groceries and a car of meats in the same train would move at the same speed between points. There is no alleged discrimination as to that. It is the fact that the car of groceries is not shipped out the day of receipt by the railroad, or is delayed in transit at transfer points, or is delayed at destination. Those are the facts that cause the delays in the nonperishable car.

During the progress of the hearings the packers made a compilation of the schedule time of shipment of packers' commodities and grocery items, showing the schedules of the carriers and made an attempt to compare schedule versus schedule. We asked the carriers to produce the schedule time in transit for the packers' cars. The request was denied. We asked the packers to produce the actual time in transit, and they denied it. We asked the Commission to compel the production of the same, and that was denied. We asked the carriers for access to their records to show the exact time in transit on our commodities, and were granted an order from the commission requiring that information.

It showed that of our shipments 75 to 85 per cent of them were delayed one day or more, compared to the schedule time in transit. Although we were not able to secure that extensive analysis of that actual time in transit over the several thousand shipments for a representative period, we did succeed in making a number of specific comparisons.

The only exhibit offered in the record—and you will find a record of several thousand pages of exhibits which I can not conceive of you reading—in all of that list of exhibits offered by the packers the only one that showed actual time in transit over a representative period of time was Wilson & Co's. I have that exhibit.

(This exhibit was not presented to the committee.)

Mr. THORNE. It showed the per cent of delays, one day or more, to 9, for a period of 30 days, in Oklahoma during a congested period. During the same period of time there was great congestion in Oklahoma, all shipments were delayed terribly because of the demand for oil. The wholesale grocers were confronted with this situation, and we put into the record the actual delays that they had had.

The average shipments out of Oklahoma City to Clinton: The best time was 3 days; the average was 6; the longest, 15.

In all of this extensive record we compiled the number of delays claimed by the shippers in the record compared to the record of their shipments for Swift & Co.; 2.78 of their shipments showed any delays, so far as the record goes, and 1.54 of the shipments by Armour.

The CHAIRMAN. Is that percentages?

Mr. THORNE. Yes, sir. 1.54 for Armour.

Now as to the number of towns that are reached by regularly scheduled refrigerator cars of the packers, and are not reached by regularly scheduled refrigerator cars of the wholesale grocers.

Mr. BREED. You mean of the railroads?

Mr. THORNE. Available to the wholesale grocer.

Mr. BREED. Yes.

Mr. THORNE. Of the railroads, available to the wholesale grocer. I have a chart here showing the geographical location of such towns. We found over 7,000 towns in the United States reached by regularly scheduled refrigerator cars of the packers, and not reached by regularly scheduled refrigerator cars available to the wholesale grocer.

Mr. BREED. That is, refrigerator cars open to the grocer by the railroads?

Mr. THORNE. Yes, sir. It must be remembered that all of the refrigerator cars open to the grocer also are open to the packer, but none of the packers' cars are open to the grocer.

There is the map that I would like to introduce. It shows the geographical distribution of this by state only.

(The map presented by Mr. Thorne was received and marked Exhibit National Wholesale Grocers' Association No. 3.)

Mr. BREED. I would like to stop long enough to say that those black points are the points showing the towns, Mr. Chairman, and cities where the packers can send their refrigerator cars, that the railroads offer no refrigerator service open to the wholesale grocer, canner, producer or other person engaged in the food industry. And the number are 7,000.

I will call your attention to the picture that that map represents. We will have it photographed and leave a copy with you. This is the only copy we have; is that right?

Mr. THORNE. Yes, sir.

We addressed letters to all Class I railroads in the United States, to find out how many of them had regularly scheduled refrigerator cars. Eighty-seven and eight-tenths per cent of the mileage operated by the companies replying to our interrogatory are operated by companies having no regularly scheduled refrigerator service.

Concerning this number of towns I want to read, so as to satisfy you as to its accuracy, the following extract from the record. This is from the testimony of Mr. O'Hara, assistant traffic manager, at that time, for Swift & Co. [reading]:

"Q. But further, while the refrigerator cars indicated on your exhibit are available to both the wholesale grocer and the packer, your exhibits show, do they not, that there are over 7,000 towns reached by your refrigerator cars that are not reached by any refrigerator cars available to the wholesale grocer, as indicated on your exhibits?

"A. Is that the recap?

"Q. I wish you would verify that figure, exhibit 27. Your cars reach over 7,000 points which our cars do not reach, as indicated by your set of exhibits; is that correct?

"A. Yes, sir. It might be included in your cars, though." (Tr. 3637-3638.)

Mr. Manker testified that their peddler cars serve 4,419 towns, out of which only 1,170 are reached by scheduled refrigerator cars, and he confirmed the statement that "It is fair to say that there are three times as many towns reached by Armour Peddler cars approximately as there are reached by scheduled refrigerator cars available to the wholesale grocer." That appears in the transcript at page 4080.

We found altogether that there were 10,984 towns served by peddler cars in the United States, and 4,178 towns, or 38 per cent of these, were reached two or more days a week.

Mr. BREED. By whom?

Mr. THORNE. By the packers' cars.

Mr. SMITH. In the use of these railroad refrigerator cars, is the wholesale merchant allowed to put things not requiring refrigeration in them?

Mr. THORNE. He is not.

Mr. SMITH. Isn't it true that there has been great difficulty, certainly in the sections that I especially represent?

Mr. BREED. The South?

Mr. SMITH. Yes, in obtaining refrigerator cars for fruit, from the railroads?

Mr. THORNE. Yes.

Mr. SMITH. The limited number that the railroads have being pressed for the use of things that must be refrigerated?

Mr. THORNE. That is very true. Of course the packers' answer to that is that they furnish their own cars.

Mr. SMITH. Is it possible to conduct the wholesale grocery business as it is now conducted, with the amount of competition and the size of the individual wholesalers, and those individual wholesalers to own and operate cars of their own?

Mr. THORNE. No. I would say further, that even though they furnished their own cars, if they were not refrigerator cars they would not get this preferential service. Second, that if they furnished refrigerator cars handling wholesale grocery items they would lose a good deal of money, whether they had all of the resources of Swift or not. Because of the simple fact that the relative amount of their commodities demanding refrigeration is small. Therefore, in order, as I have said before, to get this service on a practical commercial basis they would also have to be packers. In order to successfully distribute prunes you would also have to be a packer.

The CHAIRMAN. Well, is there anything prohibiting them from being packers?

Mr. THORNE. Well, then you come to the question, Mr. Chairman. In order to be successful in the distribution of other commodities, must we also all become packers?

The CHAIRMAN. Aren't there a number of small packers engaged in the distribution of these unrelated lines that you cover by this decree?

Mr. THORNE. Yes.

Mr. SMITH. I wanted to get a little more information from the witness about this proposition of the wholesaler owning his own cars. Take the average size of the business of the wholesaler in the United States: Would it be possible to maintain the present average size and competition among wholesalers and yet the individual wholesaler own and operate private cars to do his individual business?

Mr. THORNE. No.

Mr. SMITH. Would the business of the average wholesaler be anything like sufficient to maintain such a service for the individual?

Mr. THORNE. Certainly not.

Mr. SMITH. Then if the wholesaler went into the use of the private cars, would it not be necessary to eliminate many and consolidate, and make almost monopolistic the business of the wholesaler?

Mr. THORNE. That is very true. There is this further feature. You have seen fit to prevent railroads going into various commercial enterprises. The question arises: Shall you permit persons performing a part of the functions of the railroads to also go into those enterprises? Shall we be required to furnish a part of the equipment, or shall the common carrier be required to furnish that equipment? It is a question of pretty big policy involved. If you are going to compel these grocers to furnish refrigerator cars in order to get preferential service—

Mr. BREED (interposing). You mean to own them?

Mr. THORNE. If you are going to compel them to own refrigerator cars in order to get this preferential service, they simply have to quit the business as wholesale grocers. They would have to consolidate both of these fields of endeavor.

Now a question arises as to practical matters: How far have the packers been able to make inroads into the business of the wholesale grocer?

The CHAIRMAN. Before you begin on that I would just like to say this: I think I made the statement that the decision of the Interstate Commerce Commission is conclusive upon us. I want to change that to say that it may be. I don't know what effect it will have upon this.

Mr. BREED. And, of course, I understand that the Attorney General appreciates that this decree, consented to by the packers who intervened in this Interstate Commerce case, was made in the middle of the proceeding, and certainly it was such an important factor in the matter that it also must be taken into consideration.

The CHAIRMAN. Just proceed. I didn't want you to get the understanding that it was conclusive upon us. I don't know the effect of it, really.

Mr. THORNE. In arriving at a consent decree there might be many questions of economics and policy involved that were not within the jurisdiction of the Interstate Commerce Commission.

Mr. Chairman, in regard to these inroads into our business——

Mr. BREED (interposing). The wholesale grocery business?

Mr. THORNE. Yes, sir. (continuing) —we felt that that would be a very important question, and we found many conflicting statements. We found many attacks on the accuracy of the statements made by certain departments of the Government. And for that reason we asked the Wisconsin Railroad Commission to release their statistician, Mr. Schriver, in order that he might come to Washington to make an investigation from the most authoritative source possible. I have here the exhibit that Mr. Schriver prepared. Concerning the trustworthiness of that exhibit I want to say this, that Swift & Co. had an economist by the name of Professor Wells, formerly of Yale faculty, make a check of those figures and of the exhibit. I think he had several weeks in which to do it. And when asked concerning it——

Mr. BREED (interposing). On the stand.

Mr. THORNE. On the witness stand—the following occurred: The question in substance was as follows:

"You take exceptions to certain deductions or conclusion we make from these figures. Can you cite any figure under any hearing that is erroneous?"

And he said that he didn't know of any. I can give you the page of the record if you want that.

Now, here is the result of a compilation made by a disinterested party, in a sense—that is, he was not in the permanent employ of either side, but temporarily released by a State commission to come to Washington and make a check of figures from various departments. It was very difficult to find a comprehensive showing of the inroads into the grocery business by the packers over a period of years. But the facts that were gathered are quite significant.

Now I want to cite a few of them that are presented on that exhibit.

The CHAIRMAN. May we have this exhibit, Mr. Thorne?

Mr. THORNE. Yes, sir.

(The exhibit was presented to the commission, but is not copied into the record.)

Mr. THORNE. As to cheese: In 1918, the packers' sales of cheese constituted 49.1 per cent of the factory production of cheese in the entire United States. This is exclusive of sales by Morris & Co., not reported. In the country as a whole, the production of cheese from 1914 to 1917, increased 4.9 per cent; making an average increase of about 1.6 per cent per year. The packers' sales of cheese during the same period increased from 14 to 50 per cent for the different companies. In two years Armour and Wilson increased their sales by an amount more than double the increase in the production of cheese throughout the United States.

It is very significant to note that the packers have been increasing their business much faster than the total volume of production in the country as a whole.

As to butter: Swift & Co. is the greatest distributor in the United States, handling in 1916, in round figures, 50,000,000 pounds, or nearly as much as the combined sales of the two largest nonpacker organizations.

I will say that most of this data is taken from a very voluminous set of reports issued by the Federal Trade Commission, for which they deserve very great credit, and none of the figures which I have read here were questioned by any packer, witness or counsel.

The CHAIRMAN. Well, could you give us especially, Mr. Thorne, the figures on the commodities that are covered by the decree?

Mr. THORNE. Yes, sir.

The CHAIRMAN. You know cheese, eggs, butter, etc., are not covered.

Mr. THORNE. Yes, sir.

The CHAIRMAN. We are especially interested in the others.

Mr. THORNE. I think, Mr. Chairman, that their ability to expand into these unrelated items is very important.

The CHAIRMAN. Oh, it shows the tendency, that is all, but——

Mr. THORNE (interposing). Absolutely, and the little incident that happened yesterday, Mr. Chairman, had more substance than fiction in it, when you

asked the witness if a man killed John Smith is that any indication that he is going to kill me. It may not be, but there was sufficient justification to fear it that they locked the man up. Likewise here, if with these facilities they are able to expand out in the handling of these various other commodities it seems to me that is very significant.

From 1915 to 1918 factory-made butter increased about 1 or 2 per cent each year. During the same period the packers' sales of butter increased 30 per cent or more each year.

OLEOMARGARINE.

The production of factory-made butter is much more than twice as great as oleomargarine. However, the production of factory-made butter has increased very little since 1914; while the production of oleomargarine has considerably more than doubled since 1915, so that oleomargarine is actually outstripping butter in its increase in volume.

The packers sales of oleomargarine in 1918 were over one-half the total production in the United States.

I want to say that while this decree was pending we all urged that these commodities be added, and if any changes be made in the decree we think that it ought to be strengthened instead of weakened in that respect.

As to lard and substitutes, one sentence: The large packing companies combined sold in 1918, 485,000,000 pounds of lard compounds and substitutes, in round numbers. The rapid increase of the packers' activities in this line is well illustrated by that of Swift & Co. In 1918 this company sold 43 per cent more than they did in 1916, two years previously.

The CHAIRMAN. Are you reading the Federal Trade Commission's report?

Mr. THORNE. No, sir. I am trying to give you, if I may be permitted, a statement of what is in front of you, in a very brief way.

The CHAIRMAN. In this exhibit?

Mr. THORNE. Yes.

The CHAIRMAN. I wanted to be clear on that.

Mr. THORNE. Canned goods: Canned vegetables produced in the United States showed no increase from 1914 to 1917. Now that is in tonnage, not in value. The packers up to the present time have handled probably less than 17 per cent of these commodities (Morris and Cudahy not reported); but note their phenomenal growth in recent years:

Armour & Co. in two years trebled their sales in pounds of canned vegetables and sundries, including canned and dried fish, peanut butter, evaporated milk, condiments and rice.

For Wilson & Co. some confusion exists in the amount of canned vegetables, for plants and branches, but the plants alone showed an increase in one year, 1917 to 1918, of 186 per cent, and the branches showed an increase during the same year of 445 per cent. The increase of tonnage sales through branches since 1915 was 1,374 per cent for Wilson & Co.

Libby, McNeill & Libby, the Swift & Co. concern, sell to a very substantial extent through wholesale grocers. This concern increased its tonnage sales from 1915 to 1918, 250 per cent, or an average of 83 per cent per year.

Remember that during these three years, the increase in production for the United States as a whole was nothing.

From 1915 to 1918, the tonnage sales of condiments and preserves through the plants of Wilson & Co. increased 760 per cent, and the sales through branches increased 367 per cent.

That is all.

Mr. BREED. Have you anything to show with respect to the entrance of the packers into the ownership of other wholesale grocery houses, hotels, or other consuming corporations?

Mr. THORNE. Yes. I understand the chairman has frequently asked for specific facts instead of generalizations. And I have been trying my best to give him a few this morning.

I will read an extract from the report of the Federal Trade Commission on the meat-packing industry, Part IV, Chapter II, pages 17 to 24, inclusive:

"Just as half a century ago the anthracite carriers embarked on a scheme of securing tonnage for their roads by the purchase of mines, so some of the big packers seem to be embarking on a policy of buying stock in hotel companies as a means of securing these important outlets for their tonnage. The agents of the commission found it difficult to secure admissions from the

managers of hotels in which packers own stock that such stock ownership in any way influences the purchasing policy of the hotel; stewards, it was held, buy where they can get the best terms. The correspondence of Swift & Co. leaves no doubt, however, as to the object that company has in buying stock in hotels, or what its opinion is of the purpose of other packers in making such purchases.

"On June 16, 1917, Edward F. Swift wrote to L. F. Swift as follows:

"I am not in any way agitating the questions of Swift & Co. taking stock in hotels to influence their supplying the same, but as a matter of information will be pleased to have you advise me what you understand Swift & Co.'s policy is.

"Also, irrespective of the above, what you know about new New York Central Hotel that is being built in New York City near the New York Central Station, as to whether any outsiders have been asked to take stock in this hotel, and if you know whether the supplies will be bought on the open market or otherwise."

"On June 20, 1917, L. F. Swift replied as follows:

"Answering your letter of the 16th concerning Swift & Co.'s policy in connection with taking stock in hotels, I will go back to 1910, which was the time this first came up.

"McAlpine: I highly recommend taking \$50,000 stock in the McAlpine Hotel, which carried with it their entire business. * * * Sol. Zahn, the hotel man in New York, took what we refused and I don't doubt his profits are \$50,000 annually. No contract for supply.

"Biltmore: The next was the Biltmore Hotel. Armour took stock to the amount of \$200,000, but we had no opportunity. No contract to supply their meat, but this is assumed, and they hold the trade. I don't doubt his profits exceed \$50,000 annually. * * *

"Commodore: The new hotel you speak about on Forty-second Street is the Commodore. Edwards, Moon, and I have seen Mr. Bowman five or six times and begged him to let us become stockholders, but he has refused, claiming the stock is all sold or something of that kind. Armour has, I think, \$500,000. While there is no contract to supply the meat, it is assumed he gets it. There is no doubt but that the stocks in both of the above hotels will be profitable. Moon sees Mr. Bowman almost every day.

"Manhattan: The same owner has taken on the Manhattan Hotel which the Metropolitan (a Swift concern) supplies to the extent of about \$500 per week, which is quite small. We are trying to get more but can not get it away from Armour.

"Ansonia: * * * Capital, \$100,000, 7 per cent cumulative preferred, \$50,000 common. John McE. Bowman, president, and William J. Cummings have recently acquired a stock ownership, and in order to assist him and Mr. Bowman to straighten out the affairs of the hotel, Swift & Co. have loaned them \$75,000, and some of the individuals \$25,000 additional, with the understanding that we will get their business.

"Pennsylvania: The Pennsylvania Hotel in New York City is to be run by Mr. Statler. Mr. George Edwards and I have seen him several times and have a partial promise of his business. But he does not ask anybody to take stock. Equal Commodore in size.

"Policy: As to our policy, I should say every opportunity we can get to do anything like the above, we would better do it. There are a good many questionable hotel enterprises which I think should be turned down, and I have recently turned down three or four of them."

"The remainder of the letter reviews the facts about four well-known hotels, two in New York, one in Boston, and one in Baltimore. It may be said that according to information given the agents of the commission by the secretary of the Beau-Site Co., which operates the Biltmore Hotel, Mr. Armour owns only \$70,000 of the preferred stock out of a total capital stock of \$3,000,000; that he owns \$750,000 preferred in the Bowman Hotel Corporation, which operates the Commodore Hotel; and that he is interested in the Manhattan Hotel through ownership of stock in the Armow Operating Co., which operates the hotel—a name suggestive of the only and equal owners, Mr. Armour and Mr. Bowman.

"The following extracts from the Swift correspondence throw further light upon the Ansonia Hotel transaction referred to in L. F. Swift's letter. On April 11, 1917, L. F. Swift wrote L. A. Carton, treasurer of Swift & Co., that for personal reasons he and other members of the firm had advanced \$25,000

in connection with the Ansonia, and that he found when he got into it 'that Mr. John McE. Bowman, head of the Biltmore, Commodore, and Manhattan Hotels, was behind the company. He now puts up a proposition for us to take \$75,000 cumulative preferred stock to be returned \$10,000 each year, in return for which we will receive the Ansonia Hotel business, and it seems to me quite necessary that we do it.

"You know that I tried to make an investment in the Biltmore and Commodore Hotels, hoping to get their business, but it was impossible; Armour had arranged it in advance."

"On April 18, 1917, instructions were sent to the company's representatives in New York 'to approach Mr. Bowman and make the best terms you can so as to secure Swift & Co. in their advance to him of \$75,000 and to get his trade in return.'"

"Satisfactory terms were made and the \$75,000 advanced; but it was not till toward the end of the year that arrangements were perfected for starting the hotel under the new management. On September 24, James P. Moon, for Swift & Co., wrote the vice president of the hotel company:

"You have met Mr. T. P. Kidd, manager of the Metropolitan Hotel Supply Co., through whom Swift & Co. would like you to arrange for the supplies of Swift's products to the Ansonia Hotel; and Mr. J. P. Davenport, No. 1 Hudson Street, New York, manager, Libby, McNeill & Libby, for such supplies as you may require from them."

"On the 28th the vice president replied:

"The moment our new company is started, I will notify Mr. Kidd and Mr. Davenport to call on me—then we will commence giving you "some sure enough business." In fact, every dollar's worth that the Ansonia buys in your line, will be bought from you."

"The correspondence of Swift & Co. shows that the purchase of stock in other hotels was considered as a means of securing these important outlets for their products. During the summer of 1917 the question of taking stock in the United Hotels Co. was considered. This company is the owner of a line of hotels in medium-sized cities and planned to supply their own and other hotels with all kinds of furnishings. On September 18, 1917, L. F. Swift wrote E. F. Swift as follows:

"I think the time has come when Swift & Co. have got to adopt a decided policy about their hotel business and not have any more of this happy-go-lucky * * * way. Now comes the question of the United Hotels Co., who have hotels in the following cities: Birmingham, Ala., Erie, Pa., Hamilton, Ont., Newark, N. J., Peoria, Ill., Syracuse, N. Y., Utica, N. Y., Worcester, Mass.

"I understand we can get your business by taking \$100,000 preferred stock * * *."

"Here are eight hotels fairly started. It is quite different from a new hotel which has not started yet, a good many of which I suppose we would from necessity have to turn down; but anything with the right earmarks, like "the Washington Hotel" now being built, should, in my opinion, be accepted. * * *"

"A conference a day or two later convinced Mr. Swift, of the hotels company, but there were important questions of trade policy that caused further hesitation. Some of Swift & Co.'s customers, two of which there had been serious talk of taking over were selling the hotel company and probable complaints were foreseen. Mr. L. E. Swift suggests on September 20:

"* * * We might take this investment, giving them the cash by October 1, which is the time they want it, and form a policy on the other questions open in the meantime.

"We need not try to press our advantage from this stock during the months of October and November, if we didn't want to, and use it when we needed it and had a policy formed. * * *"

"Mr. Charles H. Swift was in full accord with other members of the firm as to the purpose of stock purchase in hotels, and as to the desirability of having a definite hotel policy. On September 18 he wrote L. F. Swift as follows:

"* * * I agree fully that Swift & Co. should decide upon a policy in regard to these investments. The opportunity before us of the United Hotels Co. is a good illustration to work on. I do not know of any other field where we could get so much hotel business for as moderate an investment as is indicated in this case. I understand they would like us to take \$150,000 preferred stock instead of \$100,000, as you suggest; and I shall be very glad indeed to see the policy worked out accordingly."

"In the light of the Swift letters quoted above and in the absence in this voluminous correspondence of any condition as to prices upon which packer sources the trade of a hotel, it may be assumed that so far as this form of control over outlets for goods extends, it places distinct limits upon the field of competition. It is a matter of concern, therefore, to other dealers in foods whether markets are to be secured in this way. It is also a matter of concern to other stockholders in the hotel companies who have nothing to sell. It is a matter of concern to consumers that the supplies for the hotel they patronize are arranged for on the basis of the ownership of a little stock rather than on the basis of competition. Under such circumstances the limits set upon prices are those to which monopoly is subject everywhere rather than those fixed by competitive forces."

Mr. THORNE. In regard to these voluminous investigations, it has seemed to me—

Mr. BREED (interposing). Are you going off on another subject now?

Mr. THORNE. No, sir. (Continuing:)—it has seemed to me that the selection of significant and important facts which have been produced at public hearings, without any contradiction or question from any person, and selection of salient facts is somewhat worth while to you. It seems to me that the particular facts that I have tried to call your attention to this morning, including the fact that they do get preferential service, the fact that they reach many towns, thousands of towns that we can not reach with that preferential service, the fact that they are permitted to put anything that they want to in that car, the fact that they do negotiate with hotels, and there, by loaning, or by buying stock, get control of the food service of those hotels, without any reference whatever to prices, the fact that they have made these enormous, rapid increases into these various unrelated items when they were permitted to operate—all of these things are of sufficient significance to be presented to you.

The CHAIRMAN. Mr. Thorne, you say we won't read it, but can we not have, anyhow, a copy of the record? Have you a copy of the record before the Interstate Commerce Commission available that you could file with us?

Mr. THORNE. Yes, I shall be very pleased to. I only have copy. It is about 4,000 pages. I think there are about 2,000 pages of exhibits, and probably about 1,000 pages of briefs.

The CHAIRMAN. Well, I think I have the briefs.

Mr. THORNE. You have?

The CHAIRMAN. I have got part of them, at least. Perhaps all of them.

Mr. BREED. Could I just bring home, to you, gentlemen of the commission, the one very vital fact that appears to me in connection with any motion by the Government to modify this decree? And that is that if the decree and the injunctions contained in it, and consented to by the packers, with respect to carrying in their private refrigerator and peddler cars these unrelated food products is modified,—which, mind you, is a matter to which they, themselves, consented—then the mere fact that the Interstate Commerce Commission has held that they are not going into that makes all the more important your action on this modification of this decree. The wholesale grocers and canners, one and all who have testified here, unanimously have said that their personal private business experience shows that these refrigerator car preferential services open to the packers, if they are allowed to use them in these unrelated lines, will injure and affect their trade, whatever the Interstate Commerce Commission held as to the situation.

The CHAIRMAN. Well, let our argument come later, Mr. Breed, and we will get through with Mr. Thorne now.

Mr. BREED. Could I ask Mr. Thorne one question on the hotel business?

The CHAIRMAN. Yes.

Mr. BREED. You referred to, and you have offered these letters showing the policy of the packers to acquire stock in hotels, which letters apparently showed that it carried with the stock ownership the sale to the hotel of food products. Did that include both meat and general food products?

Mr. THORNE. Very frequently they referred to food products, or food.

Mr. BREED. Now, all of these hotels throughout the United States have heretofore been served direct by the retail or by the wholesale grocer, have they not?

Mr. THORNE. Yes, on a competitive basis.

The CHAIRMAN. Just in that connection. It is a fact that I have studied this thing so long, and know so many of the facts connected with the processes and methods and the lines handled by the packers and grocers, and so forth,

that we are now considering that that has made it rather hard for me to hold myself down at times, so I don't mean any disrespect, because some of these things I have known for a long time, and that is the reason that I have made an effort to limit the discussion as much as possible. For instance, on the thing that Mr. Breed just brought out, I have been familiar with it, and I have been considering my own knowledge rather than the record, I fear.

Mr. BREED. Well, we want to go on record as saying that we think that the commission has given the wholesale grocers—everybody concerned—as fair a hearing as was ever accorded in any investigation in which I have been present.

The CHAIRMAN. It is very nice of you to say that. Mr. Hall, you have a question, I think.

Mr. HALL. Yes. Mr. Thorne, I wanted to ask you a few questions on this preference as to time. What effect has the use of the refrigerator cars to ship the unrelated lines, on the wholesaler as to time?

Mr. THORNE. The packers shipping the unrelated items in their peddler car, which is a refrigerator car, get prompt, regular, reliable delivery, which I was proceeding to outline, and which Mr. Armour frankly concedes, whereas the wholesale grocer is subject to delays on over three-fourths of his shipments. He can not approximate the date of delivery, or the time of day, whereas the packer can. The packer can on practically 90 per cent of his shipment. The grocer can not on over 10 or 15 per cent of his. The certainty, the regularity of it, is of just as much importance as the speed. I have various extracts from the record which I could cite in support of that general statement that I have just made.

Mr. HALL. But I was asking the effect on the wholesaler. Does it delay him, then, in supplying his retail trade?

Mr. THORNE. If you are competing with another man, and you can not get regular shipments on your commodities, and he can on the same commodities, it is only a question of time till you lose that business. Quality and quantity being the same, the time of delivery is important in every line of activity, and this is specially demonstrated by the testimony of Mr. Stix that I read to you.

Mr. HALL. Does this work a hardship on the wholesaler as to nonperishable articles?

Mr. THORNE. Absolutely, just as Mr. Stix stated.

Mr. HALL. Why?

Mr. THORNE. Because he has to have prompt, quick, trustworthy deliveries, and if you do not have them, you lose the business to the other fellow.

Mr. HALL. Well, isn't it a fact that the wholesalers carry a stock on hand from year to year to supply the trade?

Mr. THORNE. So does the packer. So does the retail grocer. Everybody does. It is the question of turnover.

Mr. HALL. I was asking about the time, not the turnover.

Mr. THORNE. The two are inseparably connected, Mr. Hall.

Mr. HALL. One represents capital, doesn't it, and money, and the other the question of time?

Mr. THORNE. Let's see—

Mr. HALL. What I wanted to get at is this: Was the wholesaler delayed in deliveries to his retail customers by reason of the use of the refrigerator cars by the meat packers?

Mr. THORNE. Let us see if they are not inseparably connected. If you are a retailer out in Bloomfield, Iowa—

The CHAIRMAN. Make it Indiana. I know there is a town by that name there.

Mr. THORNE. All right. If you are a retailer out in Bloomfield, Ind., and you have so much money that you can command; if you purchase from Sprague, Warner & Co., Reid, Murdock & Co., at Chicago, a given line of food products, and can not know the time of arrival, you have got to carry a larger stock on hand, you have got to have a larger amount of investment, and you are going to patronize the man from whom you will get the quickest and the most reliable delivery.

Mr. HALL. Well, I didn't mean to go into the question of capital. I merely wanted to confine the question as to time. It is a fact, isn't it, Mr. Thorne, that the wholesaler does carry a large stock from year to year?

Mr. THORNE. Yes.

Mr. HALL. Of the nonperishable goods?

Mr. THORNE. Yes.

Mr. HALL. So that if he received an order from his retailer wouldn't he be able to fill that?

Mr. THORNE. Yes.

Mr. HALL. He should be able to fill it?

Mr. THORNE. Yes.

The CHAIRMAN. But he could not get it to his retailer in the same length of time that the retailer could get it from the packer.

Mr. THORNE. Yes.

Mr. HALL. I don't see why. The packer has it on hand, and so has the wholesaler it on hand in the distributing houses.

Mr. THORNE. Well, I haven't made myself clear, surely, to you.

Mr. HALL. Probably not.

Mr. THORNE. Now, let us see again. Supposing you are Sprague, Warner & Co., and you put it into a trap car at Chicago. It goes out on an average of seven days later, out of Chicago. If you have a refrigerator car it goes out the same day.

The CHAIRMAN. May I ask a question which I think will clear it up? In other words, the time is lost in the transportation between the wholesaler and the retailer.

Mr. THORNE. Precisely.

The CHAIRMAN. The wholesaler has a great deal slower transportation to his retailer than the packer has?

Mr. THORNE. Yes, sir.

The CHAIRMAN. Does that clear it up?

Mr. HALL. Yes, that clears it up.

Mr. THORNE. Now demonstrating that, Mr. Dawson, traffic manager of Sprague, Warner & Co., made an analysis of their shipments by trap car for 30 days. There was an average delay of seven days going out of Chicago. The packers stuff would go out the same day. And the wholesale grocer's would go out seven days later.

Mr. HALL. That is all right, I just wanted to clear it up.

Mr. BREED. And your point is that if the packers are allowed to go on into these unrelated lines, shipping them in their cars, that carry this quick service, that it is only a question of a very short amount of time when the packers can absolutely get as much of the business of the retailer as they see fit to seek, because they can make quicker deliveries than the wholesale grocer?

Mr. THORNE. Absolutely.

Mr. HALL. That is, quicker deliveries to the retail trade?

Mr. BREED. Quicker deliveries to the retail trade.

The CHAIRMAN. Senator, have you any questions?

Mr. SMITH. Take a line of road running back 100 miles from Chicago. Here are your retail merchants distributed along that 100 miles. If the retail merchant is an intelligent business man who will he buy from, the man who can deliver it in 24 hours to him, or the man who may deliver it in a week or two weeks?

Mr. THORNE. I think the answer is evident.

Mr. SMITH. That is about the situation that is presented?

Mr. THORNE. Of course the difference in time varies, on straight shipments, within 100 miles there would probably be only a day's difference.

The CHAIRMAN. Any questions Mr. Daily?

Mr. DAILY. No, I have no questions, Mr. Chairman, to ask. I think Mr. Thorne has covered it very thoroughly.

The CHAIRMAN. Is that all?

Mr. BREED. Does Mr. Gray want to ask any questions?

Mr. GRAY. Not at this time, thank you.

Mr. THORNE. Mr. Breed stated that that applied to shipments to the retailer. I want to say that it also applies to shipments to the wholesale grocer's branch house which he may operate just like a packer. Those car-load shipments that I showed you, where the variations range from 3 to 35 days for a one-day haul, demonstrate it.

In conclusion, gentlemen—

Mr. BREED. Before you conclude may I not ask you: If the packer goes into the canning and producing business, does it not also apply in connection with the shipments from the canning factory to any point?

Mr. THORNE. Yes, sir. Gentlemen, the two tribunals that have reviewed this situation, the Federal Trade Commission and the Interstate Commerce Commission, have reached somewhat diverse conclusions. I want to say that 90 per cent of the cases before the commission referred to discriminations in rates

instead of discriminations in service. To my mind a discrimination in service is just as important as a discrimination in rates, if not more important, and the business men of this country are beginning to realize that more and more. If these gentlemen are permitted to have this discrimination in service, and then you let them put anything into their cars they want to, it is only a question of time until the packers will dominate the entire food industry of the Nation, just as they have the slaughter industry.

MR. DAILY. Mr. Galloway, just a question or two suggested by Mr. Breed's question.

MR. THORNE. Is it not necessary for packers of seasonable vegetables and fruits to use refrigerator cars in the winter time to protect them against freezing? Is it not customary?

MR. THORNE. Yes, sir.

MR. DAILY. Do you know anything about the experience of canners in obtaining refrigerator cars when they need them for such shipments in the winter time?

MR. BREED. From the railroads?

MR. DAILY. From the railroads.

MR. THORNE. I understand at times they have great difficulty.

MR. DAILY. That is all, Mr. Thorne.

THE CHAIRMAN. That will be all. Thank you, Mr. Thorne.

Then we will adjourn until Monday morning at 10 o'clock.

(Thereupon, at 1.15 o'clock p. m., Saturday, December 3, 1921, an adjournment was taken until Monday, December 5, 1921, at 10 o'clock a. m.)

MONDAY, DECEMBER 5, 1921.

The committee met at 10 o'clock a. m. in room 704, Department of Commerce, pursuant to adjournment on Saturday, Hon. Herman J. Galloway (chairman) presiding.

THE CHAIRMAN. Gentlemen, let us proceed now. I understand there are two representing the National Wholesale Grocers' Association who wish to be heard yet.

MR. BREED. Yes.

THE CHAIRMAN. Just proceed with them, Mr. Breed.

MR. BREED. Mr. Herscher.

STATEMENT OF MR. J. W. HERSCHER, PRESIDENT OF NATIONAL WHOLESALE GROCERS' ASSOCIATION, CHARLESTON, W. VA.

THE CHAIRMAN. Would you give your name, address, and business to the reporter, please?

MR. HERSCHER. My name is J. W. Herscher, connected with the wholesale grocery firm of Lewis, Hubbard & Co., Charleston, W. Va.

THE CHAIRMAN. And what official position, if any, in the wholesale grocery trade do you occupy?

MR. HERSCHER. I cover that in my statement, sir.

THE CHAIRMAN. Just proceed, then.

MR. HERSCHER. I am president of the National Wholesale Grocers' Association, which was organized in 1906, largely representing a sentiment of wholesale grocers throughout the country in favor of a national food law. The association favored that law in Congress and since that date has continuously cooperated with the Department of Agriculture in connection with the enforcement of that law. It has also urged the enactment of uniform State food laws based on the national statute and such laws have been enacted in about 80 per cent of the States.

The members of the association are individual firms and corporations located in every State in the United States, numbering about 1,800, and representing about 85 per cent of the total volume of business done by wholesale grocers in the United States.

I estimate this volume of business done by all wholesale grocers in the country, of which there are approximately 4,000, to be possibly four billion dollars. The statement made in the answers of some of the packers in the action of the United States against the Big Five packers and in which this decree was entered, indicate that the business of wholesale grocers at that time was about three and a half billion dollars. This represents the business of probably four thousand independent firms and corporations doing a distribut-

ing business and is about the same as the volume of business done by the Big Five meat packers, as shown by their own records.

From time immemorial there has been found the necessity for the wholesale handling of food and other products in order that the same should be collected in quantity at some point capable of being distributed to the retailer who comes in daily contact with the consumer in various small localities. The wholesale grocer buys his goods outright, owns them, insures them, transports them, pays the freight on goods purchased and then pays for the cartage on daily deliveries to the retail grocer. He is also obliged to extend credit to thousands of retail grocers.

The average wholesale grocer is obliged to carry in stock from three to five thousand different articles.

The number of wholesale grocers has grown, so that to-day, according to records of the Joint Commission of Agricultural Inquiry, there are upwards of 5,000 independent competing wholesale grocers.

"Retail grocers and delicatessens constitute the largest retail group, and of these there are 335,212, or one for each 315 inhabitants, or 73 families. In the grocery trade there are 5,950 wholesalers, or one wholesaler for each 56 retailers."

The above is from the report of the Joint Commission of Agricultural Inquiry, dated October, 1921.

The origin of the National Wholesale Grocers' Association, as I stated, was brought about chiefly because of the difficulty of doing business under 45 State laws regulating the production, distribution, and sale of food products. The objects of the association are as follows:

Mr. BREED. What are you reading from, Mr. Herscher?

Mr. HERSCHER. From a copy of the constitution and by-laws of the National Wholesale Grocers' Association of the United States [reading]:

"ARTICLE II.—OBJECTS.

"The objects of the association are:

"First. To foster and promote a feeling of fellowship and good will among its members and on broad and equitable lines to advance the welfare of the wholesale grocery trade of the United States.

"Second. To oppose improper methods and illegitimate practices inimical to the right conduct of business that honest and open competition may prevail.

"Third. To promote harmonious relations among manufacturers, wholesalers, and retailers in order that food products may be placed in the hands of consumers at the lowest possible cost.

"Fourth. To assist in the enactment and enforcement of Federal and State pure food laws that in their operation shall deal justly with the rights of consumers and the trade, and of effective weights and measures statutes for the protection of the public.

"Fifth. To promote the adoption and enforcement throughout the United States of uniform laws upon commercial subjects.

"Sixth. To disseminate useful information and maintain high standards of education among members with respect to the scientific and practical features of their business.

"Seventh. To have business conducted upon lawful and proper lines; and to correct evils, including 'schemes,' 'deals,' 'lotteries,' 'premiums,' and the subsidizing of jobbers' salesmen.

"Provided, That in the efforts of the association to accomplish these ends, no action shall be taken that will tend in any manner whatsoever to fix or regulate prices or in any way operate in restraint of trade."

I am the ninth president of the association. The other presidents are as follows: From 1906 to 1909, Wm. Judson, Grand Rapids, Mich.; 1909 to 1910, D. H. Bethard, Peoria, Ill.; 1910 to 1911, Fred P. Drake, Easton, Pa.; 1911 to 1912, George B. Wason, Boston, Mass.; 1912 to 1913, George E. Lichty, Waterloo, Iowa; 1913 to 1915, O. B. McGlasson, Chicago, Ill.; 1915 to 1918, Theodore F. Whitmarsh, New York; 1918 to 1921, Arjay Davies, Easton, Pa.

All of the officers of the association serve without pay.

I can state positively that as a result of the activities of this trade organization during these years great improvement in the distribution of food products has resulted; studies of the cost of doing business have been made, the association having contributed to the Harvard Bureau of Business Research, which has investigated the business of the wholesale grocer with a view to determining where there was waste, if any, in connection with the methods of

operation. That bureau has made reports which give most illuminating data with respect to costs.

Doctor Copeland, director of the Harvard Bureau of Business Research, has on various occasions attended our meetings and has conferred with officers and members on the subject of costs.

In that connection I want to read from Bulletin No. 26, bureau of business research, Harvard University, entitled "Operating Expenses in the Wholesale Grocery Business in 1920." [Reading:]

"The standard accounting system which was published at that time [1916] in cooperation with the National Wholesale Grocers' Association has formed the basis for the collection of these data. * * *

"The funds to cover the expenses of the investigation this year were provided by the National Wholesale Grocers' Association, and the association has aided also by stimulating interest among its members."

I want to say further, that while the national association pays the cost for the gathering of these figures by the bureau of business research, of Harvard, that so far as the reports are concerned each individual jobber who submits his report finds out about his own individual business, and, outside of getting the figures for all who report, that is as far as the information goes, so far as it has been used by the trade.

Mr. BREED. The Harvard bureau has investigated other trades and industries, has it not, Mr. Herscher?

Mr. HERSCHER. They are investigating the retail jewelry trades. I have some correspondence from Doctor Copeland at this time along those lines. And they are investigating the hardware trade, and, I think, the drygoods trade, and the boot and shoe trade, and possibly others.

I want to give you an idea, gentlemen, as to what goes to make up the cost of conducting a wholesale grocery house, as per these reports by Harvard.

Wages of receiving and shipping force; packing cases and wrappings; outbound freight, express, and cartage; office salaries; office supplies and postage; telephone and telegraph; rent; light, heat, and power; taxes and insurance on merchandise; repairs of equipment; depreciation of equipment.

Total interest, I suppose, on borrow capital. Almost all of us borrow money whenever we can get it.

Now it has been charged from time to time that the wholesale grocer is not an efficient agent. In going over this report of Harvard I find that on 43 firms who have reported annually to Harvard since 1916, and including 1920, that where their total expense in 1916 was 10 per cent, in 1917, 9.3 per cent; 1918, 9.4 per cent; 1919, 9.3 per cent, you will observe that in 1920 their expense was 9 per cent. That is the common average.

Much has been charged about the wholesaler charging too much for his goods. According to this report, for the year 1920 the wholesale grocers who reported to Harvard and who did a gross volume of business of, I think, in the neighborhood of \$750,000,000 in their Federal reserve district the losses ran from—and this was the net loss, gentlemen—from 1.2 per cent to 0.1 per cent. Only in the San Francisco reserve district did the wholesale grocers show a net profit last year of 0.4 per cent.

I wish now to add a word as to why this association is appearing at these hearings.

Mr. BREED. Could you say, before you go on, what the average net profit of the wholesale grocery business is in normal times?

Mr. HERSCHER. Over a period of time it has been my experience that if they can make 2 per cent net on turn-over they are very much satisfied.

I wish now to add a word as to why this association is appearing at these hearings.

First, let me say that the National Wholesale Grocers' Association and no other wholesale grocers, so far as I know, had any connection with the action of the people against the big five, except that, at the request of the Attorney General just prior to the entry of the decree, several conferences were had with members of the wholesale grocery trade and other trades affected by the decree in order to give the Attorney General certain information which he desired.

When the decree was entered the National Wholesale Grocers' Association sent a bulletin to its members in which notice was given of the entry of the decree and the following statements were made: (This is under date of February 28, 1920.)

"Attorney General Palmer has here rendered a great and signal public service that deserves the ungrudging commendation of consumers everywhere. The Federal Trade Commission also has been untiring in its investigation of this subject, in publishing facts to the country and in aiding other departments of the government. It is understood, of course, that, notwithstanding the decree, the Attorney General, the Federal Trade Commission and other departments of the government will continue their efforts to promote competition and to enforce the existing laws in the public interest with regard to any features of the problem that, as they shall find from time to time, may not have been adequately disposed of by this decree.

"We respectfully urge that the wholesale grocers and other food merchants throughout the country, including the numberless independent manufacturers, should look upon this accomplishment of Attorney General Palmer and the Department of Justice as an opportunity and an invitation to them to redouble their efficiency as servants of the public and to devote their best efforts toward the service of consumers throughout the country, through constantly increased economies and facilities of manufacture and distribution, to the end that food products may be placed in the hands of the people under an open and freely competitive system and at the lowest possible cost."

This went to our membership.

The association has never had any contest with the packers who for many years have been distributing meat products, until early in 1919, when the wholesale grocers began to realize that the meat packer was enjoying certain special privileges with respect to the transportation of grocery products in privately owned refrigerator and peddler cars, enabling the packer to make deliveries much in advance of deliveries made by wholesale grocers in the same localities. This we regarded as an unfair advantage and began action against the railroads of the country before the Interstate Commerce Commission to prevent the packer from getting this preferential service. It was also evident at this time that the packers were making rapid strides in the handling of food products other than meat and meat food products and that their work along these lines was not confined to the distribution of these products, but to the acquisition of the sources of manufacture and production.

We also realized that the packers in the meat business had not been primarily interested in the distribution, but in the control of the raw product and its prices. We, therefore, believed that the ultimate object of the packer was not to utilize his distributive system and special privileges for the purpose of rendering a valuable service to the public, but for the purpose of distributing products from canneries and factories owned by him or under his control.

During the last 100 years the wholesale grocer has remained essentially a distributive agent and has not gone into the fields of production or manufacture, and he is to-day performing the same general service which he always has performed—distributing food products to the retail grocer who in turn sells to the consumer.

The packers in the handling of meat business have grown into a huge monopoly, recognized by the Government as such, and consequently the subject of regulation by legislative enactment to prevent their monopoly from extending in such manner as to regulate and control prices, to the injury of the consumer.

In the bringing of the action against the railroads before the Interstate Commerce Commission we firmly believe that the institution of that suit was one of the causes which induced the packers to consider the demands of public opinion, that they should not be allowed to extend their monopoly into unrelated lines, such as food products, and thereby has an influence upon the packers consenting to the court decree which provided that they should withdraw from these unrelated lines.

Judge HAINER. May I interrupt you there just a moment? When was that suit filed—before the consent decree?

Mr. HERSCHER. The suit was filed on July 1, 1919, sir.

Judge HAINER. And the decree was February 27, 1920?

Mr. HERSCHER. The decree was February 27, 1920.

In any event, while the proceeding before the Interstate Commerce Commission was pending, the packers called the attention of the Interstate Commerce Commission to the fact that on February 27, 1920, they had consented to the decree and agreed to go out of unrelated lines and that, therefore, the major part of the subject brought to the attention of the commission by the National Wholesale Grocers' Association was academic.

The wholesale grocers is not opposed to the packer as such. He performs a most essential and necessary service to the people of the United States in connection with the handling and distribution of meat and meat food products which are in his line of business. As citizens of the United States, however, we agree with the Government and with Congress that the control of the Nation's food supply should not be permitted to be lodged in the hands of five concerns. The packers are a recognized monopoly, and as such the Government believes that they must be regulated, and they are regulated, to prevent their monopoly from operating to the injury of the public.

We believe it is not to the interests of the people of the United States that the meat packers, who are a monopoly, should be allowed to extend their monopoly into unrelated lines, the handling of which is outside of their own original line of business. We would be as much opposed to any other monopoly doing the same thing as we are to the packers' monopoly.

Mr. BREED. Is that the end of that subject?

Mr. HERSCHER. Just one paragraph more, Mr. Breed. The wholesale grocer believes that it is un-American to force monopoly and concentration in the hands of a few and to give them the control of any one line of trade. The wholesale grocer believes in the competitive system of doing business.

Mr. BREED. I ask the witness to stop just a moment, because I know that Judge Hainer happened to be unable to be present at the hearing Saturday, and I would like to call to his attention the statement of counsel for the five packers which was read into the testimony of Saturday, given in their brief filed before the Interstate Commerce Commission in this suit, which reads as follows:

"It was in order to make publicly of record such an absolute and unqualified denial of any effort to monopolize the food products of the country as could not be proceeded by any intelligent mind that the packers, defendant in the equity proceeding, consented to the entry of the decree in that case."

Judge HAINER. Whose statement is that?

Mr. BREED. That is the statement of the five counsel for the five packers, signed by them, and submitted to the Interstate Commerce Commission in the suit pending before that commission.

Judge HAINER. How does this apply, Mr. Breed? Perhaps it is not clear to me. They make an unqualified denial, do they, of any effort to monopolize? How is this applicable?

Mr. BREED. Well, you see, in this proceeding brought by the National Wholesale Grocers Association against the railroads of the United States it was alleged that not only they had a preferential service, but the general implication was made that by reason of their monopoly and the special service in these cars, they were able to put these nonperishable food products into the cars carrying the perishable products, to the disadvantage of the wholesale grocers, and that in addition their power to monopolize the source of supply would control the prices of the supplies which the wholesale grocers had to buy in order to furnish the retailer, and the packers themselves called the attention of the Interstate Commerce Commission to the fact that they had on February 27 signed and agreed to this consent decree, and that is a statement in their brief showing that they want to let the public know why they consented to this decree.

The CHAIRMAN. Well, they state here the reason why they consented.

Mr. BREED. Yes; they state here the reason why they consented.

The CHAIRMAN. Yes; in order that they might of record deny that they were guilty of any monopoly.

Judge HAINER. In this statement they make an unqualified denial of any effort to monopolize. They disclaim being guilty of it.

Mr. BREED. Well, they wanted to make clear to the public that they have no intention to monopolize unrelated food lines, and therefore they agreed to go out of the business of distributing and buying unrelated food lines.

Judge HAINER. Well, now, as a lawyer, may I ask you this question: Unless the consent was entered, there has been no law preventing them from carrying on this business, provided they did not monopolize the commodity?

Mr. BREED. They are subject to the same laws as anybody else with respect to restraint of trade. Monopoly.

Judge HAINER. Certainly. But it was only merely by consent that it could have been entered?

Mr. SMITH. Not necessarily.

Judge HAINER. Well, that is what I wanted to ask.

Mr. SMITH. I would answer that the proof that has been presented in this case would have justified a court in rendering this decree, because the proof in this case justified the conclusion that they were proceeding upon a line which would have eliminated competition and driven the wholesale grocer out of business.

Judge HAINER. That is what I wanted to get from you, Senator.

Mr. SMITH. Yes. I believe the evidence would have justified it, but without reaching that conclusion, they simply said: "We consent to be enjoined from doing these things", and they gave the public the benefit of the consent, which eliminated them from the business.

Mr. BREED. I would say that is a statement of our position exactly.

The CHAIRMAN. Proceed.

Mr. HERSCHER. It has been urged by Mr. Vernon Campbell of the California Cooperative Canneries at these hearings that the decree should be modified so as to allow the packers to distribute merchandise on a commission basis.

Mr. Campbell also suggested this same thing before the House Agriculture Committee when hearings were being held on the packer control bill and he then stated to that committee that the packers said that they would be willing to distribute on a commission basis. I have no doubt they would, as this would enable them to make even greater profits than heretofore, and would also enable them to extend their monopoly to even greater lengths.

It must be remembered that the wholesale grocer does not transact business on a commission basis, but buys the products outright, sometimes entering into contracts for the same from four months to a year in advance of their delivery, thus enabling the many small canners and manufacturers from whom he buys to finance their operations. The wholesale grocer runs all the risk in depreciated market prices, spoilage, shrinkage and other losses, and performs a real service to the country and by reason of this is obliged to become a trained, careful merchant, knowing and studying the needs of the various localities throughout the United States in which he lives and doing business in a character and quality of products which these localities require.

If the packer be allowed to do business on a commission basis then the wholesale grocer would have to do business on a commission basis. If the packer should be permitted to do business on such a basis he would run none of the risks, all of which would have to be borne by the farmer, producer and manufacturer and the packer would always be assured of a profit. This would force the wholesale grocer to do business on the same basis and bring about an entire change in the producing and distributing of food products in the United States.

At the present time there are several methods of distribution. I might mention the following:

First. Through the wholesale grocer, who buys from manufacturer, producer, and canner in large quantities and sells to the retailer.

Second. To the manufacturer who sells direct to the retailer, maintaining the expense of assembling and distributing the merchandise himself and who is thus not only a manufacturer but also a wholesaler.

Third. Through the chain store, which buys from the manufacturer and sells direct to the consumer, and which bears the expense of assembling and distributing, and sometimes manufacturing.

Fourth. Through the mail-order house or catalogue house, as sometimes called, which sells direct to the consumer and which must necessarily bear the expense of assembling, and which is sometimes interested in manufacturing and, of course, must bear the expense of shipment and distribution to the consumer, together with the credit risk involved.

The function of the broker is the personal one of finding buyer and seller, and seller for buyer.

In all of these methods of distribution there is no way of eliminating the actual expense of assembling merchandise, transportation from various parts of the world to central localities, freight charges, insurance, interest, storage charge pending resale either to the retailer or consumer, and the cost of the labor involved, which is quite an item.

There is also the risk which is assumed of the loss which may occur between the time when the purchase is made and when the actual sale is made to the consumer. To-day such risk is borne by the distributor. If the packers be permitted to sell on commission basis, that risk will be thrown back on the producer, and that the producer is hardly able to carry by reason of his limited capital, in many instances.

Judge HAINER. Who do you mean by the producer?

Mr. HERSHEY. That might, in some instances, your Honor, be the farmer or, again, it might be the canner or the buyer, who might act as a commission man, let us say, buying dry beans, and operating a cleaning establishment, and selling them to wholesale merchants.

I want also to say that the National Wholesale Grocers' Association came into this matter of the proposed modification of the consent decree in this way: On August 10, 1921, there appeared in a Washington newspaper a news item which was called to our attention, to the effect that there was a movement on foot to ask for modification of the decree. We immediately took the matter up with our secretary and counsel and made investigation. Our association then found that Vernon Campbell, of the California Cooperative Canneries, had been in Washington for 18 months, as he has stated here, engaged in an attempt to develop interest in the modification of this decree. We found that he practically had an office in Washington, and that he had talked with canners throughout the country, with producers and others, trying to induce them to believe that the decree should be modified.

Now, Mr. Galloway. Saturday I was asked to furnish something, and if I remember rightly it was a copy of the report of the conference committee held with the Western Cannery Association of Chicago. Is that correct?

The CHAIRMAN. Yes.

Mr. HERSHEY. All right. More or less has been said, gentlemen, with regard to the Western Cannery Association's action on Oct. 3, and finally at their regular annual convention. Mr. Campbell, in the beginning of the proceedings here, made several charges against the wholesale grocers in the form that a deal had been made on this, that, and the other, and I simply want to tell you honestly and in sincerity the facts as I know them, because I suppose that I know as much about them, from the wholesale grocer's standpoint, as any one else, and I will try and give them to you in the way in which they took place.

On October 15 I received a letter from the chairman of the program and publicity committee, John A. Lee, of Chicago, stating that he had been instructed by the president of the Western Cannery Association, Mr. Royal F. Clark, to invite me to be present at their annual meeting at the Sherman House in Chicago on November 11 and 12, "and to address the convention of canners who will be present, on any subject that you may deem proper."

I replied to that letter stating that I did not see how I could be present, because I was under prior engagement to be in Atlantic City the following week at the American Specialty Manufacturers Convention.

Returning from a trip out of town, I found a further letter from Mr. Lee, and also from Mr. Paul W. Paver, a merchandise broker in Chicago, who, by the way, is also a member of this program and publicity committee of the Western Cannery Association, insisting that I be on hand.

Mr. DAILY. Before you go any further, isn't it common, as an act of courtesy, for allied trade associations to invite the president of the other associations to address their respective conventions?

Mr. HERSHEY. It is, Mr. Daily; and I went home yesterday and found a letter from the president of the National Cannery Association dated November 30, 1921, in which he says:

"Our annual meeting will be held in Louisville, Ky., on January 16. For the sake of furtherance of mutual cooperation between your association and ours, I esteem it a privilege to request you to be present at this opening meeting and make an address on any subject you may see fit."

And, as Mr. Daily has just indicated, it has been the common practice in allied trade associations to invite the chief officers, and at times other gentlemen, in order that they may have conferences dealing with the difficulties which develop. Sometimes those difficulties are considered serious; at other times they are of minor importance.

Mr. DAILY. Always a case of having difficulties, though, is it?

Mr. HERSHEY. Not at all, sir. Sometimes they have no difficulties whatever, sir.

Mr. BREED. You are speaking of trade questions?

Mr. HERSHEY. Trade questions. I accepted the invitation to go to Chicago, and at the time I arrived there, on Friday morning, I did not know that the president of the Western Cannery Association would incorporate the following in his annual address—in fact, I arrived in the assembly room after the meeting was convened. I want to quote as follows [reading]:

"I recommend the submission of the differences between distributors and producers as outlined in this address to immediate discussion and action by a conference committee between the National Wholesale Grocers' Association and a committee to be appointed from this association, such conference committee to report its findings to this convention."

At the conclusion of the president's address a motion was made by Mr. Anderson from Utah, as follows [reading]:

"I move that we approve the president's address and authorize him to appoint a committee from the Western Canners' Association to meet with a similar committee from the Wholesale Grocers' Association, and the committee appointed by the Wisconsin Pea Canners' Association to discuss any and all important apparent differences between the wholesale distributors and the canners, and report back to this convention to-morrow."

It was seconded, and the motion was carried.

Immediately thereafter I wrote on the back of an envelope a note to the president something like this [reading]:

"Please announce that all wholesale grocers present shall meet at the close of this morning's session."

We gathered out in the hall, and to the best of my knowledge and belief the room in which we met was the room used by a broker who was there representing either a box manufacturer or label manufacturer, or some machinery and supply house. There were possibly 24 wholesale grocers present, from whom I appointed a conference committee, whose names will appear on this report which I will give you in a moment. And after lunch, why, we met in one of the parlors of the Hotel Sherman. Would you like me to read this report, Mr. Chairman?

The CHAIRMAN. You may do as you like about that.

Judge HAINER. I believe you had better read it.

Mr. HERSHEY. I would like to read it. And permit me to make this statement prior to my reading it. Mr. Campbell charges that the wholesale grocers had quarters at the Hotel Sherman.

Mr. BREED. Is that true?

Mr. HERSHEY. To the best of my knowledge and belief, gentlemen, it is not so, and I, myself, was stopping at the Congress Hotel, and I have yet to find any one of the wholesale grocers who was present who was stopping at the Sherman House.

Judge HAINER. Well, how would that affect it, anyhow, if they were?

Mr. HERSHEY. Not at all. He next makes the charge that the wholesale grocers had formulated and insisted on the use of 100 per cent contract, and that we would force the canners to sign such contracts.

Mr. BREED. Is that true?

Mr. HERSHEY. No, sir. He also charges that we would only withdraw this murderous contract if they would rescind their resolution of October 3.

Mr. BREED. Is that true?

Mr. HERSHEY. As to that, gentlemen, I want to say that the canners in that conference committee room, when they were there, and we had decided upon these propositions here which I shall read to you—one of the canners said, "What are we going to do about the consent decree?" The grocers said, and I said myself, "That is a proposition for you folks to deal with, as we refuse to have anything to do with it." And we didn't know what action those canners would take with reference to their final resolution, until the resolution was read by the president of the association the following day in the open convention. As to a deal being made, I just want to deny that as emphatically as it is possible for a man to deny anything.

Here is the report of the conference committee.

After lunch, and finding about twenty-odd gentlemen present, the motion was made for a chairman, and Mr. Frank Carter was made chairman of the committee, and during the afternoon session Mr. Davidson, a wholesale grocer from Indianapolis, was made the secretary, and he leaving that night, Mr. Walter J. Sears, a canner, finally drafted this, after it was all gone over, and read it to the convention.

Mr. BREED. Will you give the names of the committee?

Mr. HERSHEY. I will read them on here, Mr. Breed. They are on here. [Reading:]

REPORT OF CONFERENCE COMMITTEE.

"The joint conference, committee, consisting of members of the National Wholesale Grocers Association, Wisconsin Pea Packers Association, Western Canners Association, and Southern Wholesale Grocers Association, appointed by the presidents of the said associations, having met and considered several matters of mutual concern, beg to submit the following report:

"We find that the cordial and helpful relations that ought to exist between the canners and wholesale grocers have been disturbed by certain misunderstandings marked by a spirit of unrest among the canners. The causes of this unrest may be stated as follows:

"First. The demand of the wholesale grocers associations for a future sales contract providing for a guaranteed delivery of seasonal canned products, with a cash penalty clause as well as other objectionable terms and conditions in such sales contract.

"Second. The widespread impression and belief, on the part of the canners, that the wholesale grocers had committed themselves to a policy which was opposed to the future purchase of canned foods.

"Third. That opposition of some wholesale grocers to the inspection and advertising program of the National Canners Association.

"Fourth. The present conservative policy of the wholesale grocers in the purchase of canned foods in such limited quantities as to affect the market unfavorably.

"Fifth. The increased spread which exists between producers' selling prices and the cost to consumers of canned foods, leading to the belief on the part of many canners that the distributors are placing upon canned foods an excessive amount of the burden of their cost of merchandising.

"Sixth. The controversy that has here arisen between the canners and the wholesale grocers in regard to the effort which is now being made to modify the packers' consent decree.

"In respect to some of these several matters, your committee finds and reports as follows"—

And I want to say here, gentlemen, that the committee which finally drafted these resolutions, spending the evening and as much of the night on them as they cared to, were canners themselves and they submitted it the next morning, and here and there, of course, amendments and changes were made. [Continuous reading:]

"1. *Sales contracts.*—The nature of the canning industry in respect to the production of seasonable and perishable foods is such that a sales contract which provides for a guaranteed delivery of the product with cash penalties for nondelivery is in conflict with the principles of sound economics. This is true because the productive power of the industry is determined by the natural hazards which underlie and surround the growing of perishable human foods.

Believing that the execution of such contracts by canners would threaten their economic safety and security, we earnestly disapprove and condemn such contracts as unfair and unjust, and urge that they be withdrawn and discontinued.

"2. *Future sales.*—We are convinced that there is no concerted action on the part of the wholesale grocers to discontinue the long-standing policy of purchasing canned foods under future contracts: the limited purchases made this year being due to the economic depression which has curtailed the financial resources of the grocer. It is our opinion that there will be a general renewal of both the canner and distributor, since such future purchases tend to stabilize values, regulate the volume of the annual production and provide the basis for conservative financing on the part of the canner.

"3. *Distribution costs and margin.*—We agree that there is a seeming increased spread between prices realized by canners and paid by the consumers, and we pledge ourselves to the development of an understanding on the part of all factors, that all excessive distribution costs and margins operate as detrimental to sound business growth.

"We agree and recommend to the distributors that cost studies should govern the percentage of margin properly applicable to the several classes of canned foods to the end that canned products shall only bear their just proportion of distributive costs.

"4. *Advertising.*—We urge the development of a sentiment in our respective associations for collective and individual effort in popularizing canned foods, and specifically indorse canned foods week, in the hope that this may initiate a yearly program of similar effort.

"5. *Present conservative buying policy.*—Though this policy, now in vogue, may in many instances be dictated by necessity, we urge general consideration of the thought that such policy involves increased expense of distribution, tending proportionately to restrict consumption.

"We recommend that this action be referred to the National Cannery Association, the National and Southern Wholesale Grocers Associations, and the Wisconsin Cannery Association and urge that it be given the fullest publicity through the bulletins of such associations.

"Approved and signed by the committee at Chicago, November 12, 1921, as follows:

"Members Western Cannery Association: Frank Gerber, Fremont Canning Co., Michigan; L. A. Sears, Warrensburg Canning Co., Illinois; W. C. Leitch, Columbus Canning Co., Wisconsin; J. W. Denniger, Badger Canning Co., Wisconsin; W. J. Sears, Sears & Nichols Canning Co., Ohio; E. W. Virden, Gillman Canning Co., Iowa; J. A. Anderson, Morgan Canning Co., Utah; E. B. Cosgrove, Minnesota Valley Canning Co., Minnesota; R. Dickinson, Dickinson & Co., Illinois.

"Wisconsin Pea Packers Association: Fred E. Hulbert, Fall River Canning Co.; Lester R. Edwards, P. Hohenadel, jr., Co.; John V. Neiman, Milwaukee River Canning Co.

"National Wholesale Grocers Association: Sam B. Steele, Steele-Wedeles Co., Illinois; R. L. Davison, M. O'Connor Co., Indiana; O. J. Moore, O. J. Moore Grocery Co., Iowa; H. C. Gardner, Ridenour-Baker Co., Missouri; R. B. Caywood, H. D. Lee Merc. Co., Missouri; C. E. Wilcox, Sprague, Warner & Co., Illinois; J. W. Herscher, Lewis, Hubbard & Co., West Virginia; Geo. E. Lichty, Smith, Lichty Grocery Co., Iowa; Wm. Campbell, Dahl-Campbell Co., Ohio; R. A. Horr, Stone-Ordean-Wells Co., Minnesota.

"Southern Wholesale Grocers Association: Milton H. Hunt, Oliver Finnie Co., Tennessee; H. T. Clark, F. E. Royston & Co., Illinois."

Attached to this is a copy of the resolution as finally adopted by the Western Cannery Association [reading]:

"*Resolved*, That we protest against any modification of the consent decree as far as it relates to canned foods other than meat products."

Judge HAYNER. What is the date of those resolutions?

Mr. HERSCHER. November 12.

Judge HAYNER. This year?

Mr. HERSCHER. Yes, sir.

Now, Mr. Campbell has stated that the contract of the wholesale grocers was a 100 per cent contract. For many years it has naturally been the desire of buyers and sellers to formulate a contract which is absolutely fair to both. War-time conditions of course, made that almost a physical impossibility, in fact, it became known as a seller's proposition. He could demand his own price. And other conditions which were more favorable to the seller than buyer. And in January of this year it was the desire of the National Wholesale Grocers Association's contract committee to try and arrive at a contract which might be acceptable for this season's production. For various reasons it was impossible to make a satisfactory contract with the National Cannery Association at their convention in Atlantic City in January of this year, and for the purpose of education of our own members of the National Wholesale Grocers Association, our organization, in April of this year prepared this suggested form of contract, and I just want to read you one clause in it to disprove Mr. Campbell's statement that it was a 100 per cent contract. Under the head of "Future deliveries" [reading]:

"Goods sold for future delivery shall be shipped during packing season, or not later than 30 days after packing season closes.

"Seller agrees to provide for sufficient acreage on basis average crop yield to cover all goods sold. If causes beyond seller's control prevent full delivery, buyer will accept 75 per cent delivery with all other buyers of same grades. If seller does not make 75 per cent delivery, he shall pay buyer an amount equal to one per cent of the price for each one per cent reduction below 75 per cent of total quantity herein purchased, but in no case shall delivery be less than 50 per cent."

Mr. BREED. This contract that you refer to, Mr. Herscher, is a proposed form of uniform contract, is it?

Mr. HERSCHER. Yes, sir.

Mr. BREED. Is any individual wholesaler or any individual canner under any obligation whatsoever to adopt that contract for his individual purchases?

Mr. HERSCHER. None whatever, sir. It is entirely optional with buyer or seller as to whether they use an association contract prepared by either the buyer's organization or the seller's organization. The truth of the matter is the majority of buyers with whom I come in contact prefer to fix up their own, because they can make one which is more satisfactory to them.

Mr. BREED. And has the subject which you refer to of settling disputes between canner and wholesaler, where the canner has been unable, either on account of seasonal conditions or otherwise, to make delivery of the goods which he has agreed to deliver, been a source of much trouble in the trade for many years?

Mr. HERSCHER. It has been a source of trouble, Mr. Breed, since the preserving of these seasonal food products has been attempted.

Mr. BREED. In other words, is it the custom of the trade that the canner asks the wholesaler to enter into a contract for the purchase of his supplies in advance of those canned goods being grown and packed?

Mr. HERSCHER. Yes, sir.

Mr. BREED. And you are talking, therefore, about contracts made by the wholesaler with the canner to buy his products before he even cans them, or even, in some cases, before the fruits are grown?

Mr. HERSCHER. I am talking about a contract to cover commodities for which the seed has not yet gone into the ground, and the blossom is not yet on the trees.

Mr. BREED. Therefore, when the canner enters into a contract to sell a certain number of cases of canned goods, it is frequently found, by reason of a drought or otherwise, that the farmers with whom he has contracts are not able to produce the fruits; is that not so?

Mr. HERSCHER. That is absolutely correct.

Mr. BREED. And it is to settle this seasonal trouble that this question of latitude has been discussed between the trades for years?

Mr. HERSCHER. Yes, sir. There is hardly a season goes by but the conditions make it necessary for these cannery and producers to ask for a conference, and to get together for an adjustment of these new problems which turn up.

Mr. DAILY. I happened to be a member of that joint conference committee, and I would like to ask you whether or not it is a fact that these questions are entirely questions that are discussed in an earnest endeavor in good faith to solve the problems for the best interests of both sides, and that there are certain interests on both sides which are very hard to harmonize, and difficulties which are hard to solve and to get together on?

Mr. HERSCHER. They are intended primarily to make the relations between the buyer and seller as harmonious as possible, having a desire to place the products in the hands of the consumers at the very lowest possible price, the lowest possible cost, operating in the most efficient manner possible.

The CHAIRMAN. Do you know how generally that contract has been adopted by the various wholesalers?

Mr. HERSCHER. This contract that I have under discussion, Mr. Chairman, was sent out by the National Wholesale Grocers' Association to its members, I think the last week in April, as a trade contract—there was nothing compulsory about it at all; something for them to shoot at, so to speak. By reason of my position and the fact that I am in touch with all the members, and those that I see fit to correspond with, I keep in touch with the members, and to the best of my knowledge and belief I have yet to find a man who made a contract under our suggested form of contract for the year 1921. That is for this reason, Mr. Chairman: Leaving out of question the fact that it might or might not be acceptable to the seller, when that contract was sent out to the trade, the bulk of the contracts for this season's commodities had already been contracted for; that is, this season, on the cannery's own form of contract, or such form of contract as they elected to make with each other.

The CHAIRMAN. Did your organization recommend that form of contract to its members?

Mr. HERSCHER. I have not the exact language before me in the communication in which it was sent; but it was sent to them, as I say, as a trade document, with a view—

The CHAIRMAN (interposing). With a recommendation that it be adopted?

Mr. HERSHEY. With the recommendation that they adopt it, if they could find a seller that would make use of it. There is nothing compulsory about it, whatever, sir, because each of these is an individual matter, after all.

The CHAIRMAN. It was sent to the wholesalers?

Mr. HERSHEY. To the wholesalers, through our methods of communicating with the National Wholesale Grocers' Association.

Judge HAINER. Was it distributed to the canners?

Mr. HERSHEY. No, sir.

The CHAIRMAN. Is there anything else?

Mr. SMITH. I would like to ask a question: Under this contract, if you bought 100 cases, or 1,000 cases of canned goods, and there should be an enormous increase of crop—an unprecedented yield which would necessarily make prices cheaper, did the wholesaler get any consideration on that account, or did he pay for his purchase at the stipulated average price?

Mr. HERSHEY. Senator, I have been through the mill on what you have in your mind, and on that question the wholesaler, the buyer, receives 100 per cent, and he invariably has to merchandise those goods at a loss.

Mr. SMITH. He takes the full amount contracted for?

Mr. HERSHEY. Yes, sir.

Mr. SMITH. He pays the full cost?

Mr. HERSHEY. Absolutely, the contract price.

Mr. SMITH. But if the crop is short, you allow the canner to reduce the contract 25 per cent?

Mr. HERSHEY. Yes, sir.

Mr. SMITH. From the contract?

Mr. HERSHEY. Yes, sir.

Mr. SMITH. You let him cut off 25 per cent of his contract; while if it is big, you take your purchase without any reduction of price?

Mr. HERSHEY. That is correct.

Mr. BREED. The suggested contract has nothing whatever to do with prices, has it?

Mr. HERSHEY. Nothing whatever, sir.

Judge HAINER. What is the purpose of it then? Perhaps you will bring that out, Senator?

Mr. SMITH. Yes.

Judge HAINER. All right, then answer the Senator's question.

Mr. SMITH. This contract agrees that when the crop is short—while you are bound to take it all and pay the price you stipulate when the crop is big—when it is short, under this contract you let the canner cut off 25 per cent of his contract?

Mr. HERSHEY. Yes, sir.

Mr. SMITH. While you get no reduction in the price if it is big?

Mr. HERSHEY. That is correct.

Mr. SMITH. Your only stipulation then is that if the seller does not make 75 per cent, he shall pay the buyer an amount equal to one per cent of the price on the amount of the reduction below 75 per cent?

Mr. HERSHEY. That is correct.

Mr. SMITH. That is, I presume, to enable you to go into the market and hunt somewhere else and pay the higher prices incident to a short crop, is it not?

Mr. HERSHEY. That is correct. It is done for this reason: Not all wholesale distributors make 100 per cent distribution to their customers. My house does. I have been with them for 26 years, and it makes 100 per cent distribution. In 1918, when the goods were commandeered and when there was a short delivery by the canners—I did not blame them at all—at a great expense to our pocket-book, we filled our orders 100 per cent. And if you will pardon me for being jealous of my house's standing, one of the Food Administration officials who had covered a great many of the States said that he had only found three houses who went to that extent to fill orders in full, or 100 per cent. And I know of many instances and Mr. Figley, this Food Administration official, said that he found that the wholesale merchants were distributing these commodities based on our retail sale price to the original merchant.

The CHAIRMAN. Does this contract name a specific amount that he had to purchase?

Mr. HERSHEY. Oh, no; that is entirely optional. It depends on how good the seller is.

The CHAIRMAN. It takes the entire crop.

Mr. HERSCHER. No; it depends entirely, Mr. Galloway, on the amount the buyer wants to buy.

The CHAIRMAN. You insert the specific amount when you execute the contract?

Mr. HERSCHER. Yes, sir.

The CHAIRMAN. And you are not bound to take in excess of that?

Mr. HERSCHER. I have entered into contracts where I proposed to take the entire output.

The CHAIRMAN. On this form that you have there?

Mr. HERSCHER. The specific amount would be specifically mentioned.

The CHAIRMAN. And you are not bound to take in excess of that quantity?

Mr. HERSCHER. No, sir; only to this extent, Mr. Galloway, if I may explain a moment: If I buy 10,000 cases of canned tomatoes, and there is an abnormal production, as is sometimes the case, I get 100 per cent—I get 10,000 cases, but because of this abnormal production, let us say 150 per cent of normal, it affects the market value of the entire production, with the result that the man who produces the goods only gets his original contract price on those that he delivered to me, the 100 per cent, and he may sell his surplus, the 50 per cent, at less than he sold to me, and make me take a loss.

The CHAIRMAN. But you are only bound to take the amount you buy?

Mr. HERSCHER. That is all. But in a short crop he can get a reduction on his contract; he can deliver down to 75 per cent of his contract, without any penalty to him.

Mr. SMITH. You are obliged to take your whole purchase?

Mr. HERSCHER. Absolutely.

Mr. SMITH. And he is not obliged to deliver his whole sale?

Mr. HERSCHER. No, sir.

Mr. MCKINNEY. May I ask a question?

The CHAIRMAN. Yes.

Mr. MCKINNEY. Is not the whole purpose of this contract to give a necessary protection to the canner who prepares to pack a certain amount, but is dependent on his contracts as to whether or not he can make that pack?

Mr. HERSCHER. Absolutely, Mr. McKinney; that is absolutely so.

Mr. MCKINNEY. And isn't it true also, sir, that when you purchase a certain number of cases from a canner, you are at that time cognizant of what your wants are; and you determine that you want to purchase a certain number of cases that you feel that you can market, and that you are not harmed in any manner, nor do you expect anything but a full delivery at the time you purchased?

Mr. HERSCHER. That is quite so. And I would just like to further say to the commission that it is apparent to my mind, in observing what has been going on here for the past week—it seems a wee bit difficult for those other tin canners and wholesale distributors, and those who deal in the products of the soil which nature controls entirely so far as production is concerned, that the interests of the canner and distributor are absolutely mutual, and they are obliged to work in harmony in order that the maximum production and distribution can be obtained to the advantage of the entire public.

The CHAIRMAN. Mr. Herscher, you stated that very few of these contracts were in force or in existence during the crop which has just passed. What was the nature and condition of the contracts in existence at that time?

Mr. HERSCHER. We were just getting over the war-time period, when the contract for the future was not of very much value, except to have something to shoot at; it was something like the situation on the other side. You did not know what the condition would be.

The CHAIRMAN. Were there contracts at that time for future deliveries?

Mr. HERSCHER. None by the Wholesale Grocers' Association. But many individuals had contracts, and many wholesale grocers and canners had them, if they could use them.

The CHAIRMAN. Had the wholesale grocers contracted with the canners for future delivery?

Mr. HERSCHER. You mean, generally speaking?

The CHAIRMAN. Yes.

Mr. HERSCHER. Yes, sir.

Mr. SMITH. Those contracts had nothing to do with the prices?

Mr. HERSCHER. No, sir.

The CHAIRMAN. But you were familiar with those contracts?

Mr. HERSCHER. Yes, sir.

The CHAIRMAN. You know they did exist?

Mr. HERSCHER. Yes; contracts have existed between wholesale grocers and the canners ever since the beginning of the business, I suppose.

The CHAIRMAN. From your knowledge of the matter, did they exist to the same extent as they did this season?

Mr. HERSCHER. Yes, sir.

The CHAIRMAN. Did those contracts which were in existence in past seasons provide for 100 per cent future delivery?

Mr. HERSCHER. I have had 100 per cent future delivery contracts, your honor, with a certain canner, who, by the way, is not an honorable canner, in just the way you find dishonorable men in every line of endeavor. I got 38 per cent delivery in 1919.

The CHAIRMAN. Were those contracts which were in existence during the season just past in excess of the amount of contracts in force in past seasons?

Mr. HERSCHER. I would not be prepared to say about that; I would not know about that.

The CHAIRMAN. You do not know?

Mr. HERSCHER. No, sir.

Mr. DAILY. Is it not true that in the conduct of the canning business, that all reputable canners only contract for a conservative amount of their estimated production?

Mr. HERSCHER. That is quite right, sir; it is absolutely correct.

Mr. SMITH. I would like to make this statement, Mr. Chairman: I never saw that contract before, and knew nothing about it, but I only want to say that it does not seem to me to be oppressive on the canners. I know it is not oppressive on them.

Judge HAINER. Have you any of those contracts that were used last season? These new contracts are for the coming season.

Mr. HERSCHER. That has been withdrawn, judge, and at the coming convention of the canners association that is coming on in January, I know from the correspondence I am having that it is the purpose to draw up a contract which will be mutually satisfactory to buyers and sellers.

Judge HAINER. Have you a copy of the contracts in use last year?

Mr. HERSCHER. There were no contracts out last year.

Judge HAINER. You have no copy of the contracts in use last year?

Mr. HERSCHER. There were no contracts out last year or the year before, or in the past, going back five years, that were suggested by the Wholesaler Grocers' Association.

Judge HAINER. But individual wholesalers would contract, would they not? You suggested they were used?

Mr. HERSCHER. They were contracts that were suggested by the canner, to the best of my knowledge.

Judge HAINER. Have you any of those individual contracts that were used?

Mr. HERSCHER. I have in my possession at the hotel the body of four or five contracts with canners on which I have purchased their commodities for the last four or five seasons. If you would like them, I would be glad to furnish them.

Mr. HALL. Do the canners always deliver the amount of their contract to the wholesalers?

Mr. HERSCHER. They do not; but that is not because they do not want to be honest; it is because nature controls their production.

The CHAIRMAN. You may proceed with your statement.

Mr. BREED. I want to make just one statement: I think this idea of the 100 per cent contract is somewhat confusing or confused. Mr. Herscher, any contract that is made in which one party agrees to sell 1,000 cases of goods and the other party agrees to buy 1,000 cases of goods is a 100 per cent contract, is it not?

Mr. HERSCHER. Why, certainly.

Mr. BREED. Now, the trade trouble that arises between canners, who are the sellers, and the buyers is the fact that it is quite difficult to enter into a contract, we will say, in November and December, for the delivery of canned fruits in September and October of the next year, and know just exactly whether the Lord is going to produce the fruit to enable him to can that amount, is it not?

Mr. HERSCHER. That is quite right.

Mr. BREED. Therefore, the trouble that is mentioned is to work out between the trade the question of how it is possible for anyone to offer for sale in advance a definite number of cases of goods and be able to pack and make delivery of the number of cases of goods he has offered for sale, is it not?

Mr. HERSCHER. That is correct.

Mr. BREED. And it is that trouble that you seek to work out so that the contract may be fulfilled; so that if the canner enters into a contract to deliver a thousand cases of goods does not become a defaulter by any act of nature or any act of God. Is that correct?

Mr. HERSCHER. That is correct.

Just a word more, for the benefit of the commission, on this contract: There are canners in this country, for instance, in the Baltimore, Md., region, who are willing to take a chance and who will sell a 100 per cent contract. In the city of Baltimore, where they have their canning establishments, they will receive all fruits and vegetables—tomatoes, particularly, we will say, and there are years when he goes out, even before the vegetables are planted, and you find a reputable canner in that region, one who will stand hitched, and one who has been many years in the business, whose contract is worth 100 cents on the dollar, and when they lose they will accept their losses, the same as I do if I buy in the early part of the year and have to suffer a loss during the year. These contracts are only entered into by responsible buyers and sellers in order that they can negotiate their commodities to the trade. In other words, this is a contract that enables me to go out and sell the goods, and enable the canner to finance his business, to buy his cans, and his labels and boxes, and so on. He can either contract for the raw products or he can take the chances on the market of buying it and paying any price he sees fit. I do not know of any other region in the country where that practice is pursued.

Mr. BREED. May I ask you if years ago the different trades did not discuss the question of boards of arbitration to have these matters referred to when individual contracts are made, so as to discuss the question whether the canner should be relieved from 100 per cent delivery?

Mr. HERSCHER. Years ago there were such boards, in order to be mutually helpful to each other, and the boards were established, and the idea spread out so that there are probably 30 of them throughout the United States at this time.

The CHAIRMAN. We will go ahead with your statement, Mr. Herscher.

Mr. HERSCHER. I am through, Mr. Chairman.

The CHAIRMAN. Are you through with your statement?

Mr. HERSCHER. Yes, sir.

The CHAIRMAN. Is there anything you care to ask at this time, Judge Hainer?

Judge HAINER. No.

Mr. BREED. I have one further question I would like to ask: Would not this suggested uniform contract which enables the canner to make less than 100 per cent delivery under certain conditions, worked in the interests of the small canner?

Mr. HERSCHER. That is quite right.

Mr. BREED. Rather than the large canner?

Mr. HERSCHER. Quite right.

Mr. BREED. The large canner with capital, if he had entered into a contract to deliver 1,000 cases of goods and the crop were short, might, by the use of his capital, go out and buy the raw product to fill his order with?

Mr. HERSCHER. He would do it as a matter of good business policy.

Mr. BREED. The small canner without the capital, who only was relying on his own farm or on specific growers would be up against a problem.

Mr. HERSCHER. Yes; and he would make no effort to go further than his specific contract.

The CHAIRMAN. Mr. Herscher, do you know of any acts of monopoly on the part of the packers in the unrelated lines, namely, wholesale grocery lines, prior to the entry of this decree?

Mr. HERSCHER. That is a rather broad question, Mr. Chairman. I might cite this, as a case of the power that that aggregation of capital has, and using it in the instance which I want to relate, I think it can be used in almost any other, if they want to apply it. I want to talk about sugar. The meat packers, of course, and I should think for that matter large and small packers, possibly use some sugar in the proper conduct of their business, so there is no denying the purchase of sugar by them for proper purposes, for the purpose of curing some of their products. But Armour & Co. owned the Llewellyn Bean Co., of Michigan, and during the season of 1920, we all know, that in the first five or six months the transportation from New York west was exceedingly difficult. Those of us who dealt in sugar also know that beginning

about the middle of April and up to the 1st of August, that the consuming public, and the retailers, that is the retail merchants, and possibly some manufacturers, could not get enough sugar to supply their desires—whether they needed it or not is another question. If the wholesale merchant and the candy merchant, and the confectionery manufacturer, let us say, who was on the books of a sugar refiner in New York or Philadelphia, and had been on the books of the refiner, buying all his supplies from that refiner for years, would go to him and say, "We have to have five cars of sugar in the next month," he could not get it. The refiner would say, "Well, I could not get it for you. I have the raw sugar, but I can not get it through." In my own individual case, I have gone to New York to the refiner to get supplies, and he would say, "We have got the sugar, but we can not ship it; there is congestion at the division points, and we can not get it through." And we all know that in the Potomac Yards, right across the river here, there was congestion, and the cars could not be gotten through.

Now, it is well understood in the trade that Armour & Co. through their people came to New York and purchased, so it is stated here, 100 carloads of sugar from one of the refiners, a respectable firm, and delivery was made to this bean company in Michigan; it was stored with them. The salesmen for Armour & Co., who were selling Armour's products, and possibly some of these unrelated lines, would say to a prospective customer, I have got some sugar stored at such and such a place, and you can have some provided you buy from me such and such commodities. Now those things happened, not only in that particular line, but we generally understood that other merchants of small caliber, who were in specialties, would buy a few bags of sugar, and could force the sale of their particular product by reason of the fact that they had sugar. I can not imagine of anyone else in the legitimate wholesale distribution of food commodities during the particular time that I have in mind, during the spring of 1920, that could have gone to New York and secured 100 carloads of sugar and taken it out West and stored it and sold their commodities, from soup to nuts, in that way, without that sugar.

The CHAIRMAN. Do you know how they got that sugar?

Mr. HERSHEY. I suppose they bought it; they could bring enough pressure to bear through their financial resources.

The CHAIRMAN. But do you now know how they got it?

Mr. HERSHEY. I am only assuming that by the use of ordinary horse sense.

The CHAIRMAN. You do not know the actual facts of the buying of that sugar by Armour & Co., do you?

Mr. HERSHEY. No; not the actual facts, but it was generally understood in the trade to be as I have stated it here.

The CHAIRMAN. Was there any reason to prohibit them from doing that; any reason why they should not do it?

Mr. HERSHEY. None whatever, sir.

The CHAIRMAN. It was good business for them to do it?

Mr. HERSHEY. To sell their other goods, yes, sir.

The CHAIRMAN. Now did that affect the consumer, if it did, in any way?

Mr. HERSHEY. It tended very largely to constantly elevate the prices. The more buyers you have for a commodity, when the supply is short, the higher you elevate the prices, and the more the consumer must pay. If you had not had all these other buyers, the packers buying those commodities, the consumers would not have been penalized as they have been.

The CHAIRMAN. Was that before or after the sugar administration came into being?

Mr. HERSHEY. After.

The CHAIRMAN. The consumer ultimately got this sugar I assume?

Mr. HERSHEY. I am afraid that he did.

Mr. BREED. Provided he bought beans; is that right?

Mr. HERSHEY. He got Armour's sugar, provided he bought beans.

Now, gentlemen, there may be a question in your mind as to whether there is any truth in this sugar situation. There is a suit on now in the Michigan courts in relation to that sugar transaction for \$120,000.

Mr. BREED. Brought by whom?

Mr. HERSHEY. The sugar refiner, I understand.

Mr. BREED. Against whom?

Mr. HERSHEY. The Llewellyn Bean Co.

The CHAIRMAN. They did not pay for the sugar?

Mr. HERSCHER. I suppose he tried to repudiate a part of it. I do not know the details. That, I think, gentlemen of the commission, is a good illustration of what a well-financed and monopolistic organization can do if they try to do it.

The CHAIRMAN. Well, I would think the fact that there is a suit on now to recover for this sugar would be an argument the other way. I certainly cannot see how the fact that the packers bought sugar and afterwards have to use for it can be any reason that they can monopolize it.

Mr. HERSCHER. I do not know the details of that matter, but if they can apply that to sugar, they can apply it to the other fellow's business.

Judge HAINER. You mean they could apply the same principles to other commodities?

Mr. HERSCHER. If they so desire.

Judge HAINER. If they could do that with sugar, they could apply it to other commodities and thereby control the product?

Mr. HERSCHER. That is quite right, sir. In answer to the chairman's question, as to dealing in general groceries, I can only assume what others dealing in these goods assume. This Llewellyn Bean Co. sold out to an organization called the Gleaners, and it is quite possible that a part of this sugar was undelivered, and that the bean company had sold out, and at the time they sold out that thereafter they might have tried to repudiate such undelivered portion of the sugar, and the suit is for a recovery between the selling price and the contract price; that may be at the bottom of this.

Mr. BREED. The price of sugar had materially dropped, had it not, during that period?

Mr. HERSCHER. Quite a very material amount.

The CHAIRMAN. Mr. Herscher, do you know of any specific instances where Armour refused to sell any of this sugar unless he sold the other lines, too?

Mr. HERSCHER. I do not.

The CHAIRMAN. But the rumor is current in the trade that he would not?

Mr. HERSCHER. That, I think, is correct.

Judge HAINER. Do you know of any specific cases where he refused to sell meat unless the retailer would buy some of these unrelated commodities?

Mr. HERSCHER. Your honor, I went home on Saturday afternoon, traveled more than 400 miles, and got back this morning for the express purpose of trying to interview a market man in my town in order to answer that question intelligently, and, unfortunately, he was in Columbus. That was one of the prime reasons why I went home, to get that information. If I could have gotten hold of him, I could have come back here with a positive statement of yes or no. The best I can answer your question now is that to the best of my knowledge and belief they have used such tactics.

Mr. BREED. Can you say what your salesmen have reported to you on this subject?

Mr. HERSCHER. My salesmen were informed, and reported that dealers were politely asked to put in stock certain lines of goods, and if they did not, they were politely informed that certain particular cuts of meat that the man had a particular demand for in his trade were not in stock at that particular time. There are many ways of making a fellow's position unsatisfactory, if they desire to do it.

Judge HAINER. Do you know of any specific cases, or series of cases or acts of that kind that occurred; actual cases, not based on hearsay or rumor, but actual cases?

Mr. HERSCHER. No; just in a general way our salesmen report every Saturday that so and so has happened, and you finally accept that as the fact. We know that the meat packer as such was getting in his line with the merchants, and that those complaints were reported, and we naturally assumed there was more or less truth in them.

Mr. BREED. What you know is merely results?

Mr. HERSCHER. That is all, Mr. Breed.

Mr. BREED. You know that where you had previously sold groceries to certain retailmen, that your lines were gradually dropped, and the lines of food products controlled and for sale by the packers began to show up in those retail meat establishments?

Mr. HERSCHER. That is the situation precisely.

Mr. DAILY. To what extent; have you any statistics, or anything from your business to show what amount you lost?

Mr. HERSCHER. We have no actual figures on the subject at all, sir, except our general knowledge, as I said in answer to the question by Mr. Breed, that that condition did exist and was growing gradually.

Mr. DAILY. Were you entirely supplanted by the packers?

Mr. HERSCHER. Oh, no.

The CHAIRMAN. Mr. Herscher, do the wholesale grocers handle meats to any extent?

Mr. HERSCHER. When you say meat, do you mean—

The CHAIRMAN (interposing). Either fresh or cured?

Judge HAINER. Originally, how was it?

Mr. HERSCHER. Originally, I do not think any wholesale grocers attempted to distribute fresh meats. It is not possible on the face of it. But I am satisfied that the wholesale grocers throughout the country were the packers' original customers for their cured meats, their smoked and salt meats, throughout the country. And gradually they took that business away from them, by the establishment of their peddler car system and branch house system. Speaking on that subject from my experience in my own concern—

The CHAIRMAN (interposing). Well, do the wholesale grocers now do any meat business to speak of?

Mr. HERSCHER. Very little.

Judge HAINER. Do they not handle cured meats—bacon and all of that?

Mr. HERSCHER. No; to a very small extent, compared to what it formerly amounted to.

Judge HAINER. I am under the impression that in my section, around Oklahoma City, there was considerable of it.

Mr. BREED. Are you referring to canned meats?

Mr. HERSCHER. No; the judge is referring to smoked and salt meats.

Judge HAINER. Yes.

Mr. HERSCHER. In answer to that question, in the territory you have under discussion, and in my own territory, West Virginia, and in some other sections the wholesale grocers are distributing some quantities of meats, but their business is not growing, I think. They are able, by hook and crook, to maintain an amount of business in these smoked and salt commodities, but they are constantly subject to an invasion by the Big Five and other concerns.

Judge HAINER. Now, originally, did the wholesale grocers handle the canners' products?

Mr. HERSCHER. You mean the products of the canners?

Judge HAINER. Yes.

Mr. HERSCHER. You mean the fruit and vegetable canners?

Judge HAINER. Yes.

Mr. HERSCHER. They have always handled it. The canners of the United States, canning fruits and vegetables and berries, have always marketed their products successfully through the wholesale grocers principally. In fact, the canners in this country have been built up through the system of selling their product before it was grown, to responsible wholesale grocery houses.

Mr. BREED. Through future contracts?

Mr. HERSCHER. Through future contracts; and the contract has been the basis of credit on which the canner has operated.

The CHAIRMAN. Do not the wholesale grocers in some sections of the country handle a diversified line; for instance, in some sections, extending into hardware, wash boilers, and so on?

Mr. HERSCHER. Yes, sir.

Judge HAINER. Unrelated lines?

Mr. HERSCHER. Wait a moment, gentlemen. A lot of you gentlemen are older than I am—

Judge HAINER (interposing). We are sorry for that.

Mr. HERSCHER. What we are seeking here is the truth.

The CHAIRMAN. We are trying to get information; yes.

Mr. HERSCHER. I have been in the retail and wholesale business since 1889, about 32 years; and it has been my observation, as communities would develop, wherever there was a small village or two or three farmers close together, the first thing that would spring up would be a store.

Mr. BREED. A retailer?

Mr. HERSCHER. A retail store, and that fellow would naturally handle, in his crude manner, some drugs, paregoric, and all kinds of home remedies; and small articles, such as usually do not belong in a grocery store, such

as fishing hooks, fishing tackle, and carpet tacks, and shoe nails, and clothespins, and clotheslines, and so on. I am sorry I have not an index of my price book here. He handled a whole lot of those little things that you find in the household to-day. Now, that is what the retailer had, and he secured those supplies from the wholesale merchants, not necessarily in those days a wholesale grocer, but that was a common accepted term for the wholesaler, and the wholesaler handled those things that were necessary in the home, not including boots and shoes and dry goods, and things of that sort.

The CHAIRMAN. And you handled those things to accommodate your customers?

Mr. HERSHER. Yes; in my particular concern, which has been in business since 1882, prior to their starting in business in the country in the central part of West Virginia, we had another wholesale grocery that started prior to that time, and a wholesale hardware establishment, which has been in business since 1840 or 1850. We try to carry, as I have indicated, all those things that were needed in the home, because the nearest market of any considerable size was 500 miles to Richmond, or to go all the way to Columbus, or 500 miles to Pittsburgh. And we had to carry all those things that were necessary for this fellow at the little country crossroads store to have to get along comfortably.

Mr. BREED. You mean the retailers?

Mr. HERSHER. Yes; he had to have all those items. Possibly collar buttons and thread; that is, not dry goods—

The CHAIRMAN (interposing). But he would carry thread and small things like that?

Mr. HERSHER. Yes; not dry goods, but he would carry the thread, so that you could sew a button on your breeches if necessary; and he possibly also carried the bachelor's button, in case you did not have the thread.

Now, the packers have made much of the fact that the wholesale grocer has carried drugs. Now, he carried them because of the fact that there were no other methods for the small crossroads store getting his supplies of those things that were needed in the home, and in those that he did carry he did not make more than 2½ per cent on his sales.

The CHAIRMAN. He carried them to accommodate his customers?

Mr. HERSHER. He carried them to accommodate his customers; yes, sir.

The CHAIRMAN. Is that not about the same story the packers tell about their going into these unrelated lines?

Mr. HERSHER. I reckon it is.

Mr. DAILY. Mr. Hersher, as the country built up and developed, did not the trades classify themselves, and did not the drugs and those things go their way?

Mr. HERSHER. Quite so. In our business we are on the verge of eliminating those things from our stocks because we have other houses that deal in them.

Judge HAINER. There was never any danger that you would monopolize thread and fishing hooks and fishing tackle?

Mr. HERSHER. None whatever.

Mr. BREED. I wish you would elaborate on that matter a little. In the small locality has not this retailer that you have described, as the community has grown, divided himself up so that this one establishment became a retail meat market, and a retail grocery store, and so on?

Mr. HERSHER. That is quite right.

Mr. BREED. So that the original store, which was a general country store, has now become four or five different stores, as the country has grown?

Mr. HERSHER. That is true.

Mr. BREED. And they specialize in different lines?

Mr. HERSHER. That is absolutely correct.

Mr. BREED. How many of these retail grocers are there now in the United States?

Mr. HERSHER. About 350,000.

Mr. BREED. Now, has the wholesale grocer developed during this period of 30 years that you have testified to; has he developed as a wholesale grocer?

Mr. HERSHER. He has.

Mr. BREED. How many wholesale groceries have finally developed?

Mr. HERSHER. According to the report of the Joint Commission of Agricultural Inquiry there are 5,950 wholesale grocers in the United States, I suppose, as of 1921 date. Strictly speaking, I would say that there are possibly 4,000 to 4,200 or 4,300 wholesale groceries that have been in business and will

likely stay in business; because when the periods of inflation and deflation come on there are a number who go into every business who try to skin the cat while the skinning is good, and then retire either from choice or for other reasons.

Judge HAINER. One in Oklahoma City recently went out of business.

Mr. BREED. Now, have these wholesale groceries again specialized, also, and eliminated some of those lines you have mentioned?

Mr. HERSCHER. Yes; they have.

Mr. BREED. What do they carry now generally throughout the United States?

Mr. HERSCHER. The wholesale grocer is generally known as being engaged in food distribution.

The CHAIRMAN. In a spirit of jest I would say that my questions were prompted by a letter we received from a wholesale grocer on this line, suggesting that the wholesale grocers were proper and legitimate distributors, so far as anyone knows.

Mr. BREED. Now, this specialization of commodities is followed all through the trade in this country, is it not?

Mr. HERSCHER. I think that is correct.

Mr. BREED. The packers themselves developed along the line of slaughtering and selling meats, did they not?

Mr. HERSCHER. In their line they became the greatest specialists that I can think of.

Mr. BREED. And to-day these five packers, according to the testimony, control very largely the meat supply of the country?

Mr. HERSCHER. That is the generally accepted opinion.

Mr. BREED. During this period have the packers acquired any special privileges growing out of the necessary handling of these meats, and meat and food products?

Mr. HERSCHER. I think that was developed Saturday by Mr. Thorne's testimony.

Mr. BREED. Generally, what do you characterize those special privileges as?

Mr. HERSCHER. Special transportation; specially expedited service; they have had preferential rates and such mixing rules as ought, in time, to put the United States Steel Corporation out of business. When a man can have a special rate on a car of nails, by putting a ham on one of the kegs and specially expedited service, I fail to see how, in course of time, the United States Steel Corporation would not be affected.

Mr. BREED. Now, contrary to this principle you have testified about, of specialization, do I understand that the packers are now seeking or during the past five to six years have been extending out beyond the meat industry and going into all lines of foods?

Mr. HERSCHER. That is correct.

Mr. BREED. And that it was these unrelated lines of foods entered by this consent decree?

Mr. HERSCHER. Yes, sir.

Mr. BREED. And you are opposed to the Government's applying to the court for the modification of this consent decree in which the packers agreed they would not further extend into these unrelated food lines?

Mr. HERSCHER. That is correct.

Mr. BREED. What, in your opinion, would be the effect on your business if the packers are allowed to further develop their monopoly into these unrelated food lines, with their special privileges, or without them?

Mr. HERSCHER. In time they would have no difficulty whatever in putting us practically out of business.

Mr. BREED. When you say "us" who do you refer to?

Mr. HERSCHER. I mean my own particular concern, and I would imagine my competitors engaged in the same line of business.

Judge HAINER. That is, you assume that if they reached the stage of monopoly they would put you out of business?

Mr. HERSCHER. Yes, sir.

Judge HAINER. Assuming that they are only handling 5 per cent of the total product, would that put you out of business?

Mr. HERSCHER. Your honor, if they were to have an expedited transportation service, because, after all, almost any line of business is built up chiefly on the amount of service, which means—

Judge HAINER (interposing). Suppose that would be eliminated, the preferential service and the special transportation? Of course, that is considered unfair practice, is it not?

Mr. HERSCHER. We look upon it as such.

Judge HAINER. It would be unfair for any wholesaler to have that as against your concern, would it?

Mr. HERSCHER. We would be just as much opposed to a wholesaler having preferential service on food products, as for the meat packers to have it.

Judge HAINER. Supposing you are placed on an absolute equal footing in transportation?

Mr. HERSCHER. And turning them loose?

Judge HAINER. Yes; what effect would that have?

Mr. HERSCHER. Well, Judge Hainer—

Judge HAINER (interposing): I am just asking you for an opinion, without expressing any.

Mr. HERSCHER. Well, Judge Hainer, if we lock up a fierce bull and know he is vicious, I don't think we ever want to let him out.

Mr. BREED. Does that mean that you have any fear of the power of great capital having any effect upon the prices of the goods which you have to buy?

Mr. HERSCHER. They would have the power of controlling the production of products at the source of production, and that is possibly the greatest menace that I see in the situation.

Judge HAINER. Control the growers and canners, you mean?

Mr. HERSCHER. Yes, sir.

Mr. DAILY. And the brokers?

Mr. HERSCHER. There would be no need for such a critter.

Mr. BREED. How about the control of such a raw product as rice?

Mr. HERSCHER. I think Mr. Armour's boast as to what he did in the rice field is sufficient warning as to what might happen, not only in rice, but in anything else they might select.

Mr. BREED. Is this power that you say you are afraid controlling the products which you, as a wholesale grocer, now buy, shown in connection with any other lines? For example, what about cheese?

Mr. HERSCHER. Well, as to the cheese business gentlemen, I think that the natural distribution from manufacturer of the cheese to the retailer, to the ultimate consumer, was through the wholesale grocer. Mainly through the manipulation of the markets at the primary source of production and supply, the so-called Big Five have absolutely secured control of the cheese business, and they handle the markets to suit themselves, if we can believe the statements made to us by the few independent cheese manufacturers who are still struggling along in the business.

Judge HAINER. What about butter?

Mr. HERSCHER. Swift is absolutely the largest distributor of butter in this country, and as such he can absolutely regulate the price to suit himself. He controls the price of it, and therefore the consumer must pay whatever price he likes to have him pay.

Judge HAINER. Do the wholesale grocers handle butter and cheese, and to what extent?

Mr. HERSCHER. A good many of them have given up both lines, your honor, because it is absolutely unprofitable; because in the summer time both commodities require refrigeration against heat; and in the wintertime cheese does, at least, against the possibility of freezing. And without any refrigerator service available, you can readily see where the wholesale grocer, or the wholesale butter dealer is, as compared with the facilities of the meat packers.

For example, in our situation, let me illustrate by showing that the Chesapeake & Ohio Railroad runs from Fortress Monroe to Cincinnati and Louisville. At one time, prior to 1912 and 1913, we had on that road, which the road owned, a few refrigerator cars, which they tendered to dealers beyond Cincinnati and Louisville. To-day there is no refrigerator service on the Chesapeake & Ohio Railroad, and many times during the past few years it has been impossible for me to receive cheese from Wisconsin, because I have been advised there is no refrigerator service beyond Cincinnati. I have received my supply in the summer time absolutely spoiled, and in the wintertime frozen hard and solid. In handling that commodity, the meat packer can get his supply in his own cars. That, I think, is not fair; I know it is not fair.

The CHAIRMAN. Does this harm the consumer in any way?

Mr. HERSCHER. I do not think it wise to place in the hands of a few organizations the regulation of the price.

The CHAIRMAN. The injury to the producer is, indirectly, that it is a monopoly?

Mr. HERSCHER. Yes; and also the injury to the consumer.

The CHAIRMAN. Mr. Herscher, it has been brought into the record here that the wholesale grocers have taken an active part in endeavoring to mold the sentiment of the canners in this proposed amendment of this decree. Do you know anything about that?

Mr. HERSCHER. We are not nearly as active as our friend Mr. Vernon Campbell. In no instance has it come to my observation, gentlemen—and possibly because of my honorary position I have received letters from a very considerable number of wholesale grocers, and also from canners throughout the United States—

The CHAIRMAN (interposing). Can you tell us, before you get to his activities, about your own, and then we will go to his.

Mr. HERSCHER. As to my own individual activities, I have taken so little part in it—which may be a surprise to my associates—that it has amounted to nothing whatever.

The CHAIRMAN. How about your firm?

Mr. HERSCHER. None whatever. I would have taken the action if any had been taken.

The CHAIRMAN. What about other firms?

Mr. HERSCHER. Whatever action was taken, was taken on their individual initiative. And I am quite safe in saying, as they saw the matter from an honest, unbiased viewpoint, having in mind the fact that from the time the canner, to whom they addressed their letter, from the time they went into business they had been trading with the canner, and that their business was on mutual terms, I am safe, I think, in saying that it came as a shock when the action of the Western Canners' Association came out with the announcement that it was for this modification. And it was molded by Mr. Slessman, who was under the control of Armour & Co., and Mr. Vernon Campbell, who was present. Now, the other men who were there were known nationally. And it was quite a shock, I dare say also, to the food brokers of the country that that kind of thing had taken place.

Judge HAINER. You refer to the first resolution?

Mr. HERSCHER. Yes; to the first resolution.

Mr. BREED. Favorable to modification?

Mr. HERSCHER. Favorable to modification, yes; in October. I think I am making no mistake about that, because very few canners knew what this consent decree meant.

Mr. BREED. Or wholesale grocers either?

Mr. HERSCHER. No, sir; nor wholesale grocers either. If they knew what it meant you would have about 100,000,000 people down here saying, "Boys, don't do it." And so far as the action of the wholesale grocers is concerned, the letter that they sent to their men and customers, as compared with the number of canners and wholesale grocers in the United States, I do not think the per cent would be more than 2 or 3 or 5 per cent.

The CHAIRMAN. And that appeal to the canners went to canners that had been doing business for some time?

Mr. HERSCHER. When you say some time, it could not have gone back prior to the middle of October.

The CHAIRMAN. You misunderstand my question. The canners to whom the wholesale grocers—

Mr. HERSCHER (interposing). You have that turned around, Mr. Chairman, it was the wholesale grocers to the canners.

The CHAIRMAN. The canners to whom the wholesale grocers appealed were canners with whom the wholesale grocers had been doing business for some time?

Mr. HERSCHER. Yes, sir.

The CHAIRMAN. And they felt that the canners should respect their interests?

Mr. HERSCHER. I am satisfied that the grocers who wrote those letters to the canners felt that if the canner thoroughly understood the situation he would not approve of the action taken on October 3.

Mr. BREED. You mean, from the canners' point of view?

Mr. HERSCHER. From the canners' point of view.

Mr. BREED. As well as the wholesale grocers' point of view?

Mr. HERSCHER. As well as the wholesale grocers' point of view.

Mr. SMITH. The wholesalers, when they first handled so many of these unrelated products, did they not do so because the small retailer had access to them almost alone, and it was his convenience?

Mr. HERSHEY. Absolutely so; it was for the benefit of the ultimate consumer in their respective communities.

Mr. SMITH. What has been the entire tendency of the trade; has it been the curtailing of the handling of these commodities?

Mr. HERSHEY. As such?

Mr. SMITH. I mean by the wholesale grocers; has the tendency been to extend or curtail the handlings of those commodities? Has he extended or curtailed the handling of those commodities?

Mr. HERSHEY. You mean in his entire line of merchandise?

Mr. SMITH. Yes.

Mr. HERSHEY. He has eliminated a good many of them, because he found a wholesale drug house would start up, and it was unprofitable to him.

Mr. SMITH. Is it not true that a great many of these wholesale houses have entirely eliminated them?

Mr. HERSHEY. Quite so, and many who have gone into business in recent years have not taken on the old lines that the old houses formerly carried. In fact, I would say that in the State of New York the wholesale grocer is primarily a food merchant; handling nothing but food products.

Mr. SMITH. Is that not also true in nearly all the other States?

Mr. HERSHEY. I think so.

Mr. DAILY. I would like to ask a question or two: Mr. Herscher, will you kindly describe in detail the function of the food broker; that is, the service rendered in the making of sales of canned fruits or dried fruit, and the dried fruit packer to the wholesale grocer?

Mr. HERSHEY. I thank you for the compliment. The canned fruit broker, or the general merchandise broker?

Mr. DAILY. The food broker.

Mr. HERSHEY. The food broker. Yes; he represents the canner or the dried fruit processor, or the shipper of California or Colorado fruits from those points, for instance, long before the products are grown, or anything of that kind—I am I presuming too much as to what—

Mr. DAILY (interposing). No; you sit at the buyer's desk day after day, and know of the services they perform. I merely want to get into the record the economic service the food broker performs for the public in general.

Mr. HERSHEY. I think that long before the food product is grown, the food broker gets all the information he can with reference to the probable supply, the amount carried over, and the new style of packing, and so on; the likelihood as to what the price is going to be, and the probable output.

Mr. BREED. By the probable output, you mean the probable output of the canners?

Mr. HERSHEY. The output of the canners or producer or the dried fruit packer. And equipped with that class of information, the food broker canvasses his local market—

The CHAIRMAN (interposing). What is his local market?

Mr. HERSHEY. Sometimes it may be simply the locality in which he resides.

The CHAIRMAN. I mean, what class of trade?

Mr. HERSHEY. The wholesale grocer. And, of course, some food brokers sell grain and feed, so that they come in contact with the flour-milling industry and the grain trade.

As I said before, he canvasses, with this class of information, the probable crop, the carry-over, and the probable requirements, and discusses with the trade the quality of the product, and if there are any changes or new styles of packing, and such other facts as are pertinent to the possibility of bringing the seller in contact with the buyer and the buyer in contact with the seller.

Mr. DAILY. Does he supply you with information as to the crop?

Mr. HERSHEY. He gets all that information to the best of his ability, and he asks that this information be furnished him, not spasmodically, but as fast as he can get it.

Mr. DAILY. Is there trade interchange between the brokers; in other words, are you able to talk to various brokers, and pick up this information by comparing the same information from several food brokers on the same commodities??

Mr. HERSHEY. To the best of my knowledge, the food broker is a very necessary medium between the seller and the buyer. He can locate supplies

a considerable distance away from his market; and the compensation which he receives for such service, for bringing the seller and buyer together—for bringing the seller to the buyer, and the buyer to the seller, and bringing them together is, to the best of my knowledge, reasonable.

Mr. DAILY. How much of a maximum do you think would be normal or appropriate for canned foods?

Mr. HERSCHER. My understanding is that the food broker receives anywhere from two to two and a half per cent of the gross value of the sale, out of which they have their office expenses, and the cost for telegrams and all expenses necessary to bring about a sale.

Mr. DAILY. Now, let me put another question: This service extends the year around, does it not?

Mr. HERSCHER. Their posting and information service is continuous.

Mr. DAILY. You use the brokers during the years to build up your depleted stocks, and to fill up all your stocks, do you not?

Mr. HERSCHER. Whenever we need a food product to replenish our stock, we are most likely to ask the broker how much he has to-day, and how much it is worth, and where it is located, and who is the seller, and so on.

Mr. DAILY. In other words, by means of a few inquiries of a few brokers, you are enabled to have before you on your desk complete information as to stocks and prices throughout the country?

Mr. HERSCHER. That is correct.

Mr. DAILY. For all this service, which, as you say, extends the year around, does it cost you one penny?

Mr. HERSCHER. Nothing.

Mr. DAILY. Who pays the brokerage?

Mr. HERSCHER. The seller.

Mr. DAILY. In case of disputes between the seller and the buyer, what function then is occupied by the brokers; if there is a question of faulty delivery, or poor quality, or some reason for disputing whether there has been a good delivery?

Mr. HERSCHER. He uses his best offices to bring about an arbitration of the differences, which it has been found, in commercial practice, to be the best and most satisfactory way to adjust those differences.

Mr. BREED. Rather than by a law suit?

Mr. HERSCHER. Rather than by a law suit.

Mr. DAILY. Is it not true that the National Association of Food Brokers have been instrumental in organizing a National Board of Arbitration handling those questions?

Mr. HERSCHER. That is my understanding.

Judge HAINER. How large is this organization?

Mr. HERSCHER. The last report I had was the 600 main offices; that was 1920. I think the last report the secretary gave 700 principal offices, scattered throughout the United States.

Mr. DAILY. Mr. Herscher, is it not true that these brokers sometimes represent more than one producer of a commodity?

Mr. HERSCHER. Quite often that is the case. It has been the desire—at least it has been my observation—when they do that, they try to sell the product of the one that is really the best, notwithstanding they all put out good stuff.

Mr. DAILY. Is not the reason also, and an equally important reason, the fact that a good broker in a big, live market can not find in every instance packers with sufficient production to supply the quantity of goods he can sell?

Mr. HERSCHER. That is quite correct.

Mr. DAILY. Mr. Herscher, are you familiar with the prices of canned tomatoes in No. 3 tins, standard quality, extending over the period from 1913 down to the present time, or the beginning of this year?

Mr. HERSCHER. I bought them in each of those years, Mr. Daily, but whether or not I could tell you offhand—

Mr. DAILY (interposing). Are you familiar with a trade paper, Mr. Herscher, issued in Baltimore, known as "The Canning Trade"?

Mr. HERSCHER. Yes, sir.

Mr. DAILY. Are you familiar with the Almanac they issue?

Mr. HERSCHER. Yes, sir.

Mr. DAILY. Would you consider that an authority?

Mr. HERSCHER. On the price of tomatoes, yes.

Mr. DAILY. I would like to put in the record, gentlemen, from the Trade Almanac the prices on tomatoes given twice a year extending from a period in 1913—I will beg'n at 1913, and I would like to have the witness look at this—

Judge HAINER. How is it material?

Mr. DAILY. There was a question brought up in your absence on a question of unfair practice, in which the price of tomatoes was the question, and it was said that the packers sold tomatoes at \$1 a dozen, when the price was \$1.70, and I wanted to put this in the record.

The CHAIRMAN. On No. 3 tomatoes?

Mr. DAILY. Yes.

Judge HAINER. Just that part of it?

Mr. DAILY. Yes; it is the price of No. 3 tomatoes, from 1913 to the end of the ist. The price is given twice a year.

The CHAIRMAN. You may proceed.

Mr. HERSCHER. In 1913, in January, 85 cents; July, 85 cents. In 1914, January opening price, 75 cents; in July, 72½ cents. In 1915, in January, 65 cents; July, 67½ cents. In 1916, January, \$1; July, 95 cents. In 1917, January, \$1.35; July, \$1.85. In 1918, January, \$1.85. They were entirely withdrawn from the market in the summer of 1918 by reason of the wartime conditions. Everybody was up in the air. In 1919, in January, \$1.80; July, \$1.65. In 1920, January, \$1.70; July, \$1.55.

Mr. DAILY. Mr. Herscher, referring to the annual convention of the Canners' Association, were you the only speaker on the program?

Mr. HERSCHER. No, sir.

Mr. DAILY. Mr. Campbell, in his testimony, stated that you were the only one that was permitted to talk.

Mr. HERSCHER. That is not a fact.

Mr. DAILY. Mr. Herscher, was the president of the National Food Brokers' Association present at that time?

Mr. HERSCHER. He was.

Mr. DAILY. Do you remember the nature of his address? I see you have before you a copy of The Canner reporting that convention. It is perfectly right for you to refer to that, I think.

Mr. HERSCHER. As well as I remember, he referred to the general economic conditions of the service the broker performed, and gave his reasons—after careful investigation, gave his reasons why the consent degree should not be modified.

Mr. DAILY. In other words, he argued against a modification of the decree, did he not?

Mr. HERSCHER. He did.

Mr. DAILY. Do you know whether the meat packers wanted the decree modified, or not?

Mr. HERSCHER. As I understand, they have not put in an appearance in the equity proceeding in the court in the District of Columbia.

Mr. DAILY. Do you know whether they want to go back into the grocery business?

Mr. HERSCHER. We are led to believe some of their agents are seeking a modification of the decree.

The CHAIRMAN. Did the president of the Brokers' Association make an address before or after the resolution was passed?

Mr. HERSCHER. Before.

Mr. MCKINNEY. Might I make a request of the commission, before you adjourn?

The CHAIRMAN. Yes.

Mr. MCKINNEY. This is on behalf of Mr. Chase and myself, who have come a long ways, and we greatly appreciate the fact that the commission listened to us on the first day. The difficulty we are in is this: That we are here as the representatives of a large number of Californians; we came for the growers as well as the canners and buyers, and we shall feel we have not done our full duty until we get some sort of a clearance from the commission that we have met this issue. Now, we naturally feel that if there is to be any attempted rebuttal—we do not think there is to be any real rebuttal—we would like to reply to it. The only persons who could go on at this time are Mr. Campbell and Mr. Gray. It may be that the commission is not announcing the list of those who want to present rebuttal to our testimony. If that is so, we would like to know it as soon as possible. And we also would like to

know, as a courtesy to us, if Mr. Campbell or Mr. Gray have any rebuttal to offer, and if the other persons would permit, that they could bring forward that rebuttal so that we could get away. The holidays are near at hand, and Mr. Chase and myself have another point in the east we want to visit before returning to California. And another reason for it is that it is exceedingly difficult to get a reservation to California, especially by the Santa Fe route, the one way we desire to go on, because the tourists are now going to California. We merely put this up to you with the thought that we know you would accommodate us in any way you could.

The CHAIRMAN. We want to accommodate you in any way we can.

Mr. McKINNEY. We appreciate that.

The CHAIRMAN. We do not know what rebuttal, if any, the proponents may have. In addition to that, we have not completed the list that we now have. And, therefore, it would be very hard to make any arrangements at this time in respect to the appearance that you have spoken of. I do not see how we could do it now. I assume that we shall have to follow the usual course, that after the statements in chief on both sides have been put in, then rebuttal will be permitted.

Judge HAINER. And under the rules of evidence, surrebuttal, if it is desired.

The CHAIRMAN. Yes.

Judge HAINER. I do not see any other orderly way.

Mr. McKINNEY. We thought perhaps Mr. Campbell and Mr. Gray would be willing to make an answer to our testimony at this time.

We received word from the Placer County, Calif., Growers' Association, which is an association of growers who own and operate their own canneries, who wired to request that they be represented here as opposed to the modification of the consent decree. I have no doubt that they have also communicated with you.

The CHAIRMAN. We will now take a recess until 2 o'clock this afternoon.

(Whereupon, at 12.45 p. m. the committee stood on recess until 2 o'clock p. m. of the same day, Monday, December 5, 1921.)

AFTER RECESS.

The hearing was resumed at 2 o'clock p. m., pursuant to the taking of recess.

Mr. BREED. Mr. Bode, will you take the stand?

STATEMENT OF MR. WILLIAM F. BODE, OF REID, MURDOCH & CO., CHICAGO, ILL.

The CHAIRMAN. Will you state your name?

Mr. BODE. My name is William F. Bode, of Chicago, Ill.

The CHAIRMAN. What is your business, Mr. Bode?

Mr. BODE. I have been in the wholesale grocery business, connected with the firm of Reid, Murdock & Co., of Chicago, from which firm I retired January 1 last on account of ill health, but as my health has improved I probably shall be engaged in business again.

I have been identified, through that concern, with the National Wholesale Grocers' Association, and have been on many committees in connection with the various problems that have confronted the grocers of the country in the past 16 years. During the war period I was chairman of what was termed the War Service Railroad Committee. The duties of that committee were to aid the Administration in the prompt handling of cars by our industry, so that the cars were available for the great movement of merchandise that was necessary to properly conduct the war.

Mr. BREED. That is food you are referring to?

Mr. BODE. All kinds of goods. We were instructed and asked to see that the cars were properly handled in and out.

They were double loaded, they were delayed as little as possible, to the point that the greatest efficiency might develop, and our industry received the commendation of the Railroad Administration for that effort.

The CHAIRMAN. Now, just proceed in your own way, Mr. Bode.

Mr. BODE. I appear in behalf of the National Wholesale Grocers' Association, comprising about 1,300 wholesale grocers located in every State of the United States. I appear also personally as a citizen, to protest against the monopoly and possible control by a few interests of the food products of the nation in the event

that the consent decree should be modified, thereby allowing the five great meat packers to again engage in the handling of unrelated lines of food.

For a period of 37 years, I was associated with one concern, Reid, Murdock & Co., of Chicago, wholesale grocers, 25 years of that period as a director, and of this latter time 10 years as vice president. The business was established in 1853, 68 years ago. Our trade extended into many States of the Union, and we employed approximately 200 salesmen. I have followed up nearly every branch of the business and have had a great deal to do with the observation of competition, and especially in late years with the competition of the meat packers, who have entered our industry—that is, handling goods that are commonly known as grocery items.

In the summer of 1918 the traffic manager of Reid, Murdock Co. came into my office with a bunch of orders, about 50 or more, from customers in Illinois and Indiana. The orders were for cheese, among other items on the order, which required shipment during that summer period in refrigerator cars. He said to me, "We could not ship these orders; the railroads have no refrigerator-car service." I said, "These customers certainly can get the cheese from somewhere?" He stated, "Yes; the meat packers with their cars can deliver and are getting all the business."

I then started an investigation as to the meat packers' advantages over us in railroad service, and I desire to read into the record some of the statements that I presented to the Committee on Interstate and Foreign Commerce of the House of Representatives on January 31, 1919. I shall not read all of it, but I will give you the important features. [Reading:]

"I desire to give this committee some important facts developed from personal knowledge and experience of the special service rendered by the railroads of the country to the meat packers which is not rendered to any other food industry. This applies to the handling of privately owned refrigerator cars, particularly known as packers' refrigerator peddler cars for fresh meat. These are handled daily by the railroads delivering fresh meat to every town, village, and city in the United States located on a railroad. It is a splendid service and keeps the retail butcher supplied with his fresh meat needs almost without interruption and is so certain and sure that the arrival at any station can be timed to a minute (barring accidents). These privately owned refrigerator cars aggregate many thousand and when handled by the railroads are for the sole use of the products of the owner, and when empty must be returned to the plant with a payment of 1 cent per mile. For example, movement loaded 200 miles, returned empty 200 miles, payment \$4 to the owner. No other food industry receives peddler-car service with privately owned equipment.

"The wholesale grocer deals in many perishable and non-perishable products, requiring refrigerator service approximately seven to eight months per year and to safeguard this class of merchandise the railroads will provide refrigerator cars, iced in summer and heated in extreme cold weather. This service is limited, however, by each railroad to certain specific cities on its line, and according to printed schedule refrigerator cars move on certain sailing days only. Some roads have no refrigerator service at all. Others have one, two, and three day service per week.

"To illustrate: The Chicago & Alton offers no refrigerator service to the public. The Nickel Plate has refrigerator-car service on its entire line from Chicago for two cities only, namely, Fort Wayne and Cleveland. The Illinois Central Railroad has refrigerator cars and will render service to the public but will only deliver to 33 cities by actual count in the State of Illinois."

This was, of course, back in January, 1919. [Reading:]

"There are approximately 500 or more towns on the Illinois Central in Illinois. The Illinois Central will handle the packers' refrigerator cars any day to every town, 100 per cent service to the packer; to the public (anyone else) approximately 5 per cent service.

"If the railroads will give any specific grocery jobber this special service, he will make corner grocery stores out of every other grocery jobber in the country. This special car service for the sole benefit of the packer has restricted the small packer to his limited zone and is responsible for the wonderful growth of the Chicago packers. This should be denied them except for fresh meat; every one being served by a public railroad corporation should have an even break. Regulate the railroads so that they, as public carriers, render equal service to all and you automatically curb monopoly. Service is the one and most important element that fosters and develops monopoly. No railroad should be allowed to handle private equipment for the sole benefit of the owner, but

when such equipment is tendered to the railroad it should be subject to public use for like service and be utilized for the products for which it was intended. Regulate the railroads and you solve the problem.

"The packers have taken advantage of the special privilege of service for their private cars, and the question arises, Should they be blamed unless they can be charged with the responsibility of having encouraged such private agreement due to promise of increased business, etc.? Goods not demanding refrigeration should not be put into refrigerator cars during the period when refrigerator service is in demand and a refrigerator-car shortage exists.

"Special service by the railroads for refrigerator cars should be confined to fresh meats only, and made available to public use. All other refrigerator service to be rendered according to regular railroad schedule.

"There should be no discrimination in favor of any industry.

"Special service by railroads held the small dealer or packer to his own district, put the packer in the butter business, put the packer in the egg business, put the packer in the cheese business, put the packer in the poultry business, put the packer in the rice business, put the packer in the soap business, and put the packer in the grocery business.

"Many cars receive 100 per cent refrigeration when only 10 per cent or more is necessary, the balance of the car being loaded with nonperishable goods.

"Packers have their own terminals, have their own belt lines, have their own refrigerator-car lines. Some of these are operated under separate corporate style.

"A special switch service is rendered these cars without extra cost."

I think that has been changed; I think that switch service is now charged for. [Reading:]

"One reason for that splendid service is the fact that the Chicago Junction Railway is practically controlled by the packers, and they, being a railroad industry, can get the railroad ear of the trunk line and can get most excellent service in their switching. We can not have that advantage."

The CHAIRMAN. That Chicago Junction Railroad was owned by the Chicago Stockyards, was it not?

Mr. BODE. By the packers, so called.

The CHAIRMAN. And the packers have now disposed of their interest in it?

Mr. BODE. So I understand. [Reading:]

"The refrigerator-car towns in Illinois I refer to are 11 towns, or rather, 11 schedules with 33 towns, and the Illinois Central Railroad operates about 49 cars a week. During the summer and winter months we have lost business requiring refrigerator cars to all towns excepting these towns, for the reason that the perishable or semi-perishable products can not be shipped. They are refused by the railroads. [Reading:]

"The packers were very careful not to disclose to the committee"—

That is, when the packers appeared before the Congressional Committee here in January, 1919—

" * * * the actual facts regarding this service, and that they were able to provide a service that they are protected in and a service that only the packer enjoys. It is a special service that is nearly equal to the passenger service of the railroads. It was created solely for fresh meats, and rightfully so, due to the highly perishable nature of the product and to the fact that the consumer should receive his meat fresh and on schedule time. This splendid service was developed with the full cooperation of the railroads, so that arrivals of peddler cars delivering meat from privately owned refrigerator cars could be timed to almost a minute in every town having railroad service in this land. A low minimum weight of 10,000 pounds was agreed upon between the packers and the railroads to insure daily or frequent service, and applied and intended only for the so-called packing-house products. This is a very flexible term, as I will disclose later.

"In due course the packers commenced the manufacture of butterine and oleomargarine; and having received such excellent service with fresh meats in making refrigerator-car deliveries, they decided to put into this car, intended solely for fresh meats, a box or so of butterine and justified their action by classifying this product as a packing-house product. In time this butterine business grew to an immense magnitude. Subsequently creamery butter was included in the distribution. This class of business goes hand in hand with the cheese business; hence the packer concluded that with the fine service at his disposal he would also deliver cheese in his meat cars, so he bought cheese and shipped this product (in no sense a packing-house product) in the meat-

refrigerator cars and gave such excellent service to the trade, with the result that the packer now controls the cheese business of the United States, taking this business almost entirely away from the usual channels of trade and making deliveries daily where no one else can deliver, thereby having a protected monopoly which is gradually reaching out and covering every item of food products handled by the grocery jobber. This special or favored service given the packers by the railroad company is responsible, as stated by the packer (Mr. Armour in his statement before this committee), for the handling of grape juice, crushed fruits and sirups, soaps and soap powders, talcum powder, canned goods, including fruits, vegetables, salmon and canned milk, bottled pickles and olives, also bulk pickles and kraut, cereals of all kinds, rice, prunes, and other dried fruits, beans, coffee, eggs, and poultry. The private-owned packers' car is a refrigerator car especially equipped for fresh meats. Many of the items mentioned are of a nonperishable nature, and in shipment by the packers these refrigerator cars are used for both perishable and nonperishable goods.

"The packer not only put his nonperishable and nonpacking-house product into a 10,000-pound minimum car, but he, at the same time, reduced his perishable or fresh-meat weight to correspond, permitting a quicker get-away to serve the trade."

That was his main point. He wanted to use a car every day if he could possibly get it, because the privilege of sending that car into a town every day gave him the opportunity of getting all the other business of that town.

Mr. BREED. That is, as I understand, the packer increased his business with refrigerator cars, filling them only half with perishables, and the other half with these other goods?

Mr. BODE. Yes; to increase the number of times the car would be available. [Reading:]

"The packers' car minimum is 10,000 pounds for packing-house products. The privileges accorded this car are in allowing the contents to be peddled and delivered to customers in every town en route. The grocery jobbers' car minimum is 15,000 pounds, causing thereby a 50 per cent greater cost to the grocery jobber. The railroad thus receives less revenue."

In other words, a minimum car provided for meats was 10,000 pounds—

Judge HAINER (interposing). Do they still continue that practice?

Mr. BODE. Absolutely.

Judge HAINER. Has that matter been taken up with the Interstate Commerce Commission?

Mr. BODE. Oh, yes; and agreed to. It is for meat. Now, they put the balance of that stuff in the car, and get the advantage of the 10,000-pound minimum for peddling or distribution under the peddler-car system, stopping the train at every town and delivering the meat for that town and going on. My minimum of 15,000 pounds is to one destination only; I can not peddle my car. I can only deliver to one destination, unless I consign my goods to the railroad and have them put it in the railroad peddler car.

Judge HAINER. And the Interstate Commerce Commission permits that practice?

Mr. BODE. Yes, sir. And I believe it is right. If the people of this country want fresh meat, and they have no facilities for getting it in their own district, then the best possible service should be made available to the packers so that they may get that meat to those people promptly. It is a very highly perishable product, as you know.

Mr. BREED. But you do not think it is right to use this same service for non-perishables or nonrelated products, do you?

Mr. BODE. That is what I am getting at. Because the public should have this prompt service for a needed product like fresh meats, it does not follow that it is necessary for goods that should go into the regular channels of distribution.

Mr. BREED. And you are not making any attack, then, upon the privilege of the packers of distributing meats in these private cars?

Mr. BODE. Oh, no; I would improve it if I could.

Judge HAINER. But they should not include both; is that your contention?

Mr. BODE. Realize this position: They have got, or have received, by reason of the necessities and demands of the consumer, a service from the railroads which enables them to deliver those meats at once; and the salesman, having satisfactorily served the trade along his route in meats, comes to you and says, "Now, here, this service is splendid. Put some eggs in there, put some butter in there, put some groceries in there. I can tell that man that he need not buy from Austin, Nichols & Co., or Francis H. Leggett, or Reid-Murdoch, or any

of these other houses, because the railroad service that they have available is the usual or schedule service that takes two or three days to nearby towns, or a week or 10 days to far-away towns. I can make, according to the experience that I have had, a promise that if that car leaves this packing plant to-night, it can reach this town to-morrow morning."

And those are exactly the arguments that have been used, to my personal knowledge, by the packer salesmen in taking our business away from us—regardless of price. And I will say this to you right here. It is an absolute fact—you will do it, and I will do it—if I can get a delivery to-morrow morning, having given an order to-day, I will pay more money than if I had an uncertain delivery date for the goods. And that is what the packers have relied upon. And if you will look over the records of sales by them—excepting where they are using an article to make an issue with—their prices are higher than any jobber in the United States on the same article at the same time. [Reading:]

"In the matter of full carloads of packing-house products the tariff provides for a 30,000-pound minimum. The jobbers' minimum for his products to certain destinations is from 36,000 to 40,000 and higher."

The packers have been benefited in all this determination of minimum weights and classifications by the fact that they are handling a perishable product in there for the people of this country—namely, fresh meats. [Reading:]

"Meat service should not be given to the grocery items. Meats are an essential and are in great demand and needed by the people of the country, but groceries are not, except as they can be delivered through the usual channels of the roads. Meat, however, must be delivered promptly. Meat receives the special service from the railroads that it is entitled to, and Mr. Packer to-day is doing very well, as I have stated, with that service, and he simply interjected these other items in there and gets a one-day or two-day delivery when it takes me 5 or 10 days, and maybe longer, subject to the usual delays of the regular scheduled service in reaching destination. This, as I have said, is responsible for getting him into these lines that are foreign to his particular business.

"I have noticed some advertisements which the packers have been putting out recently. In every reference to these cars they state, fresh meats. There is not a word said about anything else they are used for. For instance, in Morris's ad here the other day they state:

"Ownership of refrigerator cars makes possible distribution of fresh meats to the distant consumer."

He does not say it also makes possible the distribution of grocery items; he emphasizes the fresh meat.

Mr. BREED. Do the salesmen make reference to that?

Mr. BODE. That is reported to me by every salesman with whom I raise the question.

Mr. BREED. What was reported to you?

Mr. BODE. That they—

Mr. BREED. Who is "they"?

Mr. BODE. That the meat packers use the meat schedules for their business in influencing trade on groceries or unrelated lines.

Judge HAINER. The meat packer salesmen?

Mr. BODE. The meat packers' salesmen. [Reading:]

"Mr. Swift puts in an ad saying:

"Ice boxes on wheels. Refrigerator cars for carrying meat are ice boxes traveling on wheels. Most people in America would have to go without fresh meat or would have to pay more for what they could get if it were not for these traveling ice boxes, so Gustavus F. Swift had to make the cars himself. The first one was a box car rigged up to hold ice. Now, there are 7,000 Swift refrigerator cars. Each one is as fine an ice box as you have in your home."

"Those cars do carry nonperishable stuff, beans, canned corn, coffee, prunes, and everything of that nature that the meat service requires, but they get these other goods in the car, and our salesmen fail to get the business.

"For years the packers have been adding various commodities to their packing-house business that are not products of slaughtered animals. The past few years have witnessed the addition of many lines of merchandise not found under the caption of 'Packing-house products' as generally defined in the various freight tariffs of carriers.

"Under special privilege accorded packers by virtue of privately owned refrigerator cars, coupled with extraordinary service, and this service means

approximately passenger-train schedule, which in general is provided by railroads, there seems to be, in our judgment, no end of commodities they can not handle to extreme advantage over all other shippers who must submit to intermittent and slower movement for nonperishable, and in most cases no service at all for perishable freight.

"Principal commodities handled by packers affecting our business are: Perishable: Cheese, fish. Nonperishable: Coffee, rice, dried fruit, peanut butter, soaps, soap powders, talcum powder, etc. Semiperishable: Canned fruits, canned vegetables, pickles, olives, catsup, table sauce, preserves, jams, sirups, crushed fruits, grape juice, canned milk.

"There is no reason why they can not also successfully handle to the exclusion of others, because of these special privileges, dry goods, boots and shoes, furniture, hardware, or any other merchandise bought and sold.

"Eliminate the advantage of the packer with reference to special equipment, except for meat requiring refrigerator cars and their special service, or confine the loading and use of refrigerator cars to the purpose for which they were built or intended, namely, transportation of meat requiring refrigeration or protection from weather conditions.

"It is the special expedited railroad service rendered the packers only that has enabled them to successfully add the various articles other than meat to their packing-house business.

"Upon representation of shipping conditions, hazard of slow transportation, reflected in loss and damage to meat, has enabled packers to induce or procure from railroad operators special fast schedules, by which their cars are given right of way over all other classes of freight. Special switch movements are made with two, three, four, or more cars. Example: South Omaha to Omaha or Council Bluffs transfer yards, Union stockyards to downtown Chicago freight houses and yards, and these performances by the railroads are done to place not only meat but all other goods handled by packers in their cars on some scheduled train for distant point or district.

"Some of these cars from the packing houses to downtown Chicago depots contain very small amount of fresh meats, some of them no fresh meat. Articles consisting of cured meats not absolutely requiring the special protection the same as fresh meats, while the balance of the car is made up of miscellaneous other nonperishable goods.

"For example: A car was recently handled on which more than half the car was taken up by canned goods—that is, fruits or vegetables in tin cans, boxed—for Cedar Rapids. The canned goods did not require the special use of refrigerator cars, but refrigerator car was used to obtain the special meat schedule from the stockyards district for Chicago freight stations. Goods in that car were forwarded on that particular day. When, on account of no freight, due to sailing-date plans, the car itself is either held over with the small amount of freight in it for a particular point for the sailing date, or perhaps the freight is taken out of the car and held in the railroad company's warehouse for the sailing date, and if any meat it's held in railroad's special cooler.

"Because of this expedited service the meat-packers took advantage to go into other lines of business and utilize their cars and service as a special inducement to buyers of coffee, grape juice, rice, pickles, talcum powder, soaps, and the long list of merchandise previously referred to, and on account of general shippers' inability to meet the service rendered by packers' daily, weekly, semiweekly, triweekly timed schedule against dead freight and merchandise uncertain schedules according ordinary shipments by railroads it has enabled packers to make great inroads on certain lines of goods to the exclusion of those compelled to use whatever is made available by carriers.

"Take cheese, for instance—this commodity has always been a grocery item, or until packers discovered they could load cheese into their cars and get the service also to make up minimum in some cases; also they found some space in cars to stow cheese that did not interfere with the meat, so they got into the cheese business and are able to serve any community in the United States, either through branch-house supplies or peddler cars, and their customers can depend absolutely on goods arriving on a certain day, and a certain train. In consequence, the packer is to-day doing from 65 to 75 per cent of the cheese business in the country.

"The wholesale grocer must submit to refrigerator car schedules as furnished by railroads, and the following is a sample of the Pennsylvania Railroad (Pan Handle Route):

"For example, Chicago can get no refrigerator service to towns Chicago to Columbus, Ohio, not a dollar's worth of an inch of space. There is not a pound of perishable stuff that goes from Chicago to towns Chicago to Columbus, Ohio, and in consequence of that we have lost all the trade on perishables like cheese and goods that will not stand the weather in the winter time to every town between Chicago and Columbus on the Pan Handle route. The packer can put his cheese or his meat, and all of these goods carried by him of our character, and deliver them every day to every town between Chicago and Columbus on the Pan Handle route. We call that, and claim it to be, a discrimination."

Mr. BREED. Judge Hainer asked the question of another witness a few days ago as to whether cheese or butter was covered in the prohibition of this consent decree. Are they?

Mr. BODE. They are not covered in the prohibition of the consent decree.

Mr. BREED. So that they are not prohibited from going on with this with reference to cheese and butter?

Mr. BODE. Not at all. I was just wondering why they did not do it though.

Mr. BREED. Simply because, in my judgment, the cheese people of the country and the butter people of the country did not understand the purport of this decree—how far it extended. That is my view of it.

Judge HAINER. And they are not represented here.

Mr. BODE. Why, they would have been here in force—the retail dealers.

Mr. BREED. For the record and for the information of the committee I would like to say that at that time representatives of the National Wholesale Grocers' Association in conference with the Attorney General, as Mr. Thorne also stated, urged that this decree should cover cheese, and, I think, butter, but it did not; and my idea is that the prevailing reason was that the packers themselves had such a large control of the cheese business at that time that it was a very strong reason.

Furthermore, they had given a very fine service to a perishable article, such as cheese and butter, which is not necessary for these other grocery articles in which we were more particularly interested.

Mr. BODE (reading):

"Illinois Central Railroad serves 33 towns in the State of Illinois out of total of towns, approximately, 500, on their lines in the State, and that service, mind you, is from daily to once a week. These are typical of the entire country.

"It is true cheese can be safely shipped with little or no damage by weather in the spring and fall seasons, but the bulk of cheese business is during seasons requiring protection that can only be given by refrigerator cars.

"Even in the spring and fall shippers who are compelled to rely on what service he gets from railroads is still further handicapped on deliveries by the sailing day schedule for general merchandise."

Do you comprehend that?

Judge HAINER. What do you mean by "sailing day?"

Mr. BODE. The sailing day is the day the train leaves one terminal for distribution of its cars. That is a common term used by railroads the same as by boat lines. It is the day they sail, or start.

Mr. BREED. May I ask this, for the benefit of the record? Are these dates the dates they actually start or are they the advertised dates when they will start?

Mr. BODE. They are the advertised dates, and are usually to be relied upon, Mr. Breed, unless something interferes; but it is within their power to change them without notice. In other words, the Pennsylvania Railroad Company may say, "We will have a package car only once a week between Chicago and Columbus, Ohio," or they may say it will be twice a week, and we can only ship once or twice a week. The packer can deliver his cars to them every day and get a daily service along that route.

Judge HAINER. That is, provided it is put in the peddler car?

Mr. BODE. I am talking of a packer's refrigerator car.

Judge HAINER. Yes, but not any other car?

Mr. BODE. No other car. That is what I refer to.

Judge HAINER. Well, the peddler car and the refrigerator car are the same thing?

Mr. BODE. The same thing. We call the packer's car the packer's refrigerator peddler car. [Reading:]

"You will note that operations are limited to two or three days per week for shipping, but the packers' cars, branch houses, and peddler move any and every

day. The magnitude of this discrimination is evident when you realize that this special service for peddler cars is available to thousands of branch houses and plants of the packers all over this land and packers' cars peddle out at a number of towns on a minimum loading of 10,000 pounds, and the deficit is charged on basis of practically the lowest less than carload tariff rate."

By that I mean that if that peddler car which is to move to-day has only 6,000 pounds in it the packer must pay the difference between the 6,000 pounds and the 10,000 pounds. That is termed the minimum weight for revenue of the railroad.

Mr. BREED. May I ask this? This 10,000-pound minimum only refers to the meat and the refrigerator cars of the packers?

Mr. BODE. Well, I am saying that the packers' refrigerator cars containing less than the minimum weight—namely, 10,000 pounds—must pay the difference between the weight that is in the car and the 10,000 pounds.

Mr. BREED. Yes, but that was not exactly my point. As I understand it, the packers' minimum is 10,000 pounds, whereas the minimum in the merchandise service is 15,000 pounds before they move? Is that correct?

Mr. BODE. Yes.

Judge HAINER. I was going to ask that question. What is the difference in the tariff rate between the grocery line and fresh meat? Is there any difference?

Mr. BODE. Oh, yes; they are classified. The classification runs from one to six. Meats are classified, I think, in the second class—some of them in the first class.

Judge HAINER. Yes, but when these groceries are put in the same cars—

Mr. BODE. They take fourth class—it would be 10,000 pounds at the packers' rate. [Reading:]

"When other shippers move cheese they must load or be charged on the basis of 15,000 pounds minimum, or 50 per cent more weight."

If I utilize a car for 15,000 pounds minimum and only have 6,000 pounds in it, I must pay the railroad the difference between the freight on 6,000 pounds and the freight on 15,000 pounds. Mr. Packer pays the difference between 6,000 pounds minimum and 10,000 pounds minimum.

The CHAIRMAN. Does he pay the same rate?

Mr. BODE. The same rate exactly.

Judge HAINER. Has not the Interstate Commerce Commission passed upon that question and held directly that it is discriminatory?

Mr. BODE. Well, it relates to this contention that we are making, that if they eliminate the unrelated lines then the 10,000 pounds minimum is acceptable to all parties concerned.

The CHAIRMAN. But if you were doing the same kind of business as the packers, if you were shipping perishable products—by that I mean packing-house products—and owned your own refrigerator cars the same as the packers, you could get the same service?

Mr. BODE. Absolutely not.

The CHAIRMAN. Why couldn't you?

Mr. BODE. Why, no; absolutely not.

Judge HAINER. I do not believe you understand the question, Mr. Bode.

The CHAIRMAN. If you were shipping packing-house products and owned your own refrigerator cars, could you get the same service as the packers?

Mr. BODE. Absolutely not; it is not possible. To illustrate that point I will show you this. The packers get this business by the fact that they have so many hundreds of thousands of cars moving. Unless I became a monopoly like they are I could not get the railroads to serve me under any consideration.

Judge HAINER. Your answer is that the people dealing in wholesale grocery lines have not these cars, or very few?

Mr. BODE. They have not the cars, and, if they had, it would not help them. I will come to that and give you an illustration of that in a moment. [Reading:]

"The packer only pays for 10,000 pounds and the railroad renders just as much service, and gets one-third less revenue."

Now, get that clear. The railroad gets one-third less revenue in handling the packers' car than when it handles my car with a minimum of 15,000 pounds. [Reading:]

"And they render a town-to-town service, and while the roads offer the public a town-to-town service on equipment, they will never render it to you because you can not get it."

We have asked them to let us give them a car loaded on station order from our plant, to put it on their train and make town-to-town delivery, and they would not do it. They simply say, "Groceries can go into the regular cars that the railroads offer through their depots; but meats we can not handle through the railroad depots of our line. They are perishable, and we must stop that train and deliver those meats from town to town as the train goes along."

Mr. BREED. Do you mean by your last statement that you, a wholesale grocer, have to haul your groceries to the main depot of the railroad, and that they themselves are the ones that determine the car they shall go in and what other merchandise shall be mixed with them?

Mr. BODE. They alone have that control of the merchandise—that is, unless I ship a carload. When I ship less than a carload I must deliver it through the regular channels, take the usual facilities offered by the railroad, subject myself to their handling, subject myself to their stowage in cars, in whatever car they want to use, no matter when the car is to leave.

Mr. BREED. And if you wanted to ship a carload to be distributed to a half dozen towns along a certain line, do I understand that they refuse you that peddler car service?

Mr. BODE. Absolutely; they will not give me that service.

Mr. BREED. And that is the peddler car service which the packers enjoy in their particular peddler cars?

Mr. BODE. Yes, sir. [Reading:]

"The important point is that the meat has given the packers a town-to-town service, which is not enjoyed by any other industry, and by reason of that, they put these other goods in the car and when a customer is handling meat, and even if it is a customer not handling meat, knowing that the refrigerator car of the packers is coming along, they will say, 'Send me some canned goods, because I can get that service to-morrow or the next day.'"

Judge HAINER. May I ask you a question there? Could not the Interstate Commerce Commission by rule and regulation prohibit the packers from continuing that practice? Has their attention been called to that, and have they refused to act on that? That is probably more of a question of law which Mr. Breed might be able to answer better.

Mr. BODE. Judge, I would like to refer you to the recent decision in the case of the National Wholesale Grocers' Association against the railroads. We put in all this evidence, and they found gross discrimination in rates. They found gross discrimination in classification. They found a lot of other irregularities, they made a decision and said, "This must be changed so that all are on an equal basis." But they clearly stated that, "When it comes to service we are not prepared to give the jobbers any relief"—in so many words.

Mr. BREED. In other words, they were impressed, perhaps, with the conclusion embodied in the Chairman's question a moment ago; namely: If you as a wholesaler wanted to own private cars, would not you be entitled to a railroad schedule and exactly the same rates and service as the packers? That is the fact, is it not?

Mr. BODE. Yes, sir.

Mr. BREED. Well, you did not quite answer his question in that way.

Mr. BODE (reading):

"With me I have got to rely on the schedule of the railroads and that schedule, if it is perishable stuff, would be one, two, or three cars per week, with the delays incident to their scheduled service. If there is no refrigerator service I can not ship it at all, but Mr. Packer can get those goods into that town, whether it is for a butcher or for a baker, or for a grocer, with his meats right on the minute. That is a discrimination in favor of the packer, and naturally he will get into every line of business on earth if that special favor is continued.

"The packer in supplying consumers with their needs as to fresh meat consequently arrived at a basis of loading so-called peddler cars to as low a figure as was possible to negotiate with operators of railroads, thus creating a 10,000-pound minimum car, and is permitted to use it in peddling packing-house products at various towns en route. The rule is so framed that in case there is less than 10,000 pounds of packing-house products in the car that the deficit in weight is charged for on the basis of the lowest less-than-carload rate to

final destination of the car, and these are the only requisites demanded by the carriers in handling the cars by special service.

"There is nothing in the rule to prohibit packers from loading any other goods in the car; in consequence they load and peddle the long list of articles previously mentioned; however, they pay the regular freight tariff rate on all the goods.

"To forestall criticism and possible charges of discrimination under the act to regulate commerce, the railroads publish a rule similar in its requirements for use of shippers of perishable freight other than packing-house products, the notable exception being the requirement of 15,000 pounds instead of 10,000 as a requisite to furnishing a refrigerator car.

"This rule is entirely a paper rule, subterfuge, camouflage, as many roads do not have or control any refrigerator cars, and those who do would not furnish cars for the purpose, and no refrigerator car is furnished for any kind of load without much persuasion and complete history of transaction as to contents, destination, and route of car; or, in plain words, if we ordered a refrigerator car for peddling same as packer we would exhaust our patience, and the length of time to get it would lose sale.

"For shipments between towns in the State of Minnesota, when there are no regular scheduled refrigerator cars furnished by railroads, such carriers have a rule that they will furnish such cars for 10,000 pounds minimum shipments."

In Minnesota there is a 10,000-pound minimum basis. [Reading:]

"In the matter of waybilling and deliveries from packers' peddlers, many of those cars move to destination on the manifest or copy of the bill of lading which does not show the amount of weight, charges, and extension. Then two or three days later the regular waybill is received by the destination agent, from which the destination agent makes an expense bill. In other words, the goods are not held at the shipping point station for waybilling purposes; they go forward to destination without any waybill. No other goods are handled in this manner.

"In case the bill of lading does not agree with the expense bill, the expense bill has to be returned for correction, sometimes as to commodities, others as to weight, resulting in wrong tare or actual weight in use, and these corrections create undercharges and overcharges. An extra amount of clerical work on part of railroad employees is involved through these practices at both the shipping point and the destination of the goods.

"This applies to all goods handled in the regular peddler cars. Sometimes it applies to shipments made in what are known as 'branch house' cars, which also contain a miscellaneous lot of merchandise.

"All freight, perishable and nonperishable packing-house products in peddler cars to one customer or consignee, is handled on one bill of lading, manifest, or shipping ticket; thus the packer is enabled to avoid splitting the shipment and also extra freight due to eliminating minimum charges."

I will explain that feature to you so you will understand it.

Others than packers by use of his peddler cars in handling shipments requiring refrigerator protection, either against cold or heat, are required to make out separate shipping tickets—that is, others than the packers using the railroad peddler cars—are required to make out separate shipping tickets covering the perishable goods in any order that might be taken of perishable goods and nonperishable goods usually handled by wholesale grocers. The splitting up of the shipment, in other words, requires special attention with reference to minimum charges; that is, an entire shipment may weigh 300 pounds; however, if there is 50 pounds of cheese—cheese is a perishable item—in the shipment, we would have to pay a greater sum of money than this same 50 pounds of cheese would be hauled for if it could be included with the nonperishable goods.

To illustrate, Chicago to Pittsburgh: A grocer's shipment in a refrigerator car delivered to the railroad depot. Cheese, 50 pounds. The minimum payment on that would be 78 cents. Box car for the following items of the same shipment: Coffee, 100 pounds, 42 cents; rice, 100 pounds, 39 cents; raisins, 50 pounds, 26 cents; soap, 50 pounds, 22 cents. A total charge of \$2.07.

A packers' shipment—cheese, 50 pounds, 39 cents. Just one-half. We must pay on a minimum basis of 100 pounds. The packer only pays on the minimum basis of the entire shipment. Coffee, 100 pounds, 42 cents; rice, 100 pounds, 39 cents; raisins, 50 pounds, 26 cents; soap, 50 pounds, 22 cents. A total of \$1.68.

An advantage on the part of the packer of 39 cents on 350 pounds.

"Further, under Railroad Administration regulations during the war period—"

Mr. BREED. Mr. Bode, in order to be thoroughly fair and bring out the facts, isn't it contended that the packer has an expense item in connection with the maintenance and operation of his own refrigerator cars that if borne by the railroad might justify a difference of this sort?

Mr. BODE. No.

Mr. BREED. Isn't that contended by the packer?

Mr. BODE. No, he simply justifies in his argument that he should have better service because he does bear part of the expense, but he now gets 2 cents a mile for the handling of his car, or the fact that he furnishes the car coming and going.

Mr. BREED. I see.

Mr. BODE (reading):

"Further, under the Railroad Administration during the war period as to routing of freight, the general shipping public has no alternative than to deliver his goods to a particular road to go a particular way to junction points or towns served by more than one road, while packers' peddler cars serve all towns en route when distributing in a particular district, including towns barred to the general public."

To limit that to a few words, I will simply say that during the war period all groceries were subject to a delivery according to the way the Railroad Administration ordered cars delivered. It might be a roundabout way. The packer was not subjected to that same obligation or same condition. And he was able to make a direct route delivery, and we were obliged to take a delivery in a roundabout way.

Mr. BREED. Was that due to the fact that he was handling meats in these cars?

Mr. BODE. That was due to the fact that he was handling meats, and he got his groceries in, to our disadvantage. [Reading:]

"The winter season develops limited service to the general trade by the railroads, and that is illustrated by a notice issued by the railroads. This particular notice was issued by the Chicago and North Western Railroad, dated Chicago, Ill., November 4, 1918.

"Subject: Accepting perishable freight."

"This gives us due notice of what we are subject to, or at least, what our shipments are subject to, during the cold period."

The notice was issued to their superintendents and agents, Circular No. 27, as follows:

"All Superintendents and Agents:

"1. Carload and less than carload shipments of perishable freight as indicated below, and other commodities which are liable to be frozen must not be accepted for shipment when the temperature is at zero or lower or when the predictions of the Weather Bureau indicate that the temperature will fall to zero or lower over the territory through which the shipment travels the next succeeding 24 hours."

Following are the items: "Ale; ale, ginger; beer." They are not moving that just now.

Judge HAINER. Near beer?

Mr. BODE. Yes, near beer, it should be called. [Continuing reading:]

"Blacking, liquid; bluing, liquid; bulbs (plants); candy (chocolate); canned goods; cheese; cider, all kinds; coconuts; cranberries; eggs; fruits, all kinds, except dried; fruit juices; holly; ink; kraut (sauer); malt extract; medicine, liquid; melons; milk and cream (fresh); mistletoe; mucilage; nursery stock; nuts, edible; paste; pickles; porter; preserves; sauces, table; shrubbery; trees; vegetables, all kinds; vinegar; water, mineral; wine; yeast.

"2. Except as provided above, shipments of less than carload perishable freight, which are subject to damage by freezing, will be accepted only on days when regular refrigerator cars are scheduled to run.

"3. When reports of storm conditions indicate an interruption of train service, perishable freight should not be accepted for shipment.

"4. When less than carload shipments of perishable freight are accepted, they should immediately be loaded into warm cars, and not allowed to remain on the open platforms. Freight received for shipment that must be handled on way freights must be placed in a warm room until the arrival of the train. Heaters must be carefully examined to see that they are properly supplied

with oils, wicks carefully trimmed, and in good condition to give proper heating service.

"E. E. BETTS, *Superintendent Transportation.*
"H. C. HOWE, *Freight Claim Agent.*"

That is a restriction placed upon every shipper except the packer. He can put all of these goods in his own car, tender that car to the railroads, and he gets delivery. We are restricted because they will not accept these goods, and they give us due notice that these goods can not be shipped. We have had our goods come back to us a half a dozen times or more, having offered them to the railroad. We would take them over to the depot, and they would say: "We can not take them to-day." Mr. Packer can put them in his car, tender his car at the railroad, and he gets them delivered.

Judge HAINER. Ask no questions.

Mr. BODE. Ask no questions. [Reading:]

"In response to that circular, we sent out a similar notice to our salesmen to this effect:

"Salesmen:

"On account of necessity of protecting certain of our goods that are perishable, due to weather conditions, especially now (winter), the following should be carefully considered:

"Railroads reserve the right to refuse any and all perishable goods for points to which, or on days when no scheduled refrigerator or heater car service is available, and enumerate the following goods subject to such loading:"

Then follows a list of the articles which I just read from the previous circular.

"Railroads insist on separate shipping tickets or one covering all perishable items, the other nonperishable, so this involves minimum charge on each separate shipping ticket or two minimum charges on any order containing both perishable and nonperishable goods.

"It is necessary, therefore, to write up two order sheets, one for perishable and the other for nonperishable goods, and consideration must be given to the weight in the orders to see that freight is not charged on something not shipped.

"Yours very truly, "

"REID, MURDOCK. & Co."

In other words, during the period when the railroads will accept both goods to make up the minimum of 100 or 200 pounds, 100 or 200 pounds is all that we pay for. If they will not accept the perishable freight in their regular box-car delivery, we must separate the perishable freight and make two shipments, one perishable and one nonperishable, and in both of the cases we must complete the minimum that the railroads exact. In other words, if 200 pounds was the minimum during regular period I pay for 200 pounds of freight, which includes cheese and nonperishables. When the hot weather or the freezing period is on I must make 200 pounds of cheese and 200 pounds of nonperishable, or pay for it, making 400 pounds I have got to pay for instead of 200 pounds. Is that clear, Judge?

Judge HAINER. Yes.

Mr. BODE. Is that the point you were going to make, Mr. Breed?

Mr. BREED. No; I was going to refer to your notice to your salesmen. Is it your contention that you were obliged to limit the activities of your salesmen due to the notice from the railroads with respect to inclement conditions, while the packer was not obliged to limit the activities of his salesmen because he could get the service, notwithstanding the inclemency of the weather?

Mr. BODE. Absolutely. We had to give them notice that they could not take those orders because the railroads would not accept the perishable items during that period.

Mr. BREED. Is the packer's salesman limited in that way?

Mr. BODE. Absolutely not. I have had an accumulation—if I just recall one time—oh, of probably nearly three or four thousand boxes of cheese that were held up—accumulated because I could not ship the cheese. And when the weather became so that the railroads would accept it, why, the opportunity for having the customer accept those goods was lost, and in the meantime we were advised that the packers had supplied the cheese. We lost the sale of that. [Reading:]

"If we own private refrigerator cars, will the railroads render us like service?" That is the question you ask. No; for the following reasons: Operating department must first be arranged with, to handle the cars. Our product, not being highly perishable, the railroad will not give us the same service, and are absolutely opposed to privately owned cars—excepting for the packer. We looked into that proposition. We took it up with the Northwestern Railroad Co., and the general superintendent of transportation would not guarantee any better service than a box car, if we owned our own refrigerator cars."

Mr. BREED. When you say "we," who do you refer to?

Mr. BODE. Our company.

Mr. BREED. Reid, Murdock & Co.?

Mr. BODE. Reid, Murdock & Co. [Continuing:]

"We took it up with the Northwestern Railroad Co., and the general superintendent of transportation would not guarantee any better service than a box car, if we owned our own refrigerator cars, notwithstanding the fact of the well established and long established service which the packer had been receiving.

"Meat should have expedited service, but these other products they are handling absolutely should be cut out. Now, the packers' refrigerator cars are so important that the railroads get out what they call a bulletin, and they call it a 'U. S. yards means loading bulletin.' They schedule these meat cars just as surely as they schedule every passenger train they have. Why they should discriminate in favor of that industry I do not know. If it is solely for fresh meat we have no cause to complain"—

Mr. HALL. Pardon me just a moment. Are those trains made up exclusively of meat cars? This is just for information.

Mr. BODE. No; the schedules are made up for delivery, and I will give you that in a moment. I will read this:

"Why they should discriminate in favor of that industry I do not know. If it is solely for fresh meat we have no cause to complain, but if it includes the items that we compete with them on, then we have a right to complain.

"For instance, Wilson & Co., route No. 3, leaving the yards Saturday, leaving from Proviso Monday, train 137, on way freight, 6.30 a. m. Elmhurst to Aurora and St. Charles. The Monday car leaves at 10.15 p. m., Elgin to Freeport. The Tuesday car from Elgin leaves at 11.05 a. m. No. 737, sets out at West Elgin to unload by wagons, picks up by 737, and peddles to Belvidere. Picks up by 739 and moved to Rockford; 733 picks up at Rockford and takes it to Freeport.

"Fresh meats should receive this benefit, but they are taking also groceries and all these other items I have referred to, and putting them in these cars.

"Armour & Co. have four schedules on the Northwestern; Swift & Co. have five schedules, and Morris three schedules.

"* * * This covers only one division on the Northwestern. How many more would depend on how many divisions they have.

"Now, they got up this bulletin and call it a meat-loading bulletin, specially handling highly perishable products.

"* * * When they tender this car they have all items under the sun in the car and that car gets the benefit of this special service, which our industry can not obtain, and in that respect we think it is gross discrimination.

"The bulletin referred to is as follows; and I will deliver this to the stenographer."

(The bulletin is here copied in the record, as follows:)

United States Yards Meat-loading Bulletin.

Loading Co.	Route No.	Day leaving.	From—	Train.	Time.	District served.
Wilson & Co.	3	Saturday	Proviso	137	6.30 a. m.	Elmhurst to Aurora and St. Charles
Wilson & Co.	19	Monday	Proviso	1739	10.15 p. m.	Elgin to Freeport.
		Tuesday	Elgin	1737	10.05 a. m.	No. 737 sets out at West Elgin to unload by wagon.
		Wednesday	Belvidere	1739	3 a. m.	Picks up by 737 and peddles to Belvidere.
		Wednesday	Rockford	1733	8.55 a. m.	Picks up by 739 and moved to Rockford; 733 picks up at Rockford and takes to Freeport.
Armour & Co.	33	Saturday	Proviso	137	6.30 a. m.	Elmhurst to Sycamore, except DeKalb, 317 from Cortland to Sycamore. If too late to connect at Cortland, take car to DeKalb to re-ice, and go to Sycamore. No. 305 Tuesday must re-ice at DeKalb same evening upon arrival of 137.
Armour & Co.	33-1	Monday	Proviso	125	10 p. m.	DeKalb to Morrison.
		Tuesday	De Kalb	135	9.30 a. m.	Set out at Dixon and re-ice.
		Wednesday	Dixon	125	4.15 a. m.	Set out at Sterling.
Armour & Co.	74	Wednesday	Sterling	131	10.15 a. m.	Set out at Morrison.
Armour & Co.	74-1	Wednesday	Proviso	125	10 p. m.	DeKalb to Elmhurst. (Peddles on 138 Thursday.)
		Wednesday	Proviso	125	40 p. m.	DeKalb to Morrison.
		Thursday	DeKalb	125	9.30 a. m.	Sets out at Dixon re-ice.
		Friday	Dixon	125	4.15 a. m.	Sets out at Morrison.
		Friday	Sterling	131	10.15 a. m.	Elmhurst to DeKalb.
Swift & Co.	115	Saturday	Proviso	137	6.30 a. m.	DeKalb to Morrison.
Swift & Co.	115	Monday	Proviso	125	9.30 a. m.	Set out at Dixon and re-ice.
		Tuesday	DeKalb	135	9.30 a. m.	Set out at Sterling.
		Wednesday	Dixon	125	4.15 a. m.	Set out at Morrison.
		Wednesday	Sterling	131	10.15 a. m.	Set out at Sterling.
Swift & Co.	119	Wednesday	Mayfair	1365	5.20 a. m.	Wisconsin Division to Crystal Lake; thence to Williams.
		Thursday	Crystal Lake	1785	10 a. m.	Bay re-ice at Crystal Lake on arrival of Wisconsin Division No. 585.
Swift & Co.	115	Wednesday	Proviso	125	10 p. m.	DeKalb to Elmhurst.
		Thursday	DeKalb	138	7 a. m.	No. 138 peddles to Dixon.
Swift & Co.	115-1	Wednesday	Proviso	125	10 p. m.	DeKalb to Morrison.
		Thursday	DeKalb	135	9.30 a. m.	No. 135 sets out at Dixon, re-ice same night.
		Friday	Dixon	125	4.15 a. m.	No. 125 sets out at Sterling.
		Friday	Sterling	131	10.15 a. m.	No. 13 sets out at Morrison.
		Friday	Proviso	137	6.30 a. m.	Elmhurst to Sterling.
Morris & Co.	19	Saturday	DeKalb	135	9 a. m.	No. 135 sets out at Dixon; car re-iced on arrival.
		Sunday	Dixon	125	4.15 a. m.	No. 125 sets out at Sterling.

1 Time freight.

2 Way freight.

Mr. BODE. This is an exact copy of their bulletin: "U. S. Yards Meat Loading Bulletin." The Loading Co.—Wilson & Co.—

Judge HAINER. That "U. S." means Union Stock Yards, does it not?

Mr. BODE. Yes; that "U. S." means Union Stock Yards—Wilson & Co., Armour & Co., Armour & Co., two more Armour, Swift & Co., and Morris & Co.

The CHAIRMAN. Isn't that all printed in your statement to the committee. Mr. Bode, either before the House or the Senate?

Mr. BODE. Well, it was a preliminary hearing there, simply a voluntary hearing.

The CHAIRMAN. Well, but isn't that schedule printed there?

Mr. BODE. Yes. But I will leave this copy here.

There are just a few more pages that I am going to cover on this.

The CHAIRMAN. Well, I mean the schedule is printed in the hearings; that is what I referred to.

Mr. BODE. Yes. But it shows very particularly the route, the date of leaving the second day of leaving from the first delivery point, the trains, the time, and the district served. Now, that is a meat car containing groceries for me. That schedule is made up—assuming I am a packer—for me. I can not get anything like that. That enabled the packer to say to his salesman: "Why, you just show that bulletin to your customer, and he can rely on train No. 137 having that Saturday car," and he can come in here at 6.30 a. m. and he will get his ham and bacon, his fresh meat, his sausage, he can get his canned goods, and he can get the thousand and one things that they have started to handle that are not related to the meat business.

Mr. BREED. And he has succeeded with that method in connection with cheese to such an extent that the packer now controls the cheese industry, is that right?

Mr. BODE. Cheese, butter and eggs, poultry, and gradually into all these other lines. [Continuing reading:]

"Aside from meat and packing house products the minimum carload weights required by railroad tariffs and classifications is 40,000 on dried beans, rice, soap; 36,000 on canned fruit, canned vegetables, pickles, olives, preserves, catsup, etc. Yet by special privilege in exception to classification, packers secure a 30,000-pound minimum in cars containing most any of goods they handle, by placing in the car as little or much as they desire of some canned meat. It is possible to get 30,000 pounds minimum with one small box of canned meat, say 10 pounds in weight, balance canned goods, rice, etc. In short, packer gets 30,000-pound shipment at carload rate—others must pay on 36,000 to 40,000 pounds, or go into packing house product business or buy canned meat to place in car goods every time they want to ship 30,000-pound minimum car. Carload minimums enjoyed by packers on their shipments:

	Pounds.
Fresh meat.....	20,000
Fresh meat and packing-house products mixed.....	26,000—28,000
Packing-house products and any goods subject to carload rating fifth class in official classification.....	30,000

"Goods subject to fifth class cover about 75 per cent of all merchandise in classification.

"The effect that their competition had on our business warranted a letter by me to our salesmen written on January 11, 1919, as follows"—

This is a copy of the letter:

CHICAGO, January 11, 1919.

Mr. J. E. HALL, *Salesman*.

DEAR SIR: We are desirous of receiving full information with regard to the loss, if any, of business with your trade of perishable goods, which require, during the hot summer period and the cold winter season, refrigerator car service.

The railroads during the past two years have not been able to furnish the refrigerator car service as formerly. Some roads were unable to offer such cars at all and others confined their services to one and two days per week and then limited such service to certain large centers making it impossible for us to serve the trade that we had been accustomed to in the past. It is therefore our desire to ascertain from you what our actual loss in the trade has been of perishable goods, such as cheese and other perishable products, which require refrigerator service.

The large meat packing industries had their private owned refrigerator cars handled by the railroads without any change in the service, the cars operating

on schedule delivery time. This special service intended and assigned for the meat industries only has been taken advantage of by the packers and has influenced the use of these cars for products always handled by the jobbing grocery trade and never handled by the packers. The promise of meat car delivery service has been responsible for taking away from the grocery trade a large share of their business, due entirely to the advantages that the packers have received from the railroad companies. Furthermore, the cars were used for goods, to a large extent, of a nonperishable nature.

It is our desire to ascertain your actual experience and observations with relation to what disadvantage you have experienced and the loss of trade, if any, by reason of not being able to furnish like service.

Yours very truly,

REID, MURDOCK & Co.,
W. F. BODE.

The return answers are:

KALAMAZOO, MICH., *January 13, 1919.*

REID, MURDOCK & Co.,
Chicago, Ill.

* GENTLEMEN: From observation on my territory the large meat packers have had and now have regular weekly refrigerator-car service to nearly all the towns and cities which I make. With this service at their command their salesmen which call upon practically the same trade as I do had a cinch on all the cheese business and other perishable items that I had always sold heretofore.

It has also been my observation that the packers not only delivered cheese and other perishable items in these weekly refrigerator-car route cars, but also canned foods and other commodities which did not require this service. Consequently I have suffered a heavy loss in business in perishable items, such as cheese, etc., by not being able to furnish like service.

Yours truly,

J. E. HALL.

ALLIANCE, OHIO, *January 22, 1919.*

Mr. WM. F. BODE,

DEAR SIR: H. S. Were, Alliance, Ohio, had purchased of me several casks dill pickles, but owing to the fact that Libby, McNeil & Libby salesman made the statement that they would ship packages one at a time and include same in meat cars, which would practically guarantee prompt delivery, which is shipped by R., M. & Co., there was no telling when goods would arrive, and because customer had had shipments from us which were due before goods arrived—we were requested to cancel his dills.

JOHN T. VEALE.

PEORIA, ILL., *January 21, 1919.*

DEAR MR. BODE: I simply have no business whatever unless I stand the express rate personally during hot summer and cold winter months, and my annual business suffers fully 50 per cent average for the year.

The railroads never fail to deliver a meat car on the exact date as advertised, and our shipments on the regular line of merchandise drag along for a week, sometimes more.

Yours truly,

P. A. LOWER, *Salesman.*

URBANA, *January 20, 1919.*

Mr. WM. F. BODE.

DEAR SIR: The inability of the railroads to furnish adequate refrigerator car service on this territory resulted in a loss of practically all of our perishable goods business during the summer months, and it is only due to the moderate weather this winter that we are not now handicapped to an even greater extent.

I hesitate to say what this loss would amount to for fear of underestimating. In fact, it is impossible to estimate the loss because you appreciate that our inability to supply merchants with our brands of merchandise on which we have spent time and money for years to introduce, entails a loss that is difficult to figure in dollars and cents, and it goes without saying that the packers

with their refrigerator car service have an unfair opportunity to take advantage of this condition and replace our brands with their own.

There are about ten customers on this territory who formerly bought cheese from me that rarely buy it now, and I attribute this to the fact that we were unable to supply them when weather conditions would not permit box car delivery.

These customers would average a hoop of cheese every two weeks. Averaging the price at 25 cents a pound, it is a fair estimate that the loss on this item alone would amount to about \$4,000 a year.

Yours truly,

WM. H. OATES.

JANUARY 16, 1919.

Mr. BODE, *Chicago, Ill.*

DEAR SIR: Replying to your favor of January 13th, will say I was not able to sell any cheese last summer, and I have always enjoyed a nice cheese business, and since I have been able to ship cheese this fall and winter I have not been able to get my old cheese customers back, so it has hurt me quite a little in that line. I haven't had any trouble on olives and pickles so far this winter as the weather has been very mild on my field. The packers ship anything they sell in their refrigerator cars, such as dry beans, milk, canned foods, sirup and soaps, and they have cars in most all towns twice a week.

Yours truly,

D. A. ZECK.

LOGANSFORT, IND., *January 16, 1919.*

Mr. W. F. BODE, *Chicago, Ill.*

DEAR SIR: The matter of the amount of loss suffered by me personally for the reasons mentioned on the other side is a question which I personally looked into when I was last in Chicago.

I believe that \$50 per month to me personally will not more than cover the direct loss in the past year.

Thinking, however, this was a matter over which R., M. & Co. had no control, I hesitated about saying anything of this matter of the quicker service of the meat packers. These people in the last year have had a car and some of them two cars running on regular schedule to Logansport, while it took us as much as 15 days to get goods through the regular channels.

Assuring you I will do anything in my power to help correct this injustice to the grocery trade, I beg to remain,

Very truly yours,

BEN SELL.

A letter without a date:

"Most certainly we have and do lose lots of business, and are at a great disadvantage when the packer car delivers most any day goods that is quick refrigerator service. It just kills the cheese business. I don't know what the actual loss would be, but I do know we lose lots of business. They deliver anything in these cars.

"Yours,

"D. K. HARKNESS."

One of our salesmen.

Mr. BREED. How many more letters have you got, Mr. Bode?

Mr. BODE. I have got three more. They cover some different features which I think the committee ought to hear, because they come direct from the men on the firing line; they know what is doing. We want you gentlemen to know what the people that are trying to make a living and are selling goods for us are up against.

Mr. BREED. These salesmen?

Mr. BODE. Yes. Here is another letter:

WARSAW, IND., *January 15, 1918.*

GENTLEMEN: My loss from not having refrigerator service in summer beginning in May and lasting until October 20 is big. I enjoy a splendid cheese business during the cool months, but have to pass all this fine business during the warm months. I tried shipping some cheese in the early summer last year, but had trouble.

It sure would be a big help if you can secure refrigerator service. It is hard to estimate my loss of business on account of not having refrigerator service. For instance, I have many customers buying our cheese during the cool months and have to lose them during the warm ones.

This lets him get away from me and it is sometimes hard to get him back, which also takes time and delay in getting him started again.

I lose lots of business on pickle and perishable goods in winter.

I believe I am safe in saying I could increase my business 15 per cent by having refrigerator service.

Very truly,

Another letter:

H. W. MILLER.

JANUARY 15, 1919.

REID, MURDOCK & Co.,
Chicago, Ill.

DEAR SIRS: My business has been decreased by 50 per cent by the restrictions on shipping cheese and like products. How much this has hurt future business is hard to tell. My business on cheese was increasing at the time this rule was put into effect and consider that it decreased 75 per cent.

Yours truly,

C. A. BRADDOCK.

That is the rule emphasized by the notice from the Chicago & North Western Railway Co. during that cold period.

Here is another letter:

DEAR MR. BODE: I would say that on cheese alone I could sell at least \$5,000 more a year if we had the refrigerator service that the packing houses have, and it is quite a talking point for them on a number of items which they have the advantage on this account.

Yours truly,

J. R. GANT.

That is the particular point.

Here is another letter:

St. LOUIS, Mo., January 16, 1919.

DEAR SIR: During hot and cold weather I am compelled to discontinue selling perishable goods in my territory outside St. Louis, Mo.

During the same time the packers take over practically all the kind of business and deliver from their refrigerator cars. The merchant gets in the habit of buying of them and during the balance of the year I am of the opinion I do not get my full share of this trade on this account.

Yours truly,

W. L. FLEMING.

Here is a letter from Oklahoma:

MR. BODE: We lost a lot of cheese business in August of last year in the following cities on account of no refrigerator service: Lawton, Okla., El Reno, Sapulpa, Muskogee, Okmulgee.

I had orders from above cities returned to me account of no refrigerator service.

GLASS.

JOLIET, ILL., January 18, 1919.

MESSRS. REID, MURDOCK & Co.,
Chicago, Ill.

GENTLEMEN: Answering your letter on the reverse side I certainly agree with you in that the shortage of refrigerator service in both summer and winter months has handicapped us in making deliveries of perishable goods.

First, the extremely cold weather we had last winter, the lack of protection to items such as cheese and bottled goods, was responsible for hundreds of dollars of business for the reason we could not make a safe delivery. I recall one specific case of Nelson Bros., Dwight, Ill., where I had made a sale of five and one-half boxes of Monarch twins. When the cheese came in it was frozen through. Nelson Bros. shipped same back and have never bought a pound of cheese from me since, although it was no fault of mine or R., M. & Co.

Another specific case happened last summer when the restrictions were placed on perishable goods without refrigerator. On June 5, order No. 16, I sold Boyer & Ervington, Pontiac, Ill., five hoops of Long Horn cheese. At this time the Illinois Central advertised to send refrigerator to Pontiac once a week. Due to a misunderstanding relative to time of departure, the consignment of cheese was taken to the depot a number of different times, and as many times refused. My customers received this shipment about August 8 via express. I have not been able to sell them since, as they claim that they can get it promptly from the packer's car and delivered to their door.

I feel that it is absolutely necessary that something be done to remedy conditions of this nature or we grocery salesmen will be looking for a soft spot to light. I do not believe any of the boys will object to fair competition from these people, but with such conditions before us we are ready to fight.

Believing that there is some remedy in sight, I remain,

Respectfully, yours,

J. W. BARBER.

JANUARY 18, 1919.

Mr. W. F. BODE.

DEAR SIR: No doubt I lose 80 per cent of business of account of not being able to get refrigerator service.

Yours truly,

J. G. HANNA.

Here is a letter from Missouri and Kansas:

JANUARY 18, 1919.

DEAR MR. BODE: Your inquiry on other side carefully noted, and wish to say that on account of lack of refrigerator service during the hot and cold months of the year I have lost nearly all my cheese business which I enjoyed in former years.

Have also lost some pickle business, which the packing houses are getting.

In fact, they get the business on nearly all the perishable items during the extreme cold or hot weather.

The retailers cuss them, but give them the business.

Yours truly,

M. O. ALLGAIER.

I won't bore you with too much of this that is all in the same line. Here is one more I might read:

Mr. W. F. BODE.

DEAR MR. BODE: In reply to this letter, it is very hard to estimate just how much trade I have lost by not being able to compete with the packers in giving refrigerator service. Time after time in taking orders from different accounts perishable items would come up and customers would say, "I will get that from Swift or Armour; their car will be in this week," etc. In nearly every case if we were in the same position regarding service they would never get the chance to get the order, and this is their big item, especially in hot weather. They boast of their refrigerator service and in lots of cases get more money—

Now, I want to get this clear in the minds of you gentlemen; this is from the men on the road. [Continuing:]

They boast of their refrigerator service and in lots of cases get more money than we do on cheese, but customer is compelled to buy of them.

When I was in Indiana I had more trouble than now, as I was in direct competition with the Chicago branch. I have sold lots of cheese in hot weather, only to have regular order go forward with cheese omitted, the house writing customer that cheese would follow, as they could only have refrigerator service to their town once or twice a week. The trade soon got tired of this paying two cartage charges, etc., and it got so at times of the year that I sold practically no perishable goods whatsoever, only to see this bunch of— get the business.

I have talked to a good many merchants and very few buy of the packing house because they like their methods, and everything being equal give the other fellow the preference. Another thing, I have had merchants state they got this item or that item (regular grocery item) from Swift or Armour had cheese coming, and they shipped grocery staples unperishable in their refrigerator cars, while our cheese was waiting until certain days to get this service.

I will say this, if I was able to give service like the packers on perishable goods, I could double my sales of such items, and I would not ask to have unperishable items included like they do. Of course, that's their graft; that's how they get their line into most of the stores. They boast they are the biggest handlers of this and that, and they sell to R. M & Co., etc. Altogether, they are unfair competitors.

Yours very truly,

A. J. BISCHMAN.

"Of course, this statement with reference to 'Why, we sell to the wholesale grocer,' that probably is a salesman's argument rather than an argument that is influenced by the principals of the concern, but it does give the salesman the opportunity to make that statement.

(Continuing reading from Mr. Bode's testimony at hearing before Committee on Interstate and Foreign Commerce of the House:)

"An advantage which the packers have in the minimum car is this:

"For instance, they ship a 10,000-pound minimum car to Milwaukee, Wis. The freight on fresh meats in that minimum car is 37½ cents. It costs them for 10,000 pounds \$37.50. On groceries, 15,000 pounds, the average is 22 cents, making the cost only \$33. But when packed with other items, same 10,000 pound car, only 3,000 pounds of dressed beef was included at the high rate, it would be \$11.25 for the beef and on all other packing house products, including smoked meats and groceries, 7,000 pounds at the 22 cent rate, or \$15.40, which would make the total \$26.65, as against a shipment by the grocers in order to get a refrigerator car of 1,000 pounds of cheese and 14,000 pounds of other goods, the cheese taking a 31½ cent rate of \$3.15, and the 14,000 pounds taking a 22 cent rate, or \$30.80, a total paid to the railroad by the grocer of \$33.95, and a total paid by the packer of \$26.65, or \$7.30 less revenue that the railroad receives from the packer.

"It is estimated the packer has approximately 10,000 peddler cars in service. All told, according to their reports to the railway commission, they have about 30,000 refrigerator cars, of which approximately one-third are used for peddler car service. If 10,000 cars save \$7.30, that would be approximately \$70,000 on those cars for every movement they made, and if those cars moved 100 days in the year, it would be one hundred times that amount, or about \$7,000,000 that the railroads receive less in carrying the packer's refrigerator cars than other like cars for other shippers.

"Now, see how it figures out to the packers' advantage and how the railroads lose on the full carload shipments. A packers' minimum car is 30,000 pounds when containing packing house products, whereas all other shippers have a minimum car from 36,000 to 40,000 pounds. Take a movement of 240,000 pounds of freight. The railroad handles only six cars of 40,000 pounds for every other shipper, but it handles eight cars of 30,000 pounds for the packers. The railroad renders a third greater service on packers' cars but gets no more money. They handle eight cars with a lower minimum, and the only basis for that minimum is the fact that they have it for packing house product.

"Now, the packers realize that they must own the distributing cars for the peddler car service. If owned by railroads, they would lose the special privilege of every town and for any day, but would have to accept the regular schedule service of the railroads. That is why they want to hang on to their private cars."

At that point Mr. Hamilton, of the committee of the House, asked the question:

"Does this same minimum apply to refrigerator cars owned by the railroads?"

The answer was:

"If the packer calls for a refrigerator car from a railroad, the same minimum would apply; yes, sir."

Question: "What is the reason for that?"

Answer: "The reason is, with meat and packing house products, like they did with the peddler cars, in order to move it quickly and save it from being held for heavier weights and to prevent longer delays, they"—the railroads—"said, 'we will agree on a 30,000 pound minimum for packers' cars;' that is, for packing house products. When you take fresh meat alone it is 20,000 pounds; that is, they move a 20,000-pound car loaded with fresh meats. When they include what they call packing house products, it runs that up to 30,000 pounds. That means smoked and cured meats, and everything of that kind.

"Now, the big or the special feature I call your attention to on that minimum car for the packer is this: If they go into the rice business, or the coffee

business, and these other businesses, they can load a car with rice and put in one box of meat, not fresh meat mind you, but just any kind of meat, and they can get the 30,000 pound minimum car rate, by calling it packing house products. If the wholesale grocers want to ship a carload of rice we have to put in 40,000 pounds. The railroads would not accept our car and give us the carload rate unless we put 40,000 pounds in the car. On the other hand, if the packer would ship 30,000 pounds of rice, 29,950 pounds of rice and a 50-pound box of meat, he would get that put through as a meat car or a packing house car, and would get the low minimum of 30,000 pounds."

Mr. BREED. Mr. Bode, if you as a wholesale grocer should ship some meat-food products, as the packer, wouldn't you get the same—

Mr. BODE (interposing). Let me answer that. Mr. Hamilton asked:

"Would you get the same rate if you put in 30,000 pounds?"

Answer: "Yes, sir; now. We have done that and for two years we tried it out. We got onto their scheme and tendered such cars to the railroads, and they refused them. Since then, when we want to ship a commodity in a full carload way, we get the 30,000 pound rate by simply putting a box of meat in."

That was an experiment.

"As I say, the packers realize they must own distributing cars for pedlar car service. If owned by the railroads they would lose the special service privilege to every town and for any day, but would have to accept the regular schedule service of the railroads. That is why they want to hang on to their cars."

Mr. BREED. So that in order to avail yourself of this equal privilege you have to sell to the retailer some of the packers' meat food products; buying them, acquiring them, and shipping them?

Mr. BODE. We would have to go into the meat packing business to do that.

Mr. BREED. Or else buy their products and ship them?

Mr. BODE. No, we couldn't even buy their products and handle them in the way the jobber handles them. We would have to go into the meat-packing business and have the facilities that the meat packer has with reference to switch tracks and side tracks, etc.

Judge HAINER. Why couldn't you buy some meat; 50 pounds?

Mr. BODE. Well, I am simply saying, as I suggested before in reading this testimony here, that the railroads would not give us the service that they give the packer by reason of the immense magnitude or the number of cars that they now tender the railroads.

Judge HAINER. Have you actual cases where they have put in 29,000 pounds, for instance?

Mr. BODE. Oh, we have done that, Judge, and then they refused it, and then we called their attention—

Judge HAINER (interposing). That is, you got just a few cars through that way?

Mr. BODE. Well, when we tendered it first they refused it.

Mr. BREED. Tendered what?

Mr. BODE. Tendered a car with 30,000 pounds, with a case of meat, and they refused it.

Mr. BREED. They refused it?

Mr. BODE. Yes.

Mr. BREED. On what ground?

Mr. BODE. On the ground that that was not a shipment by a meat packer.

Judge HAINER. Oh, yes.

Mr. BODE. And then when we called their attention to the fact that here we have knowledge of their shipping—

Mr. BREED. Who are they?

Judge HAINER. The packers.

Mr. BODE (continuing). We have knowledge that the packers are shipping 30,000 minimum as a packers' car because it contained meat, they accepted the shipment. And, as I say, we made some shipments to Buffalo and to, I think, Pittsburgh by simply putting in one case of meat, and it went through with the lower minimum basis.

Mr. BREED. That was after you called to their attention the fact that the packer was doing the same thing?

Mr. BODE. Yes. It was legitimate; they had the schedule, they had the classification, and any shipper can to-day make a shipment of 29,000 pounds of any item and put in a box of meat and get 30,000-pound minimum carload rate.

The CHAIRMAN. Do you pursue that practice frequently?

Judge HAINER. Does the Interstate Commerce Commission permit that practice?

Mr. BODE. Oh, yes; because it is a published tariff by the Interstate Commerce Commission that when meats are included it shall be considered a packing-house shipment.

Judge HAINER. But isn't that an evasion of the law?

Mr. BODE. It is a technical evasion, but it was created, Judge—

Judge HAINER (interposing). Not for the benefit of the grocery people, but for—

Mr. BODE. No, it was created with never a thought that it would be utilized to that extent. The packing-house product was considered the product usually produced or manufactured by the packer, and it was never thought that they would use it for groceries.

The CHAIRMAN. Well, every one can have the advantage of that same rule, can they not?

Mr. BODE. To-day they can have the advantage of that same rule.

The CHAIRMAN. Is it practiced to any extent by any one besides the packers now?

Mr. BODE. No, nobody makes shipments that way.

Mr. HALL. But you only got the advantage of the rates that way. How about the service?

Mr. BODE. Well, the service for me, unless I have got a sign on there, "This is Armour's car," I couldn't get that service in a million years.

Mr. HALL. No matter if you did include meat?

Mr. BODE. Oh, no. Just in passing I will say this, that my experience in coming in contact with the employees of railroads is this—I was educated up to this degree. Whenever you see a packer's car, that means fresh meat, and stop everything and push that car through.

Mr. BREED. Well, is the packer's car identified by any printing or otherwise upon it?

Mr. BODE. Every one of the packers' own cars have their respective names thereon, and they have well-established trade-marks and colors.

Mr. BREED. They are painted in bright colors?

Mr. BODE. They are painted in bright colors.

Mr. BREED. And are easily distinguishable?

Mr. BODE. Very much so. And they are known at once, and when a railroad switchman sees that car he says—and now these are statements made to me direct by railroad men—"Stop everything. This car has got to go." And to illustrate that point, Mr. Ackerly, of the firm of Breed, Abbott & Morgan, was on his way from Chicago to New York, and he informed me that the New York Central "Century" was sidetracked between New York and Albany to let some packers' cars go by.

Mr. BREED. That is, that he saw this?

Mr. BODE. Yes, he saw the Century sidetracked to let the packers' cars go by. But I will qualify by saying that I believe that I would have done the same thing, because undoubtedly cars were needed for Government use, and I think every service ought to be sidetracked when that condition exists.

The CHAIRMAN. If these cars are loaded with meat it is a worthy thing, isn't it, to expedite them as much as possible?

Mr. BODE. Yes, sure, absolutely. I say if you can double the speed, double it. It is a wonderful service. And the people of this country, as long as they have got the ability to get the high-class meats and the high-class products that these packers do produce, quickly, for their consumption and need, we ought to work up some plan to give them speedier service; that is my contention. And if I was in the packing business I would work along that line.

In the testimony before the committee of the House, Mr. L. D. H. Weld—

The CHAIRMAN (interposing). Mr. Bode, I don't believe that we need to repeat all that testimony before the committee. We have that in our files, and those questions and answers I think are available to us, without going into it here now.

Mr. BODE. The only point that I want to make is that the particular points that affect this issue are picked out, which might be of some assistance to you in your committee, and there is only this part that I want to finish.

The CHAIRMAN. All right; go ahead and finish.

Mr. BODE. In the testimony before the committee, by Mr. L. D. H. Weld, that was reported—

Mr. BREED (interposing). Who is he?

Mr. BODE. He is Swift's economist.

Mr. BREED. Former professor of economics at Yale University?

Mr. BODE. Yes.

The CHAIRMAN. That is already in the record.

Mr. BODE (reading):

"In the testimony before the committee by Mr. L. D. H. Weld, that was reported, he said, if he is quoted correctly:

"Many small packers have testified before the committee that they have no complaint to make concerning the operation of the stockyards, and that they are doing a prosperous business; that there is no need for the proposed legislation to take over the refrigerator cars and stockyards, in which the large packers are interested. The principal reason the packers are interested in these facilities is to secure adequate and efficient service. Under no system of Government ownership or railroad ownership could the service be as efficient as it is now."

Now, this is my statement:

"If you will analyze and regulate this railroad proposition, they would not be rendered the service that would let them grow to where they have. We do not deny their growth, and do not want to stop them, but give us an even break, that is all; give us a fair show.

"Last winter especially, due to the fact that the Government had great need for refrigerator-car service, the railroads could not give us any service at all, practically speaking. There was never a day, however, when the packers were denied a minute's service. And the reason given us by the railroads why they could not render us refrigerator-car service for our perishable goods was, they said, they were obliged to deliver their refrigerator cars to the packer, so that the packer could put Government meat into railroad cars, and the packers saved their own cars for their own customers. In that way their service to their customers was uninterrupted, and we lost our business."

Now, those are actual facts, gentlemen.

(Reading from testimony before House committee:)

"The railroads were under the control of the Government. Whenever the packer wanted a car for Government service for the transportation of meats, he called upon the railroad for a railroad refrigerator car, and did not use his own car. He used his own car for the transportation of his own meat and other goods handled."

Mr. BREED. You mean the groceries and unrelated products?

Mr. BODE. Yes.

Mr. BREED. That covers that feature of it.

Mr. BODE. The packers have now a monopoly of the pedlar car system of the United States. I am sure the I. C. C. records will show they own more refrigerator cars for this class of service than all the railroads of the United States put together.

Mr. BREED. Those figures are already in, Judge, day before yesterday.

Mr. BODE. We stand for equality of opportunity and equality of service by the railroads to the business interests of the country, and not preferential service to only a few, thereby fostering monopoly and advantage to the few as against the many. We are not opposed to the packers as such, nor to them as competitors, if such enterprises are not benefited by special privileges. If they or others desire to become legitimate competitors, we welcome them. But there must be no combining with the meat business in the matter of joint sales and joint distribution, but a separate and distinctive grocery organization, compelling the use of the regular railroad channels, such as we are only able to use and obtain in the distribution of our goods to the trade.

Judge HAINER. Well, as a matter of fact, do they do any business along the same line that you do—distribute groceries in box cars for the packers? Do the packers in fact do any business along the regular grocery channels in distributing groceries?

Mr. BODE. Why, that is our case, Judge.

The CHAIRMAN. I am afraid you are not clear on it. He means distribution of groceries outside of in their pedlar cars; in any other way than through their pedlar cars?

Mr. BODE. Why, yes; they deliver to the branch houses, of which they have many hundreds.

Mr. BREED. Thousands.

Mr. BODE. Or thousands. And these branch houses constitute practically a branch grocery house as well as a branch meat establishment. And the grocers of that town go to that branch house and get their supplies.

Mr. BREED. In other words, these branch houses are nothing more than new wholesale grocery houses?

Mr. BODE. No; these branch houses are nothing more than new wholesale grocery houses.

Judge HAINER. Where do they get their groceries to take to these branch houses?

Mr. BODE. From their common centers. They either ship direct, or they have their stocks carried in Chicago. And they have what might be termed their bulk supplies of all of the products in our line that they handle, including their own line. And if Peoria or Bloomington or Columbus, Ohio, or any of these towns where a distributing point exists, wants a certain line of goods, they put these goods for that branch house into their cars and make a direct shipment to that town.

Judge HAINER. In what cars do you mean now?

Mr. BODE. In their refrigerator cars.

Judge HAINER. Oh, yes; but what I ask you is: Did they ship groceries in any other cars except these refrigerator cars and pedlar cars?

Mr. BODE. They may in this way, Judge. If they bought the output of a canner they may instruct that canner to send a car of corn or a car of tomatoes or a car of peas direct in a box car to that distributing point if that point could handle as much as a carload. But I don't think they supply as much as a carload of any one product to one branch house. Their system is to assemble these goods in their common centers, and then fill an order for that branch on a large or wholesale scale the same as they would fill an order for a small customer in a small way. Do I make myself clear?

The CHAIRMAN. But most of their transportation is done in the refrigerator cars?

Mr. BODE. Most of their transportation is done in the refrigerator car service.

Judge HAINER. What I wanted to get clearly in mind was this, about these branch houses, how they fill those branch houses with the unrelated commodities?

Mr. BODE. From the stock yards, for all the commodities that that branch house manager sends an order to the main house for. He may want a variety of all these items, because the trade there have asked for it, or he may say, "Send me just a half a car of this and half a car of that." It may be a half a car of beans or a half a car of some particular item that that particular section wants.

Judge HAINER. And that is forwarded in these refrigerator pedlar cars?

Mr. BODE. Yes, that is forwarded in these refrigerator pedlar cars.

Judge HAINER. Or in refrigerator cars?

Mr. BODE. Yes. Now to illustrate a little further, Judge. If the packer uses a given box car, and that car was loaded in Chicago, and not known as a packer's car, it would receive a slower service, or the same slow service that my car would receive. But the minute that that car comes from the packing house, switched by the packing house switching arrangements, with the packer's name on it it is accepted as a meat car. It may not have a pound of meat in it.

Judge HAINER. That is the question I was going to ask you. When they use these box cars is it labeled the same as the meat car?

Mr. BODE. No, but they seldom use a box car. They use all their refrigerator cars to move their products. They may occasionally use a tank car or a box car, but as I say, probably there is a sign on there "Shipped by Armour & Co." If the railroad man sees that sign it is an indication to him that there is a perishable product in there.

The CHAIRMAN. Irrespective of any direct order?

Mr. BODE. Irrespective of any direct order. That has been my experience and observation.

Mr. BREED. I think the judge also asked you, Mr. Bode, where the packers bought these grocery items and canned goods, where did they get them from? Didn't you so ask him, Judge?

Judge HAINER. Yes.

Mr. BREED. Answer that.

Mr. BODE. They buy them from every agency under the sun.

Judge HAINER. Well, do they buy them from the wholesale grocer, or do they ignore the wholesale houses?

Mr. BODE. They may. Through brokers we have sold them goods ourselves, and we have bought goods of them.

Mr. BREED. Well, do they buy them from their own organizations?

Judge HAINER. What do you mean by "their own organizations?"

Mr. BODE. Their own canners, do you mean?

Mr. BREED. Yes.

Mr. BODE. Why, do you mean the grocers buy them from—

Mr. BREED. No, he asked where the packers get these different canned goods and other items that they are distributing to their branch houses and selling to the retailers. Where do they get them?

Mr. BODE. The development of their business has been so great in these unrelated lines that they are seeking channels of supply and production. They have gone into California, they have gone into Oregon, they have gone into Alaska—

Mr. BREED. And done what?

Mr. BODE. Let me finish. They have gone into Wisconsin, they have gone into Michigan, they have gone into Ohio, and they have established plants or made arrangements with people who owned producing plants, and secured either by contracts, their output or the major portion of their output, or they became interested in those institutions as owners of the majority stock. So that they could control for their needs the output of those plants. And in that way have stopped our source of supply to a considerable extent. Not that they do not have a right to do it, but that is what develops.

Mr. BREED. Do they ordinarily pack these canned goods under brands that are known as their brands?

Mr. BODE. The packer is not a distributor of any products to his trade other than with brands of his own.

Mr. BREED. So that they are attempting to make inroads into the retail trade by producing their own brands of goods and selling it in competition with canners' and producers' brands and wholesalers' brands throughout the country?

Mr. BODE. That is being done by the wholesale grocers themselves. They established their brands, put their particular mark on there, and that is one way of building up the business.

Mr. BREED. Well, the packers are following that same course?

Mr. BODE. The packers are doing that, yes. We sell not only our own brands, but the brands of others. The packers sell only their own brands, unless they wish to unload a block of stuff that they have a surplus of.

I wish to add, gentlemen of the committee, we have no monopoly of distribution. Many manufacturers distribute direct to the retail trade. And I would illustrate such concerns as Proctor & Gamble Co., the National Biscuit Co., many of the flour mills, many candy concerns, the mail order houses, the chain store systems. Therefore there is no monopoly on our part that we are seeking to obtain in the distribution of food products.

We, as wholesale grocers, having before us the records of the past operations in the matter of great wealth, the desire to dominate every undertaking they engage in, the wide spread of their present facilities, and the advantages of preferential railroad service, it creates in our minds great fear and alarm for our future business existence, especially so after we read reports of actual statements made by the principals and department managers of these meat-packing concerns before committees of Congress under oath. And when we have before us the facts, as secured after a most searching investigation by the Federal Trade Commission—I would like to call the attention of this committee to some facts disclosed by these reports, particularly in view of the inquiry made by this committee, or as to the extent in which the packers have in the past handled unrelated lines.

Now I do not want to burden you with a lot of reports, but we have studied these reports very carefully, and we have picked out some of the salient ones that are facts that we know, and some that we do not know, but were made known to us by the Federal Trade Commission, which causes us alarm, and I am not going to read a whole lot of stuff, but I would like to have you get the gist of it.

For instance, the variety of unrelated foods and specialties manufactured or handled.

Mr. BREED. What is this from?

Mr. BODE. These are from the Federal Trade reports that I have gone through. I want these gentlemen here to see what affects us.

Mr. BREED. Can you refer to any page of the report?

Mr. BODE. Yes; Part IV of the Federal Trade Commission's Report, pages 15 and 16:

"These packers have entered the wholesale grocery trade and in practically all the more important centers of distribution they bid fair to dominate a field which a few years ago was almost exclusively occupied by the independent provision jobber and wholesale grocer. With the exception of sugar and flour, the profits on the marketing of which are, without the control of their supply, relatively small and the control of which by the packers has not yet been secured, and with the exception of fresh fruits and vegetables, into the marketing of which the packers have never ventured far, the five large packers are now large distributors of almost all the commodities originally handled exclusively by the regular wholesale grocery, provision and produce trade. These include dressed poultry, eggs, butter, cheese, condensed and evaporated milk, butter and lard substitutes, dried fruits, rice, coffee, breakfast and other package foods, jellies, pickles and canned fruits, vegetables and fish."

And then reading from Summary and Part I of Federal Trade Commission's Report, page 85:

"That the demand for meat is elastic is the common experience of every household. As the price of meat advances less of it is used, its place being taken by bread, cereals, vegetables, cheese and other foods. * * * The great packing corporations are aware of this elasticity in the demand for meat and they are taking steps in the direction of protecting their business and of strengthening their control of the dinner table by acquiring large interests in the industries that produce other foods, especially substitutes for meat."

And then again they say:

"With branch-house selling developed and used as a means of controlling the local market for meats, it became only a step to extend the sales of the branch from meats to other food products, particularly those of a perishable nature, which also require certain care and facilities for safe transportation and handling. Examples of these are poultry and dairy products and fresh fish, fruit and vegetables. The ostensible motive of this step lies in the reduction of overhead charges on equipment and organization not already utilized to their capacity, an economy here undoubtedly real. But when a product must largely depend for its holding and distribution upon a system of transportation, storage, and handling which is in character substantially a natural and unregulated monopoly, a more intimate and compelling motive for the step becomes apparent, viz, the desire to control the sale of the product. Finally, there came to be included in the branch house sales many foods which do not require the peculiar system of branch-house distribution but control over which is hastened by that system when unfairly used in competition. Such foods, increasingly profitable to the packers, if brought under full control, will become enormously so."

Now that is just as clear as a bell to us. [Continuing reading:]

"Such foods, increasingly profitable to the packers, if brought under full control, will become enormously so, and in so far as they are substitutes for meat will be a factor contributing to the exaction of higher and higher meat prices. Examples of such foods sold through branch houses are rice and canned and carton goods."

Mr. BREED. Will you give the page number?

Mr. BODE. That is Part I of the Federal Trade Commission's report, page 94.

And I want to add right at that point: I believe all of us, you and I, in the daily review of the cost of our foods, we strike the cost of meats, such as steak, bacon, hams, and sausage first. Then eggs, butter, poultry, and follow down to the grocery line, sugar, flour, canned foods, etc. We immediately compare 12 and 15 cents per pound for sirloin steak with 50 cents and more paid to-day. The same with butter and eggs and poultry and cheese. Take any one of the grocery items, and forget the condition of trade, shortage in food supplies generally brought about by the war, and you will find sugar, flour, cereals and standard canned goods not very far from normal. It illustrates everything handled or controlled by monopoly remains higher in the

selling market. Take any one of our items and draw your own conclusions, gentlemen. I don't care where you go.

Mr. BREED. Tobacco?

Mr. BODE. But you take anything controlled by a monopoly, and you will find to-day that it runs 100, 200, 300 per cent higher than it ever did before in the old normally nonmonopoly days.

Judge HAINER. That includes cigars. I take judicial knowledge of that.

Mr. BODE. Now I want this to sink into the minds of you gentlemen, and I put against that any item in the grocery line—staples. There may be a few specialties. Our only advance, as to my observation, in that particular line, is represented by the added cost of labor, the added cost of materials that go into the product, and the added cost of transportation. The percentage of profit is the same, or less.

Mr. BREED. To the wholesaler.

Mr. BODE. Now make your comparisons to-day with yesterday, with reference to control of products, and you have your own answer. I don't want to give you anything more on that line.

Now you add groceries to their products—

Mr. BREED. Whose products?

Mr. BODE. The goods handled or manufactured by the meat packers. And they can control them just as sure as the sun rises. And I assure you that the increase is beyond the pocketbook of the average person working on a salary.

The trouble to-day, in my judgment, with labor is food cost and high rents. And we want to see food costs down. We do not want to see them up. And we are serving the people of this country in the way of foods through the wholesale jobber to keep foods down. That has been our slogan all the time. It is not to make big profits that we are in business.

My concern has been in business 68 years, and you can come down to this country here and find people in Pennsylvania that have been there established 100 years or more. One of our members, Arjay Davies, the former president of our organization, his business was established, I think, over a hundred years ago. We want to go along in a safe, sane manner with reasonable profits and a chance to live and to serve the people. We don't want anything else. And when we see these monopolies come in and take away our source of supply, why, we are afraid, and we do not believe they can serve them half as good or as cheap as we can.

I should say this, as I have heard the chairman of this committee ask the question: "Why shouldn't these people go in unrelated lines if they can serve the people better than you can?" Can they? They can not serve them any better. They can not serve them as cheap. There is not a move made by the meat packer that does not cost him more than the move made by the grocer. The fact is, he makes one additional move that I do not make. He sends his goods from a common center to a branch house. That costs money, gentlemen.

And when you talk about efficiency—which efficiency is a very nice thing, but did you ever render efficiency at a loss? Efficiency costs money. Did you ever hire an efficiency expert? Why, he is the highest priced man in the world. Now when you say efficiency is good for the American people, I will say to you that efficiency coupled with monopoly can show a good reason why high price prevails, but that efficiency is not for the advantage of the laboring man and the clerk, and those that only secure a reasonable return for their efforts.

Now we want to supply that man with his needs, and if he can enjoy the privilege of buying a few luxuries, we want to supply those also. We do not want Mr. Packer to come in and control our source of supply, and then say to this individual: "Up goes the price because my talks are so much."

The CHAIRMAN. We will have to adjourn at this time. We will meet at 10 o'clock in the morning.

(Thereupon, at 4.15 o'clock p. m., an adjournment was taken until the following day, Tuesday, December 6, 1921, at 10 o'clock a. m.)

TUESDAY, DECEMBER 6, 1921.

The committee met at 10 o'clock a. m., in room 704, Department of Commerce, pursuant to adjournment on yesterday, Hon. Herman J. Galloway (chairman) presiding.

The CHAIRMAN. Gentlemen, let us proceed with our hearing. Mr. Bode will resume his statement.

STATEMENT OF MR. WILLIAM F. BODE—Resumed.

Mr. BODE. Mr. Chairman and gentlemen, in this hearing the fact has been brought out very carefully and very distinctly that service is one of the elements that enters into the question of competition. And my experience has been that service is considered the greatest element in the matter of competition in our trade. It is always rendered to get business, and never rendered for the purpose of reducing cost to the dealer, and the buyer, as a rule, is perfectly willing to pay a premium when he can receive his goods expeditiously and in advance of the deliveries by competitors.

Mr. Thorne, in his testimony, quoting Mr. Armour's remarks with reference to that service, read the following excerpt, and I will repeat it because it is only a short statement:

"Whatever advantage we may have over our competitor in the handling of these goods lies in the high character of the goods we sell, and the character of the service we render. I assume that this committee needs no information from me as to the necessity of there always being on hand and available sufficient refrigerator cars to handle the supply of fresh meats that go out from the packing plants every day."

Mr. BREED. What is that testimony from?

Mr. BODE. That is the testimony of Mr. Armour before the congressional committee.

Now, when he places the unrelated goods in those cars that were constructed and given special service by railroads, he is able to take advantage or receive the advantage that the railroads give him for the transportation of our class of goods, to our disadvantage. The customer is willing, in my experience, to pay a premium and has paid as high a premium as 5 cents a pound on cheese; from 1 and 2 or 3 or 4 and up to 5 cents a pound on cheese, when we are unable to render that service or allow him to receive the goods within a reasonable time. We have lost lots of business because we could not deliver in time to suit his needs.

So the point of service does command a premium, and it is evidenced by our daily custom. Now, in leaving the Washington Hotel to come up here this morning, rather than wait for a street car and get into the crowded conditions there, I got into a cab and paid 40 cents to come up to this meeting here, simply for the convenience of the speed and the desire to get better service than the other people get.

Now, people are willing to pay that premium when they get service, and the grocer is willing to pay a premium.

Mr. BREED. The retail grocer?

Mr. BODE. The retail grocer is willing to pay a premium when he can get that service.

I would like to make clear, if the committee does not understand clearly the reference yesterday to the advantages that packers have in the shipment of their goods in refrigerator cars on the question of minimum l. c. l. shipments.

The CHAIRMAN. I believe we have that point very thoroughly in mind, Mr. Bode.

Mr. BODE. Do you understand what minimum weight in l. c. l. shipments means?

The CHAIRMAN. I think we do.

Mr. BODE. For fear that you have not got it quite clear—

Judge HAINER (Interposing). What have you in mind?

The CHAIRMAN. Proceed briefly, Mr. Bode, and if we have it in mind we will stop you.

Mr. BODE. A shipment by a grocer through the regular channels of the railroad's depots must tender to the railroad sufficient weight in what is l. c. l. shipments to enable the railroad to receive from him and ship a sufficient amount to make a return to him equivalent to the first-class rate on 100 pounds of freight. Many of the goods handled by wholesale grocers rates from first class up to fifth class, the average being about fourth class. Canned goods range, I believe, third class.

Mr. BRIGGS. Rule 26.

Mr. BODE. First-class rate to be paid to the railroads on first-class freight is 75 cents. Now, if I am a wholesale grocer, I must see that the railroads receive 75 cents from my shipment, otherwise I pay a penalty. I am obliged to have an order that calls in weight for 150 pounds of freight to receive the full benefit of the 50-cent rate, if 50 cents was third class or fourth class.

So, if my salesman takes an order, for instance, for a case of canned goods approximating 50 pounds in weight, and a hoop of cheese of 50 pounds in weight, a total of 100 pounds, if that was tendered by me to the railroad, I would have to pay for 100 pounds of the third-class freight.

The CHAIRMAN. In other words, 75 cents?

Mr. BODE. 75 cents. I would have to split the shipments. If it was in the winter time, or the summer time, where the cheese would require a refrigerator car service, I would have to pay for the 100 pounds of cheese at first class; and I would have to pay for 150 pounds of the third-class freight. Do I make that clear, gentlemen?

The CHAIRMAN. Yes.

Mr. BODE. Now, the packer includes both perishable and nonperishable in his refrigerator cars, and when he ships out a car and that car contains 10000 pounds, he only takes the less than carload rate on that shipment, and according to the highest class that he may have in each car, if it is first class, to the first point of destination. All the balance goes through on the regular rate according to class. I did not know whether that point as to the difference in freight charges and classifications was clear to you gentlemen.

Mr. SMITH. What would be the difference in actual charge?

Mr. BODE. I pay 75 cents for my case of canned goods, and 75 cents for the shipment of cheese, the total being \$1.50.

Mr. SMITH. What would the same commodities in his car cost the packer?

Mr. BODE. Seventy-five cents; I pay twice as much money.

Mr. SMITH. That is it?

Mr. BODE. Yes, sir.

"With branch-house selling developed and used as a means of controlling the local market for meats, it became only a step to extend the sale of the branch from meats to other food products, particularly those of a perishable nature, which also require certain care and facilities for safe transportation and handling. Examples of these are poultry and dairy products and fresh fish, fruit, and vegetables. The ostensible motive of this step lies in the reduction of overhead charges on equipment and organization not already utilized to their capacity, an economy here undoubtedly real. But when a product must largely depend for its holding and distribution upon a system of transportation, storage and handling which is in character substantially a natural and unregulated monopoly, a more intimate and compelling motive for the step becomes apparent, viz, the desire to control the sale of the product. Finally there came to be included in the branch house sales many goods which do not require the peculiar system of branch-house distribution, but control over which is hastened by that system when unfairly used in competition. Such foods, increasingly profitable to the packers, if brought under full control, will become enormously so, and in so far as they are substitutes for meat, will be a factor contributing to the exaction of higher and higher meat prices. Examples of such foods sold through branch houses are rice, and canned and carton goods."

Mr. BREED. It that a quotation?

Mr. BODE. That is a quotation from the Federal Trade Commission report, summary and part 1, page 94.

I am only reading extracts.

"In itself, distribution of these nonpacking house products does not, in some cases, give effective control. It must be coupled in these cases with production. The packer has therefore taken this next step toward the domination of food, and to-day he is canning salmon and certain fruits and vegetables, and even as in the case of Swift & Co., is growing his pineapples on plantations in Hawaii. Having important advantages in transportation and having a vast selling organization, it is at the packer's option whether he will himself produce or whether by buying contracts he will absorb output and take his profit on what others have produced for him."

That is also from summary and Part 1 of the Federal Trade Commission Report, page 94.

"All the big meat packers are distributors of vegetables in cans, and Armour & Co. is also a large dealer in dried beans. As in the case of their fruit business, this is a recent development and one which is being expanded by leaps and bounds. (For trade estimates of packer control see Exhibit XII.) The sales of canned vegetables by Libby, McNeill & Libby (a Swift concern) had made remarkable growth during recent years. The company reported no sales of vegetables from its Pacific coast plants in 1915. (See Exhibit XVII A.) In 1918 these sales amounted to 32,864,965 pounds."

Mr. BREED. Give the quotation, please.

Mr. BODE. That is from pages 230 and 231, Part IV, of the Federal Trade Commission report on the meat-packing industry.

In addition to the sales of these vegetables from its own Pacific coast plants, Libby's sales of vegetables from other plants, particularly of asparagus and kraut, are extensive. Its sales of canned asparagus were, in 1915, 3,976,691 pounds; in 1916, 10,675,792 pounds; in 1917, 10,690,784 pounds; and in 1918, 9,749,287 pounds. The country's total pack is for these years available only for 1917, and in that year was 49,461,000 pounds. If the asparagus output of Libby's Pacific coast plants—5,514,990 pounds in 1917, at an average of 30 pounds to the case, see page 234—can be regarded as approximate sales, Libby alone distributed 33 per cent of the 1917 pack.

Mr. BREED. Of what?

Mr. BODE. Of asparagus.

Its sales of kraut were, in 1915, 5,489,004 pounds; in 1916, 4,298,775 pounds; in 1917, 8,451,887 pounds; and in 1918, 18,810,192 pounds. Of these years the country's total pack is available only for 1917. This was 73,095,957 pounds. of which Libby sold 11.5 per cent.

I am giving you these figures, gentlemen, to answer this question that you raise with reference to the packers only distributing 5 per cent of the products of our line.

Judge HAINER. That is what the Federal Trade Commission report is.

Mr. BODE. Five per cent of their gross sales.

Judge HAINER. Not to exceed that.

Mr. BODE. Five per cent of their gross sales of meat on these unrelated products. That 5 per cent, gentlemen, is confined to a certain part only of the items that were handled and it aggregates, to the best of our knowledge from investigation, about 25 to 30 per cent of our entire business of canned goods in the United States.

Mr. BREED. In other words, the percentage which has been referred to by Mr. Campbell as the percentage of their meat business?

Mr. BODE. Of their meat and grocery business combined.

Mr. BREED. Yes. But is not a percentage of the grocery business of the country?

Mr. BODE. No; nor would that be a comparison that would have much weight, unless you took a particular commodity that they were handling and then ascertained what percentage are they shipping, or what percentage are they controlling, which is illustrated by Libby's distribution of 33 per cent of the total asparagus pack. Now, 33 per cent and the other per cents may only in gross amount to 5 per cent of the packers' total business, but it does represent a very large per cent of the particular items that they handle, as against our business.

Mr. SMITH. In other words, the particular things they take hold of they show a capacity to control and dominate?

Mr. BODE. That is our experience.

Mr. SMITH. And all they have to do is to reach out for other particular things and dominate the trade?

Mr. BODE. Yes, sir. The total tonnage sales by Libby, McNeill & Libby on all canned vegetables—including asparagus, tomatoes, kraut, peas, squash, sweet potatoes, pumpkin, spinach, corn, hominy, and the unsegregated vegetables from its Pacific coast plants—were, in 1915, 20,370,832 pounds, and in 1918, 71,275,996 pounds, a gain of 250 per cent. In the four years Libby's total tonnage sales on these canned vegetables amounted to 226,022,522 pounds.

This is from pages 230 and 231 of Part IV of the Federal Trade Commission's report on the meat packing industry.

I further refer to pages 20 and 21 of Part IV of the Federal Trade Commission's report on the meat packing industry with reference to statistics on handling of canned goods by packers [reading]:

"In the handling of canned fruits, vegetables, and fish and of other foods both wide range of product handled and rapid growth by the five packers are shown. In some items a large proportion of the total pack is indicated. The canned food sales of Libby, McNeill & Libby alone amounted in 1915 to 138,068,844 pounds and in 1918 to 449,190,822 pounds, an increase of 225 per cent."

In 1918 there were 449,000,000 pounds and over. Mind you, gentlemen, this is only one source.

The CHAIRMAN. And they are still handling them?

Mr. BODE. They are still handling them.

The CHAIRMAN. And they are not prohibited by the decree from handling them?

Mr. BODE. No; and we are not objecting to that when they distribute to the meat packers as well.

Mr. BREED. Referring to this matter of Libby still handling these goods, while they are still handling the goods, if this decree remains in force and effect, Libby is prohibited from using the packers' private cars, is he not?

Mr. BODE. That is what I understand.

Mr. BREED. So that the competition which you describe as unfair when conducted by the packers with their special privileges does not apply to Libby, provided this decree is continued in force and effect?

Mr. BODE. No, sir; and we wish to state clearly, so that you will understand here our position, we are not opposed to Libby's continued progressing just as large as he wants to—and when I say he, I mean the company, Libby, McNeill & Libby, progressing as they are able to.

The CHAIRMAN. Mr. Bode, do you know whether Libby's total sales of these articles that you mentioned, or the percentages which he handles in the total, have in any way increased since he has ceased to distribute the same in the packers' private cars?

Mr. BODE. Mr. Chairman, I will say this: There is no one able to answer that question, for the reason that the war demands were so great that a comparison of their business now would not be an indication as against a normal condition. Every packer and every food handler had enormous increases in output by reason of the war demands. But, as against their business prior to the war, why their business has very greatly increased; they have very largely increased.

The CHAIRMAN. Even without handling them in the packers' cars?

Mr. BODE. Even without handling them in the packers' cars. We have no complaint on that.

Mr. DAILY. There has been a natural increase, has there not, Mr. Bode?

Mr. BODE. There has been a natural increase. [Reading:]

"For the four-year period 1915 to 1918 these sales of the Libby Co. reached the enormous total of 1,179,074,122 pounds (see Exhibit XVII A). In 1917 Libby sold 33 per cent of the total pack of asparagus and 11.5 per cent of the total pack of kraut and in 1918, 27 per cent of the total pack of pineapple"—

Now, get those percentages clear; over 25 per cent of the total pack of pineapple, in the whole world.

The CHAIRMAN. Is not the production of pineapples confined largely to the Hawaiian Islands?

Mr. BODE. Not entirely

The CHAIRMAN. I say, largely?

Mr. BODE. Yes, largely.

The CHAIRMAN. And Libby owns a plant there?

Mr. BODE. Libby owns a large plant; not the largest, but a large plant. [Continuing reading:]

"And 9.7 per cent of the total world pack of salmon."

That is from sections 3, 4, and 5 of chapter 5. [Reading:]

"Sales for the other packers segregated by commodities, if available, would show a high packer total."

JUDGE HAINER. What was that percentage of salmon?

Mr. BODE. 9.7 per cent. We do not complain of that if it were a natural increase.

Mr. BREED. Do you contend that this trade of Libby was developed, in part, by the privileged use of these cars?

Mr. BODE. We sincerely and actually believe so. [Reading:]

"Armour's tonnage sales of canned vegetables and sundries, including condiments, evaporated milk, rice, canned and dried fish, and peanut butter, but not including canned fruits and preserves, tonnage sales for which were not available, were in 1916, 61,386,920 pounds and in 1918, 196,066,848 pounds, a gain of 219 per cent. For the years 1916, 1917, and 1918 the total tonnage on these items amounted to 365,213,661 pounds (see Exhibit XVII B).

"Wilson's tonnage sales of condiments and preserves and canned fish, fruits, and vegetables were, in 1915, 6,822,242 pounds, and in 1918, 121,648,154 pounds. The sales of 1918 were almost 18 times those of 1915. The total sales for the four years on these items amounted to, 172,931,943 pounds (see Exhibit XVII C)."

Mr. BREED. Please give your citations wherever you quote.

Mr. BODE. I will do so. That is from pages 20 and 21, Part IV, of the Federal Trade Commission's report.

Manufacturing and producing: The packers are more important producers of canned vegetables and dried beans than of canned and dried fruit, although their control of production is still far behind their control of distribution. Their pack of kraut, cabbage, and asparagus is especially large, as shown in the following table of their 1917 pack.

Armour & Co., through ownership of 51 per cent of the stock, controls the Fremont Kraut Co., Fremont, Ohio, canners and packers of sauerkraut.

Mr. Slessman testified to that here.

He owns 50 per cent of the Loudon Packing Co., Terre Haute, Ind., packer of tomato products and condiments, and owns 51 per cent of the stock of the Llewellyn Bean Co., Big Rapids, Mich., buyers, cleaners, storers, and sellers of beans. Wilson & Co. (Inc.) controls the Fame Canning Co., Indianapolis, Ind. This company has a total capital stock of \$750,000 divided into \$460,000 preferred (nonvoting) and \$290,000 common. Wilson & Co. (Inc.) owns \$100,000 of the preferred stock and 2,895 out of the 2,900 shares of common stock, the other 5 shares being held as directors' qualifying shares. The Fame Canning Co. packs corn, peas, tomatoes, pumpkin, squash, and succotash in plants located at Tipton, Franklin, Anderson, and Shelbyville, Ind., Ladysmith, Clear Lake, and Cumberland, Wis., and Three Oaks, Mich. There is also a canning plant at Whiteland, Ind., conducted under the name of Wilson & Co. (Inc.).

Morris & Co. holds 518 out of 776 shares of preferred and 226 out of 337 shares of common stock of the Barataria Canning Co., Biloxi, Miss., which packs a little pumpkin, sweet potatoes, and jams, although its principal business is the canning of shrimp and oysters.

Swift & Co. has operated as a packer of canned vegetables through its ownership of Libby, McNeill & Libby, by whom the goods were packed and labeled with the control labels of Swift & Co.

Now, in addition to the goods packed by Libby under their own brand, which are distributed almost entirely by the wholesale grocer, they pack under the Swift & Co. brand for the Swift distribution, but Libby does distribute his goods also through the private car.

The CHAIRMAN. Has Libby distributed his goods also through the wholesale grocer to any considerable extent?

Mr. BODE. Very generally, yes, sir.

Swift & Co. control the Western Meat Co., G. H. Hammond Co., Union Meat Co., Plankinton Packing Co., and the Emery Food Co. (all Swift concerns), as well as with Libby's own labels. Libby, McNeill & Libby owns 50 per cent of the stock of Stetson & Ellison Co., of Camden, Del., manufacturer of fruit, vegetable, and tomato products. Correspondence between Mr. W. F. Burrows, of Libby, McNeill & Libby, and Mr. L. F. Swift indicates that the purchase by Wilson & Co. (Inc.) of the factories of Grafton Johnson Co., now known as the Fame Canning Co., increased the desire of the Libby company to go more heavily into the canning of vegetables, but as yet its principal canneries, except for the packing of kraut, are all on the Pacific coast, and these pack larger quantities of fruits than of vegetables.

That is information gleaned from page 233, Part IV, of the Federal Trade Commission report on the meat packing industry.

Only two of the big meat packers have as yet become important factors in the fishing and canning industry. Swift & Co.'s ownership of Libby, McNeill & Libby has made it an important operator, and Wilson & Co. (Inc.), which entered the salmon business in 1917, dominates the Wilson-Wakefield group of salmon interests. These two interests are among the five large groups of salmon canners, who together packed over 53 per cent of the total American output of salmon during 1917 and who dominate the entire industry.

Libby, McNeill & Libby purchased the North Alaska Salmon Co. in November, 1916, and took over its plants. These with the plants previously owned, made the company one of the largest canners of salmon. In 1917 Libby, McNeill & Libby sold the entire pack of the Taku Canning & Cold Storage Co., of Seattle, with a cannery at Taku Harbor, southeast Alaska, and received a 10 per cent commission as selling agents. Officers and stockholders of the Taku Canning & Cold Storage Co. control the Auk Bay Salmon Co., with a plant at Auk Bay, Alaska. Thus in addition to its own pack Libby, McNeill & Libby had practically complete control of the output of both companies, which together packed 128,163 cases of salmon in 1917. The pack of Libby's own plants in 1917 amounted to 435,077 cases, or 5 per cent of the country's total output. With the packs of the two companies mentioned, Libby, McNeill &

Libby controlled at the production point a total of 563,240 cases, or 6.5 per cent of the total output of the year, a percentage exceeded only by that of three other salmon interests.

Libby, McNeill & Libby now control canneries at Ekuk, Ugaguk, Kvichak, and Lockanok, western Alaska, which were formerly owned by the North Alaska Salmon Co., and plants at Nushagak, Koggiung, Yakutat, Kenai, and a saltery at Egushik. In connection with its canning business the company owns and operates the Yakutat & Southern Railway and a fleet of sailing vessels.

That is from pages 247 and 248 of the Federal Trade Commission's report, Part IV, on the meat packing industry.

That the proportion of the total pack of canned salmon distributed by the packers not only is large but is rapidly growing is illustrated by Libby's growth in the sale of salmon. Out of a total world pack in 1915 of 7,539,592 cases, this concern's sales were 347,876 cases, or 4.6 per cent. In 1918 this percentage had increased to 9.7 per cent of the world pack, which amounted in that year to 10,100,127 cases. Since Libby represents only a portion of the Swift interests and since others of the big packers are large distributors of salmon, the percentage of packer sales would run high were figures available.

That is from page 247, Part IV, of the Federal Trade Commission report on the meat packing industry.

Wilson & Co. (Inc.) owns 99.9 per cent of the stock of the Pacific Fisheries Corporation and 51 per cent of the stock of the Wilson Fisheries Co.; Mr. Lee H. Wakefield is president of the Wilson Fisheries Co., and owns the remaining 49 per cent of the stock. The Pacific Fisheries Corporation is the owner of 99.5 per cent of the capital stock of the J. L. Smiley Co., with canneries at Ketchikan, southeast Alaska, and Blaine, Wash. The Wilson Fisheries Co. owns 98 per cent of the capital stock of the Alaska Herring & Sardine Co., with canneries at Port Walter, Baranof Island, southeast Alaska; 79 per cent of the stock of the Lisianski Packing Co., which has a new plant exceptionally well located on Stag Bay, Lisianski Strait, Alaska; and 100 per cent of the stock of the Apex Fish Co., with a cannery at Anacortes, Wash. The Apex Fish Co. in turn owns the Alden Banks Fish Co., the Brownie Fish Co., the Migley Fish Co., and the Superior Fish Co. Mr. Lee H. Wakefield, the president of the Wilson Fisheries Co. and owner of 49 per cent of its capital stock, owns 100 shares of the Northland Fish Co., of which he is president. The entire remainder of the stock of the Northland Fish Co., amounting to 200 shares, is held by men who are directors in one or more of the companies in this so-called Wilson-Wakefield group of fish cannery.

That is from page 249, Federal Trade Commission report on the meat-packing industry, of Part IV.

The total pack of the Wilson-Wakefield plants and of those whose output was controlled by this group in 1917 consisted of 353,704 cases, or 4.1 per cent of the total American pack in 1917. This pack included nothing from the Lisianski Packing Co., whose plant was not in operation until 1918 and which will increase their proportion.

Morris & Co., too, is not largely engaged in production of canned fish. It owns a controlling interest, 67 per cent, in the Barataria Canning Co., with plants at Biloxi, Miss., and New Orleans, La., which can shrimp and oysters.

Members of the Cudahy family are among the stockholders of the Pacific-American Fisheries Co., in which F. C. Letts is also a stockholder and director. Mr. Letts happens to be a wholesale grocer.

That is from page 250, Part IV, of the Federal Trade Commission report on the meat-packing industry.

Libby, McNeill & Libby, now affiliated with Swift & Co., is a large manufacturer and distributor of many food products, including condiments and relishes. They maintain 114 pickle-salting stations in Indiana, Wisconsin, and Michigan, and others in Colorado. In 1918 the Libby company bought outright from Mullen-Blackledge-Nellis Co., Indianapolis, Ind., its plants located at Brazil, Ind., Effingham, Ill., and Paducah, Ky., manufacturing catsup, chili sauce, and other tomato products. This company also owns 50 per cent of the Stetson & Ellison Co., Camden, Del., which cans tomato products. Swift & Co. controls Consumers' Cotton Oil Mills (not incorporated), Chicago, Ill., which manufactures cotton-oil products—that is, a product which we handle, cottonseed oil—and jointly with Armour & Co., the Independent Salt Co., Kanapolis, Kans., which manufactures salt.

Armour & Co. is interested in several condiment manufacturing companies. The Loudon Packing Co., Terre Haute, Ind., 50.3 per cent of whose stock is owned by Armour & Co., manufactures catsup, chili sauce, etc. The Fremont Kraut Co., Fremont, Ohio, 51 per cent of whose stock is owned by Armour & Co., manufactures kraut and pickles. The Independent Salt Co., Kanapolis, Kans., 50 per cent of whose stock is owned by Armour and 50 per cent by Swift, produces salt. The East St. Louis Cotton Oil Co., East St. Louis, Ill., entirely owned by Armour & Co., manufactures cotton-oil products.

Wilson & Co. (Inc.) operates a plant at Whiteland, Ind., which manufactures tomato products, chili sauce, and catsup. Wilson also owns Fame Canning Co., Indianapolis, Ind., which manufactures tomato products, including catsup.

The Red Wing Co. (Inc.), Fredonia, N. Y., controlled in the interest of the Cudahy Packing Co., manufactures among other products catsup, chili sauce, and vinegar.

That is from pages 252 and 253, Part IV, Federal Trade Commission report on the meat-packing industry.

The contention is made by the jobber that he fears this great monopoly, which is illustrated by these facts as outlined, that they are not only buyers of these products, but they seek to produce and distribute as well, controlling the sources of supply. Many of these concerns that these people have absorbed have been sellers to us and others in the grocery trade. Our source of supply from those sections is lost. We have got to seek other channels.

Mr. BREED. Or buy from the packers.

Mr. BODE. Or buy from the packers. Some of these people have served us for many years. We are now told that they have sold out their interests to the packers, and the supplies of those plants are going to the packers, and we must seek other channels of supply.

I have a table, which shows the sales of several commodities by Libby, McNeill & Libby, a Swift concern, for the years 1915 and 1918 with percentages of increase, which I will insert in the record, if agreeable.

The CHAIRMAN. It may be inserted.

TABLE 49.—Sales of certain condiments by Libby, McNeil & Libby (a Swift concern), with percentages of increase, 1915 and 1918.

	1915 (pounds).	1918 (pounds).	Per cent increase 1918 over 1915.
Pickles.....	22,547,433	37,020,575	64
Olives.....	1,540,948	15,034,243	875
Catsup.....	2,479,300	7,682,654	210
Mustard.....	1,025,480	3,564,168	247
Vinegar.....	318,330	187,602	147
Total.....	27,911,491	63,459,242	127

¹ Decrease.

This is from page 254, Part IV, of the Federal Trade Commission report of the meat-packing industry. This indicates such a tremendous increase that you gentlemen will be interested in it.

In 1915, pickles handled by this concern amounted to 22,547,433 pounds; in 1918, 37,020,575 pounds. Olives, a product of foreign countries, in 1915, 1,540,948 pounds, and in 1918, 15,034,243 pounds, an increase of 875 per cent. In my judgment, that is largely due to the distribution facilities available to them by reason of distributing to the packers' cars. Catsup, in 1915, 2,479,300 pounds, and in 1918, 7,682,654 pounds, a 210 per cent increase.

Judge HAINER. That was during war times, and on the peak, was it not?

Mr. BODE. There wasn't a sale, in my judgment, of olives made to any Government commissary. There might have been a few.

Mr. BREED. Your citations also refer to pounds, not dollars?

Mr. BODE. This is pounds. Mustard, in 1915, 1,025,480 pounds, and in 1918, 3,564,168 pounds. Vinegar, in 1915, 318,330 pounds, and in 1918, 187,602 pounds, a decrease there. But it shows a total in 1915 of 27,911,491 pounds, and in 1918, 63,459,242 pounds. This is interest, gentlemen. [Reading:]

"Fruit and vegetable canning and preserving are remote from slaughtering and meat packing, but the big packers, through ownership of their branch house system of distribution, possess special advantages in this field of industry. The Big Five's advantage in the field rests, not so much on their ownership of canning factories, although in some branches their output amounts to more than a quarter of the total for the United States, as upon their rapidly growing control of the wholesale distribution of canned goods. Indicative of the size and rapid expansion of the packers' canned goods business is the fact that Armour & Co. increased its canned-goods sales from about \$6,500,000 in 1916, to about \$16,000,000 in 1917; whereas the combined sales of these products by Austin, Nichols Co., and Sprague, Warner & Co., two of the largest independent wholesalers, amount to only a little more than \$6,000,000 in 1917."

Now, get this clear, gentlemen: Austin, Nichols Co. and Sprague, Warner & Co. have been in the business for approximately 50 years, or more, each. Reid, Murdock & Co. have been in business 68 years. Add our total to that; if we take the equivalent to what these two had, \$3,000,000 each, we would have \$9,000,000 for the three large distributors that have been established for over 50 years each, as against Armour, who has been in the business only three or four years, or 5 years, since 1916, in the distribution of canned goods. This wonderful increase must be due to something, and that something is the special privileges which they enjoy in the distribution and the control of the sources of supply.

Mr. BREED. Do you think that the control of the sources of supply is in any way affected by the large amount of capital at the command of the packers?

Mr. BODE. That is so apparent that it hardly needs to be answered. We know that to be a fact.

Mr. BREED. What?

Mr. BODE. Well, I have an illustration that I want to make that covers that point a little later on, Mr. Breed.

Mr. BREED. All right.

Mr. BODE (reading.):

"Although distribution is the point at which the packers have acquired the greatest control, they are nevertheless entering the field of manufacture. Swift & Co., through Libby, McNeill & Libby, has become a factor of considerable importance, canning tomatoes, beans, baked beans, cabbage, spinach, asparagus, beets, pumpkin, squash, sauerkraut, pears, apples, cherries, grapes, berries, plums, prunes, and pineapples. Libby, McNeill & Libby (Maine) owns 96 per cent of Libby, McNeill & Libby (Ltd.) of Honolulu, engaged in raising and canning pineapples; 100 per cent of the Ahulmanu Pineapple & Ranch Co.; 100 per cent of the Thomas Pineapple Co.; and 50 per cent of the Stetson & Ellison Co. engaged in the canning business.

"Armour, Wilson, and Morris have likewise entered the manufacturing phase of the canning field through acquirement of ownership or control of canning companies. * * *

"Recently the big packers began dealing in various staple groceries and vegetables, such as rice, potatoes, beans and coffee, and increased their sales at such a rate that in certain of the lines they have become factors of great moment. Here again the selling organization of the packers, built up in connection with their meat business, assures them almost certain supremacy in any line of food handling which they may wish to enter."

That is from page 234, Part I, of the Federal Trade Commission report on the meat packing industry, and confirms exactly our understanding of the situation from our experience.

The reports of the Federal Trade Commission cover such a wide range that in reading them over we have picked out such things as make us fearful, and we have analyzed their statements, and as our own knowledge and experience, confirm them.

Mr. DAILY. Before you proceed, Mr. Bode, will you state, if you know, who is the Emery Food Co.?

Mr. BODE. Emery Food Co. is simply Swift & Co. That is a name used by Swift & Co. to distribute a lower grade of food products. In other words, the Swift name and the Emery name are synonymous in the trade, but the Emery Co. distributes their second grade of goods.

Mr. DAILY. Do you know who pays for the goods invoiced to the Emery Food Co.?

Mr. BODE. Why, Swift & Co.

Touching on another question, the question of cheese. [Reading.]

"Practically all estimates received stated that the packers handle 75 per cent to 80 per cent of all cheese produced in Wisconsin where 55.6 per cent of the entire country's cheese was made at the time of the last census of manufacturers in 1914. In the State of New York where 26 per cent of the cheese of the country is made, both Swift & Co. and Armour & Co. are buyers of importance. All of the Big Five are distributors of cheese, and all except Wilson & Co. own and control large cheese companies.

"The packers are also important factors in the preparation and distribution of condensed evaporated milk, and are rapidly increasing their proportion. Wisconsin, first among the States in the production of butter and cheese, is covered by their creameries, condensaries, and buying stations, and a similar process of concentration and control is already evident in the other principal dairy States.

"At present Swift & Co. through Libby, McNeil, & Libby, is the largest operator, among the packers, of plants for manufacturing condensed and evaporated milk, having plants in Wisconsin, Illinois, Indiana, Michigan, Colorado, California, and New York. Armour & Co. has more recently entered this field and is rapidly becoming an important factor. None of the other packers was found to have entered this line of food products as yet."

That is one of our large items. They control the largest plants in the country. There might be some exception to that statement. The Carnation Co. is an immense canner of milk, and the Borden Co. is also a large company, but it is generally conceded that the packers combined handle the largest items of milk.

Judge HAINER. Is that one of the items that is handled by wholesale grocers?

Mr. BODE. It always has been handled by the wholesale grocers, originally from the time of the creation of the Eagle brand of milk by the Borden Company. [Reading:]

"Swift & Co. is the largest single butter distributor in the United States. It handled in 1916, in round figures, 50,000,000 pounds or nearly as much as the estimated combined sales of the two largest nonpacker organizations, and the butter department was pushing for an increase of 25 per cent in quantity in 1918 over 1917."

That is from pages 231 and 232 of Federal Trade Commission report on the meat packing industry.

"The absolute totals shown in the tables for the business of the Big Five in these lines in 1916 are large: Poultry, nearly 100,000,000 pounds; butter, 90,000,000 pounds; cheese, over 75,000,000 pounds; eggs, over 135,000,000 dozens."

This is from page 234, Part I. of the Federal Trade Commission report.

I bring that out to illustrate the point that it was only their private car that gave them that opportunity to become the largest distributor of butter in the United States, and through their ownership of cold storage plants.

Now, you gentlemen must have it clearly brought out to you in some way that the cold storage plants of the United States are controlled by the packers.

Mr. BREED. The packers are prohibited under this decree from continuing their interests in cold-storage plants, are they not?

Mr. BODE. Yes, sir.

Mr. BREED. This interest was allowed in the petition to be through the ownership of 52 per cent of the entire cold storage plants of the United States.

Mr. BODE. Yes, sir.

Mr. BREED. And do you think the ownership of the plants of this sort furnished an opportunity to the packers for the development of their business in food products?

Mr. BODE. Why, wonderfully so. The cheese and butter and eggs. Why, just take the conditions that prevail today. You know what you pay for eggs: somewhere around 65 or 70 or 75 or 80 cents a dozen.

Mr. DAILY. Ninety cents in Philadelphia last week.

Mr. BODE. Ninety cents in Philadelphia last week, and there is a statement here that they were 80 cents in Washington last Saturday. The best time of the year for the assembly of eggs is in the spring months; the latter part of March, all of April and May. Eggs at that time, at the source of supply, are purchased anywhere from—I think during the past year, 17, 18, 19, and 20 cents a dozen. Those eggs are put in storage in the nearest cold storage plants available to this source of supply. They are carried throughout the summer.

and then when the supply is scarce, the buyers go into this source of supply and they pay a very high price per dozen. They do not care what they pay for them; 50 or 60 or 70 cents, and that immediately establishes a market over the United States that a high price prevails, and out come the eggs that they have carried throughout the summer.

Mr. HALL. Those storage eggs are not distributed at the price of fresh eggs.

Mr. BODE. The supply of fresh eggs at this time of the year would not go very far.

Mr. BREED. What time of the year?

Mr. BODE. This time of the year.

Mr. HALL. But this 80 cents is applicable to the strictly fresh eggs.

Mr. BODE. Have you made inquiry of the price of eggs?

Mr. HALL. Yes; I think I know the price of eggs.

Mr. BODE. Then you will find the difference between storage and fresh eggs will run about 10 cents.

Mr. HALL. Forty cents here.

Mr. BODE. That is not true in my territory.

Mr. HALL. It is here.

Mr. BODE. I pay in Chicago for a marked egg marked laid on such and such a date, 75 cents a dozen, when I left Chicago. And the cold storage eggs are 65 cents, or a difference of about 10 cents.

Judge HAINER. What would you do with the supply of fresh eggs when they are laid in the spring?

Mr. BODE. I would do just what they do. Just to illustrate the advantage which the cold storage owner gives to the buyer—

Judge HAINER (interposing). Would you destroy the cold storage?

Mr. BODE. No, sir.

Judge HAINER. Then who would you have distribute from the cold storage plant? Anybody can erect a cold storage plant.

Mr. BODE. Yes, sir.

Judge HAINER. Is there any prohibition against that; a wholesale grocer can erect a cold storage plant?

Mr. BODE. No, sir; we would all do the same thing. But those eggs are distributed through those cars, and that gives them a monopoly.

Judge HAINER. Then it is in the distribution.

Mr. BODE. Yes, sir.

Judge HAINER. It is in the distribution, and—

Mr. BODE (interposing). Yes.

Judge HAINER. A cold storage house is not per se wrong?

Mr. BODE. No, sir; there is no complaint of that, because supply and demand makes price, but if the demand is in the hands of the many, and the supply is in the hands of the few, I am somewhat inclined to the belief that the price is controlled.

Judge HAINER. What remedy do you suggest there?

Mr. BODE. No remedy at all, except all our efforts should be made to stop a monopoly.

Judge HAINER. Well, how?

Mr. BODE. To stop a monopoly established in the food products.

Judge HAINER. How? Take the eggs as a concrete example?

Mr. BODE. Well, the aggregation of wealth—

Mr. BREED (interposing). What has the decree done, I would like to ask?

Mr. BODE. The aggregation of wealth gives people power. Now, if you want to trust me with that power that I can exercise over the goods that I may purchase with great wealth—

Mr. BREED (interposing). What effect has the decree had on the price of eggs?

Mr. BODE. Not one bit, because it has not affected the egg business at all.

Mr. BREED. That is not affected by the decree?

Mr. BODE. No, sir.

Mr. BREED. That is, the packers are in there through their ownership of the 51 per cent of the space of the cold storage houses of the country and thereby controlling it for their own advantage and not necessarily for the benefit of the country and others who are in competition with them. I do not know what efforts have been made by the Attorney General or the court to see that that provision of the decree has gone into effect, although the terms of the decree require that the packers should, within nine months after February 27,

1920, make some plans with respect to the disposal of that class of property, cold storage property.

Judge HAINER. You mean to divest them of the cold-storage houses?

Mr. BREED. Yes.

Judge HAINER. What would you do with them?

Mr. SMITH. They would go into private companies, or private hands, and there would be competition among cold storage people, and by competition the public would get the benefit and a better price.

The CHAIRMAN. Do you know who would buy them?

Mr. SMITH. I have no doubt individuals or companies would buy them.

The CHAIRMAN. That is what we thought about the stockyards, too.

Mr. SMITH. I do not know so much about the stockyards, but I think the cold storage would be bought up.

Judge HAINER. Senator, isn't there some way by which you can prevent an unlawful act and monopoly, and yet allow business to continue?

Mr. SMITH. I don't know. If a crowd can produce a monopoly, they are almost uncontrollable. If they get to be a monopoly in a business, they conduct their business almost beyond control.

Judge HAINER. What has been done in the petroleum case?

Mr. SMITH. I am not prepared to say anything much was accomplished. They undertook to settle it, but the same old crowd dominates and put of business producers wherever they want to. They just got so strong through the use of a monopoly that they are almost beyond control.

Judge HAINER. What is the history of the tobacco business, too?

Mr. SMITH. The same thing; they wiped out almost every small manufacturer of tobacco and tobacco products in the United States; and they put down the price to the producer and put the price up to the consumer. But I am arguing the case in advance.

Mr. BREED. But what we would like to put in the record in answer to your question, we are here to show cause why you should not recommend a modification of a court decree which merely prohibited an existing monopoly from extending their monopoly into unrelated lines. At the outset of these hearings we called to your attention that we thought that the position in which the trade of the United States was put was most anomalous, because the action was one by the Government against the packers and the packers were not here present asking that the decree which they consented to and agreed to, to go out of these unrelated lines should be modified, and, therefore, we could not see why the trade of the country should be upset.

The CHAIRMAN. Mr. Breed, your statement assumes there is an existing monopoly. There is no record of that.

Mr. BREED. I don't think anybody doubts the fact that there is a monopoly.

The CHAIRMAN. There is no court record of that; that is what I wanted to bring out.

Mr. BREED. We are producing to you evidence now, in the shape of the Federal Trade Commission reports and other investigations, showing that this monopoly was rapidly extending into these other lines.

Judge HAINER. Now, Mr. Breed, I have read the Federal Trade Commission's reports over and over again. They state in those Federal Trade Commission reports—you want to be frank and fair—that as to the unrelated products a monopoly does not exist, and there is no finding as such. But they fear there is a dominating principle—

Mr. BREED (interposing). I think this evidence Mr. Bode is presenting in the case that in several lines of unrelated products an absolute monopoly existed, and a monopoly which has been obtained by the packers. For example, take the cheese, and butter, and the growth in other lines, showing a tendency to form a monopoly there.

Judge HAINER. There is no allegation in the bill that a monopoly exists as to these unrelated products, but they fear and apprehend that they will ultimately do that, in the way I construe the bill.

Mr. BREED. I understand the question before your committee is whether the Government shall make an application to relieve the packers from their consent not to extend their monopoly into unrelated lines.

Judge HAINER. As I understand it, it is based on the fact that certain parties did not have an opportunity to be heard.

Mr. BREED. Who is that party?

Judge HAINER. The California Cooperative Canneries. They never had their day in court. They never had an opportunity; and that the various requests

were made by other canners all over the country, and that is a question to determine, whether or not the decree is too broad, as it was even decided in the Petroleum case, in which the evidence showed that there is violation of sections 1 and 2 of the Sherman antitrust law, established by indisputable evidence, and the lower court found that, and the question was whether or not the decree was too broad, whether or not you should absolutely prohibit it and destroy the business, of whether you should apply what they call the rule of reason and the remedy, not to the criminal acts, but whether or not you should destroy the business or endeavor to eliminate the monopoly and permit the business to go on. Chief Justice White's opinion has been misunderstood by the bar and the public, that he used the words "The rule of reason" to the acts of monopoly and criminal conduct. He had no such thought, and the opinion does not warrant such construction, but he applied it to the remedy. In other words, if these so-called storage houses lead to monopoly, you would not destroy the business; you would break up and prevent the monopoly. That is the rule of reason that he applied in those cases. Now, whether the question is affecting the public interest here, whether it inflicts an injury on the public—

Mr. SMITH (Interposing). To keep them out.

Judge HAINER. Absolutely, to extend to the prohibition of carrying on the business, absolutely.

Mr. SMITH. That question, I think, under this record, we can discuss with great confidence.

Judge HAINER. Well, whether it inflicts an injury to the public.

Mr. SMITH. I believe it is a blessing to the public that is absolutely essential to be preserved, and that it is of infinite value to the whole public, and the canners have come here since you were here, Judge, and this whole hearing has developed nothing but one canner's interest where Armour had \$200,000 mortgage, and one sauerkraut interest where Armour had at one time owned the majority of the stock. Everybody else begs to let the decree stand.

The CHAIRMAN. Let us proceed, gentlemen, with the testimony.

Mr. BREED. Mr. Chairman, may I just add this word, please, in answer to Judge Hainer's statement that the California Cooperative Canneries appeared on the theory that they had never had a day in court. The day you were obliged to be in Chicago we presented a statement of the dates when this decree was first announced to the public. The newspaper records show that the announcement of the consent of the packers to comply with the demand of the Government was made in the early part of December, 1919. Long articles in the daily press throughout the country appeared. Also the Attorney General appeared before the congressional committee in the early part of January, the first week. The decree was not entered by the court until February 27.

The CHAIRMAN. Well, Mr. Breed, that is all argument; that is in the record already. Let us proceed with this witness, please.

Mr. BREED. I only wanted to answer the judge's question.

Judge HAINER. I will read the record.

Mr. BODE. I call your attention to the Federal Trade Commission Report, Part IV, pages 162 and 163, showing the large interests that the various packers have in the cheese business.

(The quotation from the Federal Trade Commission Report, pages 162 and 163, is as follows:)

"Demcey & Sibley Co., Cuba, N. Y., entirely owned by Swift & Co., and now known as Swift & Co. (Inc.), is a cheese concern, buying from 24 factories in New York and one in Pennsylvania.

"The Pauly & Pauly Cheese Co. has five branches in Wisconsin, in addition to the main plant at Manitowoc, for collection and storage of cheese—Green Bay, Marathon, Edgar, Sturgeon Bay, and Sawyer. These branches and the plant at Manitowoc were reported as purchasing from 202 factories producing cheese. In addition, the Pauly & Pauly company takes the entire cheese collection of the H. Blanke Cheese Co., Plymouth, Wis., paying the expense of running this concern and allowing it one-eighth cent per pound for buying. The H. Blanke Co. collects from 35 factories. The entire sales of cheese by the Pauly & Pauly Cheese Co. in 1917 amounted to \$6,299,245.81. Of this total 79.41 per cent was sold to Swift & Co., which appears to receive preferential treatment amounting to a working agreement.

"Armour & Co. owns the Neenah Cheese & Cold Storage Co., Chicago, Ill., which has branches at Richland Center, Mineral Point, and Neenah, all in Wisconsin. This company purchases from 98 factories. In addition, it takes

under contract the entire collection of Bernhard Schreiber, Sheboygan, Wis., from 18 factories.

"Fifty-one per cent of the C. E. Blodgett Cheese, Butter & Egg Co. is owned by Armour & Co., which controls the policies of the company and distributes practically the entire amount of cheese collected. In addition to the main plant at Marshfield this company has branches in Athens, Dorchester, Grand Rapids, Greenwood, Osceola, New Richmond, and Stanley, all in Wisconsin. These branches and the plant at Marshfield collect cheese from 216 factories. In addition, the company takes the cheese collected and manufactured by the Spencer Lumber & Supply Co. under the name of the Dairy Belt Cheese Co., which operates two cheese factories and collects from 27 others. The Cortland Beef Co., Cortland, N. Y., a branch house of Armour & Co., acts as a cheese-collecting agency for certain factories in New York.

"Morris & Co., through ownership of 50 per cent of the stock and by virtue of agreement, controls the C. A. Straubel Co., Green Bay, Wis., and has preference as the distribution of the cheese collected. The C. A. Straubel Co. has branches collecting cheese in Marion, Shawano, Denmark, Antigo, Lena, Gillett, Luxemburg, and Clintonville, all in Wisconsin. These branches, together with the main place at Green Bay, obtain cheese of 214 factories. Morris & Co. also controls Jacob Marty & Co., Brodhead, Wis., through similar stock ownership and agreement for preference as distributor. The Marty company has a branch at Barnwell, Wis., which, together with the main plant at Brodhead, takes cheese of 22 factories.

"The Cudahy Packing Co., through the Dow Cheese Co., Plymouth, Wis., which it owns, operates cheese-buying branches at Merrill, Fon du Lac, Thorp, Curtis, and Boscobel, all in Wisconsin. These branches, together with the main plant, buy from 101 factories."

Mr. BODE. Also Federal Trade Commission Report, Part IV, pages 163 and 164.

Mr. BREED. Showing what?

Mr. BODE. Showing the large purchasing power and the large number of factories with whom they have direct contact.

"It will be seen from the foregoing that the big packers are in direct contact with 935 cheese factories in Wisconsin which have commercial dealings with the thousands of farmer patrons in the districts contributing to these factories. And both Swift & Co., and Armour & Co. have this direct contact with many cheese factories and their patrons in New York.

"Moreover, it was found that in addition to this direct contact with producers through ownership and control of these concerns, the packers were such large regular customers for the output of still other cheese companies as to make it doubtful if they could well be true competitors, even though the packers had no financial interest in the companies. In practically every case of large sales to the packers that came to the commission's attention, it was found that, even where sales were made to more than one of the five big packers, some one of them was the chief customer as distinctly as in the case of a company owned and controlled by a single packer. Practically, these dealers are divided among the packers, only one large outlet being open to each.

"Thus, F. C. Westphal, Randolph, Wis., operating 19 factories for the farmer owners and selling the cheese produced, handled a total of 2,421,454 pounds in 1917, of which 58.87 per cent went to the five packers. Morris & Co. alone, however, received 40.87 per cent of the total output, while Cudahy, Swift, Armour, and Wilson obtained, respectively 7, 5.5, 5, and 0.5 per cent.

"The Farmers' Cheese Co., Watertown, Wis., selling 2,216,659 pounds in 1917, sold 24.35 per cent to Swift & Co. and not as much as 1 per cent to any other packer.

"N. Simon Cheese Co. (Inc.), Appleton, Wis., selling 4,658,306 pounds of cheese in 1917, sold 60.61 per cent to Morris & Co., while the combined sales to Swift, Armour and Wilson were 7.42 per cent.

"Schmitt Bros., Blue River, Wis., selling 4,510,937 pounds of cheese in 1917, sold Morris & Co. 59.33 per cent. Wilson & Co. (Inc.) 11.96 per cent, the Cudahy Packing Co. 3 per cent, and Swift & Co., 1.34 per cent.

"Wuetrich Bros., Doylestown, Wis., disposing of 1,088,999 pounds of cheese during 1917, sold to Swift & Co. 44.27 per cent, Morris & Co. 18.29 per cent, Armour & Co. 12.18 per cent, and Wilson & Co. (Inc.) 1.24 per cent, over 75 per cent of total sales going to four of the Big Five, one of them as usual being preeminently the largest customer."

Mr. BODE. Then Part IV, pages 164-165:

"How important a factor the big packers are in the cheese business in Wisconsin is suggested by the figures in the foregoing paragraphs. Considerably more than one-half of its factories are dependent for their principal market on concerns owned or controlled by the packers. Nearly another quarter of those factories look for their chief buyer to concerns which, so far as known, independent in ownership, are yet dependent for their main outlet on the packer's distributing system. That the Big Five are in a position to control 75 to 80 per cent of the cheese of the State is generally conceded.

"During the fiscal year 1916 Swift & Co., including its subsidiary and controlled slaughtering companies, sold through branch houses 28,692,101 pounds of cheese. These figures, however, do not include sales made by other methods, as by direct consignment or through other selling agencies, as the car-route and provisions sales houses. The increase in this company's branch-house sales of cheese for the calendar year 1917 over 1916 was better than 19 per cent and for December, 1917, over December, 1916, was 51.2 per cent. In 1918 the total cheese sales of Swift & Co., not including companies controlled by affiliation, amounted to 64,072,000 pounds.

"Armour & Co., the largest packer distributor of cheese in the United States, sold through its branch houses in its fiscal year 1916 nearly 29,000,000 pounds. Sales by branch houses of slaughtering companies controlled by affiliation are here included but not the sales through selling agencies other than branch houses. Armour & Co. report sales by all selling agencies, not including branch houses of slaughtering companies and other selling agencies controlled through affiliation, for the fiscal year ending October 28, 1916, 60,709,609 pounds and for the fiscal year ending November 2, 1918, 77,379,232 pounds, an increase of 27 per cent. Wilson's sales for the same years were, respectively, 12,730,372 and 21,140,319 pounds, a gain of 66 per cent. Cudahy reports sales of cheese by all selling agencies for 1917 of 15,900,000 pounds and for 1918 of 24,100,000 pounds, a gain of 52 per cent in one year. (For greater detail on the sales of the four companies see Exhibit IX). No sales figures for Morris were available for 1918.

"The combined cheese sales, as severally reported for Swift, Armour, Wilson and Cudahy for the year 1918, were 186,691,551 pounds. The total production of factory-made cheese in the United States in that year was 380,423,652 pounds. In addition to this, some cheese is doubtless made on farms, but this would hardly be a real factor in interstate trade or in competition with packer-sold cheese. As in the case of butter, the reported packer sales fall short of the full selling strength of the Big Five, since they do not include the sales by branch houses of slaughtering companies and other selling agencies controlled through affiliation, and the sales of Morris are entirely lacking. This deficiency must be reckoned with before a basis can be found to arrive at the true packer proportion of cheese distributed. The current estimate of the trade, however, that the Big Five handle at least one-half of the interstate commerce in cheese would appear to be understated, since such part of the packer sales as was reported for 1918 amounted to 49.1 per cent of the total factory-made cheese of that year."

Mr. BODE. Pages 261, 262 and 263 of the Federal Trade Commission Report, Part IV, extent of packer distribution in the soda fountain and bouillon cube, tomato bouillon, and beverages, is clearly outlined. And giving a list of all the many articles that are covered under that heading:

"*Extent of Packer Distribution.*—All five of the meat packers are distributors of beef products, such as extract of beef and beef-bouillon cubes for soda fountain, as well as other, uses. Some handle similar commodities, such as chicken and clam cubes, celery and tomato bouillon, etc. Wilson & Co. (Inc.), under the title of 'Beverages' in the price list of its grocery department, carries whole red maraschino cherries and the beverages, 'Phoz,' 'Loju,' and 'Applju.' Cudahy, through the ownership of the Red Wing Co. (Inc.), Chicago, Ill., is interested in the distribution of grape juice and cider. Armour & Co. owns the Vin Fiz Co., Chicago, Ill., manufacturers of the beverages 'Vin Fiz,' and also distributes through its department of soda-fountain supplies a full line of goods used by this trade.

"Extract of beef and beef bouillon are by-products of packing-house plants, while chicken and vegetable bouillon are related as by-products to the production of various products which are substitutes for meat. But other soda-fountain supplies, especially the extensive line carried by Armour & Co., have only the distant relation that they go to the same trade as to the extract of beef and the beef, chicken, and vegetable bouillons.

"The following list of items, taken from the book of Armour & Co.'s accounting department, known as soda fountain supplies department 12-16B, shows a line of commodities which rivals in range that of any distributor specializing on the supplying of the soda-fountain trade:

"LIST OF SODA-FOUNTAIN SUPPLIES SOLD BY ARMOUR & CO.

"Acid foam; acid fruit; acid phosphate; butterscotch sundae; caramel sundae; caramel-sugar coloring; celery; celery for bar use; cherry drips; cherries, imitation maraschino; cherries, imitation creme de menthe flavor; chop suey; cocoa and cocoa paste.

"Concentrated phosphate: Celery, cherry, claret, grape, lemon, orange, wild cherry.

"Concentrated sirup: Apricot, banana, birch beer, blackberry, blueberry, caramel, cherry (red), cherry (black), chocolate, claret, coffee, creme de menthe, cream soda, ginger, ginger ale, grape (Concord), lemon, lemonade, maple flavor, nectar, orange, orangeade, orange (blood), peach, peach bloom, phosphate (celery), pineapple, raspberry (red), raspberry (black), root beer, sarsaparilla, sherbet, strawberry, vanilla.

"Crushed apricot, blackberry, blueberries, cherries (red, sour), cherries (special), cherries (white), currants, figs, gooseberries, orange, (sliced orange), peach (sliced peach), pineapple or pineapple cubes or tidbits, raspberries, strawberries, whole red cherries.

"Figs, crushed.

"Flavoring extract: Lemon, maple, orange, pineapple, raspberry, root beer, sarsaparilla, strawberry, vanilla, vanilla and coumarin, wild cherry.

"Fruit frappé.

"Fruit preserves: Apricot, blackberry, blueberry, cherry (red, sour; white, sour), currants, figs (crushed), figs (whole), gooseberries, marmalade, peach, pineapple, raspberry, strawberry.

"Ginger for bar use, glace pineapple, grape juice, honey sundae, hot chocolate paste, malted clams, malted milk, marshmallow topping, milkase, mineral-water salts (Congress, deep rock, kissingen, lithia, seltzer, vichy).

"Nut frappé (maple flavor, plain, sirup); orange, lemon, peppermint whip; pecan halves in sirup; pecan sundaes; peppermint; peppermint for bar use; pineapple, I. M. F.; R. P. sundae.

"Soluble color, vegetable: Blue, cherry (red), green, lemon yellow, orange (blood), red, strawberry, violet, yellow-red.

"Soluble extract: Almond, apple cider, apricot, banana, birch beer, blackberry, blood, champagne, cherry (artificial), cherry (wild), cherry phosphate, chocolate cream, club soda, coffee extract, artificial phosphate and cream, cream soda, ginger ale, grape, grape phosphate, iron (cream), lemon, lemonade, maple, mint (cream), nectar, orange, peach, peach (artificial), peach (cream), pear, pear (artificial), peppermint, pepsin soda, phosphate, pineapple, raspberry, root beer, sarsaparilla, sarsaparilla and iron, sassafras, sherbet, strawberry, vanilla, vanilla coumarin, vanilla cream; soluble phosphate, creme de menthe.

"Vanilla whip, Vin Fiz, walnut halves in sirup, walnut sundae (maple flavor), wintergreen for bar use."

Mr. BODE. Pages 264 and 265, Part IV, of Federal Trade Commission report. Therein is stated that Armour & Co., while not among the customers of the California Almond Growers' Exchange in 1917, bought 2,095 bags of almonds from them in 1918, and apparently would have taken twice or three times this amount if the exchange would have accepted its orders. Except for that concern, which bought 3,000 bags in 1917 and 2,000 bags in 1918, no other customer handles so large a quantity as Armour & Co. purchased during this first year.

(The quotation is as follows:)

"The commission is not in possession of any figures to show the extent or growth of Armour & Co.'s business in this equipment for soda fountains, but found its business in grape juice and soda-fountain supplies to be very large and rapidly increasing. Armour & Co.'s sales of grape juice in 1916 amounted to \$554,095.31, while in 1918 they amounted to \$1,025,000, an increase of very nearly 100 per cent in two years. The sales credited to soda-fountain supplies in 1916 amounted to \$1,108,024.70, and in 1918 had increased to \$3,595,000, a growth in this department of over 200 per cent within a period of only two

years. If such growth is continued it can be only a short time before the control of Armour & Co. over the distribution of soft drinks will be equal to the control of the packers in the various lines of food supply.

"Although some of the supplies, such as grape juice and crushed fruits, are manufactured in its own plants, Armour & Co. is much more important in distributing than in producing, and secured most of its supplies from others. In this Armour & Co. has all the advantages which it has in purchasing in other lines, and, due to its large command of money and credit, can at once step into the ranks of the heaviest purchasers after deciding to enter a new line.

"Thus Armour & Co., while not among the customers of the California Almond Growers' Exchange in 1917, bought 2,095 bags of almonds from them in 1918, and apparently would have taken twice or three times this amount, if the exchange would have accepted its orders. Except for one concern, which bought 3,000 bags in 1917 and 5,000 bags in 1918, no other customer handles so large a quantity as Armour & Co. purchased during its first year.

"Armour & Co. is also a large purchaser of both shelled and unshelled walnuts for its grocery business, and especially its soda-fountain supply. In 1918 Armour & Co. attempted to buy 25 carloads, about 300 tons, of unshelled walnuts from the California Walnut Growers' Association. The association, however, sold the company only 11 carloads. During the same year Armour & Co. offered to buy 50,000 pounds of shelled walnuts, but had not secured them at the time the last reports were received by the commission. Armour & Co. is naturally regarded by the producers' organizations as a particularly desirable customer, not only because of its excellent credit rating, but because its soda-fountain business permits the acceptance of nuts which, while of sufficiently good quality for this use, are unattractive to the general trade.

MANUFACTURING AND PRODUCING.

"None of the meat packers is a factor of dominant importance in the manufacturing and producing of soda-fountain supplies other than extract of beef, beef bouillon, etc., although two of them are somewhat interested in this field. Mr. E. A. Cudahy and his son, E. A. Cudahy, Jr., own the Red Wing Co. (Inc.) Fredonia, N. Y., which manufactures grape juice and cider, as well as jellies, jams, preserves, catsup, chili sauce, and vinegar. Armour & Co. owns the Vin Fiz Co., Chicago, manufacturers of the soda-fountain beverage 'Vin Fiz,' and has grape-juice factories at Westfield, N. Y., and Mattawan, Mich., and plants for the manufacture of crushed fruits at Chicago, Ill., Frankfort, Mich., and Ridgely, Md. During the fiscal year 1916, 600,000 pounds of crushed pineapple preserves, manufactured from imported Hawaiian tinned pineapple, and 1,350,000 pounds of imitation maraschino cherries, made from French and Italian cherries imported in brine, were produced by Armour & Co. at Chicago; 692 pounds of crushed cherries, 22,609 pounds of crushed raspberries, and 91,223 pounds of crushed peaches were produced at Frankfort, Mich.; and 447,379 pounds of crushed strawberries were produced at the Armour plant at Ridgely, Md. Although not in a dominant position in production, it is evident that Armour & Co. is rapidly becoming of great importance as a manufacturer of grape juice, and has already entered the production of crushed fruit necessary for its soda-fountain supplies. Extension in both range and volume of production in these lines is in complete harmony with the policy pursued in other fields."

Mr. BODE. Pages 260 and 261, Federal Trade Commission Report, Part IV, "Sirups and molasses," shows the various commodities in pure sugar-cane commodities, baking and table molasses, maple-blend sirup, corn sirup, Louisiana cane and sugar-house molasses handled by the packers.

(The quotation is as follows:)

"Sirups and molasses: Morris & Co. and Armour & Co. are actively engaged in the distribution of sirups and molasses. The price list of Morris & Co. carries, in various sizes of containers, the following items: pure sugar-cane sirup, pure sugarhouse molasses, baking and table molasses, pure New Orleans molasses, maple-blend sirup, supreme brand, maple-blend sirup, matchless brand.

"Armour & Co. handles the same line through its branch houses. The following items are found in Armour's price lists in several sizes of containers: Corn and cane sirup, Helmet brand, old-fashion Louisiana molasses, pure Louisiana cane sirup, cane and corn sirup, Veribest brand, sugarhouse molasses, Veribest brand.

"Other grocery specialties: Various other commodities, usually carried by the wholesale grocer and far removed from the products and by-products of the packing plants, are found among the goods of which one or another of the meat packers has undertaken to make himself the wholesale distributor. Thus in Morris & Co's price list are listed 5-ounce, 8-ounce, and 14-ounce jars of honey, and in Armour & Co's price lists such commodities as cocoas of two brands in 1-pound, 5-pound, and 10-pound cans, in 25-pound pails, in 50-pound and 100-pound drums, and in barrels of 200 pounds; cocoa paste; flavoring extracts of lemon, vanilla, and orange, for grocers and the baking trade in containers of 1-ounce, 2-ounce, and 4-ounce, and in pints, quarts, half gallons, and gallons."

Pages 259 and 260 of the same report cover the great increase in the production of peanut butter. Also the question of coffee is outlined there.

(The quotation is as follows:)

"Peanut butter: The meat packers have recently become important factors in the handling of peanut butter. Swift & Co., through its branch houses and car routes, distribute two brands in three sizes of jars and in tins of 15, 25, and 50 pounds. Both of these brands are manufactured by the E. K. Pond Packing Co., Chicago, Ill., a subsidiary of Swift & Co., which packed, in 1916, 612,595 pounds. Wilson & Co. (Inc.) distributes peanut butter under one of its own brands in tins from 2 pounds to 55 pounds in weight. Morris & Co. carries this commodity under two of its own brands in packages ranging from small jars to casks containing 500 pounds. Armour & Co. sells seven sizes of packages under one of its own brands. The total sales of peanut butter by Armour & Co. during the fiscal year of 1918 amounted to 2,539,181 pounds, for which roundly \$575,000 was received. A production of 682,552 pounds was reported for the fiscal year 1916.

"Coffee: Both Wilson & Co. (Inc.) and Armour & Co. are handling coffee on a large scale, one of the grocer's most profitable lines. Wilson, in its grocery department, carries in packages two brands of coffee, each prepared in three styles (steel cut, whole bean, and pulverized) and two brands of blended coffee in 100-pound bags and drums, both steel cut and whole bean. Wilson is especially pushing its coffee business through all its selling agencies. At the close of its fiscal year, November 2, 1918, at which time the packers aim to carry the smallest stock of goods, the inventory of Wilson & Co. (Inc.), showed the following quantities on hand: At Chicago, green coffee, 654,809 pounds, valued at \$90,766.14, and roasted coffee, 64,099 pounds, valued at \$11,318.94; at Los Angeles, Calif., 7,853 pounds, valued at \$1,625.33; at Kansas City, 5,859 pounds, valued at \$1,331.33; and at Oklahoma City, Okla., coffee valued at \$5,016.98. These inventories showed some rather wide differences in valuation.

"Thus Blue Label coffee, whole bean, was valued at 20½ cents a pound in Chicago and 24½ cents a pound at Oklahoma City, a difference far greater than justified by freight charges. Red Label coffee, whole bean, on the contrary, showed a difference of only seven-eighths of a cent, being valued 18 cents in Chicago and 18½ cents at Oklahoma City."

Mr. Bode. Pages 237 and 238 of the same report, cover Libby's and Armour's sales in canned fruits and vegetables.

"The development of the packers' canned and preserved fruit business is recent, but has been exceedingly rapid. (For trade estimates of packer control see Exhibit XII.) This is well illustrated by the increase of Armour & Co.'s sales in canned and dried fruits from \$507,294.10 in 1916 to \$5,845,000 in 1918, a growth in volume of sales in 1918 over those of 1916 of 1,152 per cent. The percentage increase of tonnage sales, which are not available, would, of course, under rising prices, be smaller. During the same period the department of fruit preserving, which includes extracts, phosphates, and other soda-fountain supplies, as well as preserves, crushed fruits, and fruit sirups, showed an increase of sales from \$1,103,024.70 in 1916 to \$3,595,000 in 1918. Sales of grape juice increased from \$554,095.31 in 1916 to \$1,025,000 in 1918.

"Tonnage sales of canned pineapples by Libby, McNeill & Libby (a Swift concern) were, in 1915, 13,574,739 pounds, and in 1918, 47,964,549 pounds, an increase in 1918 over 1915 of 253 per cent. (See Exhibit XVII A for detail.) The increase of the country's total pack for 1918 over that for 1914 (figures for 1915 pack not available) was only 63 per cent, the pack for 1914 being 2,356,140 cases and that for 1918 being 3,847,315 cases. In 1918 Libby's sales were 27 per cent of the total pack. Since the other packers, particularly Armour, deal heavily in pineapples, the percentage for the five packers would run much higher than this if their sales in segregated form were available.

"Libby's sales of other-canned fruits were, in 1915, 36,424,628 pounds, and in 1918, 58,426,219 pounds, a growth of 60 per cent. Its sales of preserves were, in 1915, 2,198,633 pounds and in 1918, 6,488,496 pounds an increase of 195 per cent. The total sales of canned pineapples, other fruits, and preserves for the four years 1915-1918 amounted to 316,141,380 pounds. Wilson's sales of canned fruits (as combined with other items, see Exhibit XVII C) are not available in segregated form.

"This increasing proportion of the distribution of fruit products of the country by the big packers is taking the business away from the former distributors, the wholesale growers, so rapidly that the latter fear that the day is near when they will be eliminated and the distribution be concentrated entirely in the hands of the five meat-packing companies."

Mr. BODE. Pages 242 and 243 of the same report show different kinds of fruit packed by Libby, McNeill & Libby in 1917, with the number of cases of the various commodities. [Reading]:

"In the case of pineapples Libby has gone even farther back, and the pineapples packed by Libby, McNeill & Libby are for the most part produced through their own farming operations in the Hawaiian Islands on land leased for a long term of years. Only a small percentage of the raw pineapples used are secured by direct purchase from the grower, no contracts being made for this product from any acreage or for any term of years.

"The fruit packed by Libby, McNeill & Libby in 1917 in its own plants amounted to 1,463,082 cases, including cans of various sizes, nearly one-half consisting of their pineapple pack. The pack reported is as follows:

Kinds of fruits:	Cases.
Pears	71,717
Egg plums	9,859
Green gage plums	11,173
Black cherries	29,362
Red cherries	103,184
Apricots	168,736
Apples	24,415
Yellow cling peaches	339,516
Yellow free peaches	71,682
White cling peaches	2,233
Prunes	80
Strawberries	1,212
Grapes	12,115
Pineapples	617,798

"These quantities refer only to those canned fruits packed by Libby, McNeill & Libby at its own plants. In addition large purchases were made from other canners."

Mr. BODE. Part IV of the Federal Trade Commission report, pages 158 and 159, shows the condensed, evaporated, and powdered milk plants that the various packers are engaging in, and where located.

Judge HAINER. Where are those located?

Mr. BODE. Adams Center, N. Y., Morrison, Ill., covering condensed and evaporated milk, and located at Chadwick, Ill., Fenton, Ill., and Prophetstown, Ill. Condensed milk, Capron, Ill. Condensed milk, Fay-Argo, Ill.

Judge HAINER. Does the decree divest them of that business?

Mr. BODE. No. Its business is increasing, however, to our disadvantage, by the shipments or privilege to ship these goods in their refrigerator cars.

Judge HAINER. The canned milk?

Mr. BODE. The canned milk. It is a very large business, gentlemen.

(The quotation on pages 158 and 159 is as follows:)

"Condensed, evaporated, and powdered milk. Plants for the manufacturing of condensed, evaporated, and powdered milk have been and are being established by some of the big packers. By means of these plants they are obtaining a position of importance in a field which competes with the creameries and cheese factories for the milk output of the country. In this field they are relatively newcomers and are not yet proportionately as important national factors as they are in the purchase of cream and the manufacture of butter and cheese, but wherever the condensery of the packer is established it becomes for that district the controlling element in the purchase of milk from the farmer.

"Swift & Co., through Libby, McNeill & Libby, an affiliated company, operates the following plants and buying stations:

Plants and buying stations.

Location of plants.	Product manufactured.	Location of buying stations.	Product bought.
Adams Center, N. Y.....	Condensed milk.....		
Morrison, Ill.....	{Condensed and evaporated milk.....	{Chadwick, Ill.....	Fresh milk.
Capron, Ill.....	Condensed milk.....	{Fenton, Ill.....	Concentrated milk.
Fay-Argo, Ill.....	do.....	{Prophetstown, Ill.....	Fresh milk.
Union, Ill.....	Condensed and evaporated milk.....		
Janeau, Wis.....	do.....		
Sharon, Wis.....	do.....	Darien, Wis.....	Do.
Whitewater, Wis.....	do.....		
Waupun, Wis.....	do.....	Fox Lake, Wis.....	Concentrated milk.
La Junta, Colo.....	do.....		
Berne, Ind.....	Condensed milk.....		
Perrington, Mich.....	{Condensed and evaporated milk.....	{Sheridan, Mich.....	Fresh milk.
		{Ithaca, Mich.....	Do.
		{Maple Rapids, Mich.....	Do.
		{Ashley, Mich.....	Do.
Loleta, Calif.....	Condensed, evaporated, and powdered milk.....		

"Swift & Co. is the largest packer manufacturer of condensed and evaporated milk, having a pack in 1917 of about 1,500,000 cases out of a total of 27,100,000 cases, or 5.5 per cent of the country's total pack.

"Armour & Co. owns and operates, under the trade name of the Pacific Creamery Co., a plant at Tempe, Ariz., which manufactures evaporated milk and which has one buying station at Glendale, Ariz. A second plant, located at Stoughton, Wis., manufactures evaporated milk and is operated by the Wisconsin Dairy Products Co., a majority of whose stock is owned or controlled through pledges by Armour & Co.; the plant has buying stations at Oregon, Utica, McFarland, Edgerton, Sparta, and Genesee, Wis. A plant at Bloomer, Wis., manufacturing both condensed and evaporated milk, is owned and operated directly by Armour & Co. The Meadowbrook Condensed Milk Co., Issaquah, Wash., manufacturing evaporated and condensed milk until the destruction of its factory by fire in May, 1918, delivered its output of evaporated milk to Armour & Co. on contract. The original contract dated December 5, 1916, was on the basis of 100,000 cases of 48/16 at price of \$3.60 per case f. o. b. Issaquah, but this was later revised to a basis of cost plus 5 per cent."

Mr. BODE. Part 4, page 159 of the Federal Trade Commission Report percentages in this line are given [reading]:

"The handling of these forms of milk through branch house or other selling agency is common to most of the packers, and a much larger total is therefore sold than manufactured by them. The sales of canned milk by Libby, McNeill & Libby (a Swift concern) amounted in 1915 to 20,890,459 pounds, in 1916 to 47,122,425 pounds, in 1917 to 112,533,725 pounds, and in 1918 to 153,480,638 pounds. The tonnage sales in 1918 were 635 per cent greater than in 1915 and the total sales for the four years were 334,027,247 pounds. Of the country's total pack of evaporated and condensed milk in cases, amounting in 1917 to 1,211,016,000 pounds and in 1918 to 1,470,672,000 pounds, Libby sold 9.3 and 10.4 per cent, respectively. Libby's sales for 1917, as will be noted from a comparison with its pack as given above, considerably exceeded the latter. Other Swift sales or the sales of others of the five packers are not available."

Judge HAINER. Well, how is that material here if it is not included in the decree? It does not appear here.

Mr. BODE. I consider milk to be groceries—unrelated lines. It is not a packing-house product in any sense, and I believe that it belongs to the grocery line.

Judge HAINER. More so than in the packing line?

Mr. BODE. Oh, absolutely. It has no relation to the packing line, unless you call it "canned packing line."

Judge HAINER. It has no relation to live stock?

Mr. BODE. It has no relation to live stock.

Judge HAINER. No part of live stock? It is the product of live stock.

Mr. Bode. Yes; it is the product of live stock.

Judge HAINER. It is not the product of any grocery article. Wouldn't it be more nearly allied to the live stock business than to the grocery?

Mr. BODE. Not at all, in no sense, Judge. Not any more than eggs would be as against poultry.

Judge HAINER. I don't understand that that is in the decree, do you? Can you find out where it was in the decree?

Mr. BODE. I believe, Judge, it is included in the unrelated lines.

Mr. STEVENS. I suggest that while it is the product of live stock, it is not the product of fattened steers.

Mr. BREED. When you say that you think that milk is included in unrelated lines, you do not mean that it is included in the unrelated products—

Mr. BODE (interposing). Of the meat packing.

Mr. BREED (continuing)—contained in the prohibition of the decree?

Judge HAINER. Well, now, your questions are so leading that—

Mr. BREED (interposing). Well, this is the fact of what the written instrument shows.

Judge HAINER. Well, I am asking you that, whether it is in it. Now you are a lawyer. I am not asking Mr. Bode, I am asking you for information whether it is included in this decree.

Mr. BREED. It is not included in this decree.

Judge HAINER. That is what I understand.

Mr. BREED. And I was trying to ascertain from Mr. Bode, when he used the words "unrelated products," whether he was referring to the decree or his own idea.

Mr. BODE. No; my own view.

Judge HAINER. He is referring to his own ideas of canned milk, whether it is a by-product of groceries or a by product of live stock.

Mr. BREED. That is what I wanted to bring out.

Judge HAINER. Yes.

Mr. BREED. That is what you wanted to bring out, too, isn't it, Judge?

Judge HAINER. I was addressing it to you.

Mr. BODE. Judge, it is not a by-product of a slaughter house in any sense of the word. It never enters a slaughter house excepting through the medium of cans, in which the milk at the source of supply is supplied.

Judge HAINER. Now under this Packers' Control Act it is a by-product of live stock, is it not? It is not a by-product of grocery business; it is not related to the grocery business?

Mr. BODE. Well, it is just the same, Judge, as corn or wheat.

Judge HAINER. But, of course, it is immaterial here, because it is not within the decree.

The CHAIRMAN. Yes; let us proceed.

Mr. BODE. Corn or wheat from which we secure these cereals are not handled by us; they are handled by the grain people.

The packers in other lines of foods, page 22, part IV, Federal Trade Commission report:

"PACKER ACTIVITY AND THE PUBLIC INTEREST.

"The extent to which the packer should be permitted to enter these unrelated food lines (even assuming legitimate competitive methods) is a matter which the public interest alone should determine. Two questions, primarily economic, are involved: Does this widening of activity result in additional economies of production and distribution? Does it result and will it continue to result to the public in lower prices and better quality of product and service? A third question, not here discussed, relates to the ultimate effect of such vast and powerful organizations on the political and social fabric of American institutions.

"It is probable that a centralized control over an entire industry with full coordination of all its parts would, assuming equal efficiency of labor and equipment, show results in the production and distribution of goods superior to the results flowing from a control widely distributed, such as is characteristic of the competitive system. But it is also probable that unless in some way a considerable element of the tonic of competition could be infused into such a system a certain flabbiness of industrial tissue would result. Furthermore, unless this

control rested in those responsible to the public at large, not only would any advantage in cheaper production resulting from centralized control be likely not to go to the consumer but the consumer would always be in danger of an actually higher monopolistic price.

"Adequate and comparable cost records of production and distribution have not been kept by the packers nor by their competitors in these unrelated food lines, and without these records relative efficiency can not well be conclusively determined. There are at least two possibilities: The packer's volume of business under centralized management may give him lower unit costs, which, with or without unfair competitive practices, are employed to squeeze out or discipline competitors, and which during the time of this progress inures to the benefit of the consumer in lower prices. Competitors out or whipped into line, the way is open to such rise in prices as the traffic will bear. On the other hand, the packer may have no lower costs, but through unfair practices, possible because of his financial power and widely distributed operations or through special privileges not yet pronounced legally unfair, competitors are consecutively by localities put out of business.

"In either case the outcome is untoward. Competition is substantially lessened, and the tendency is towards monopoly."

Mr. STEVENS. May I interrupt just a moment. I wanted to ask Mr. Bode, in what he has been saying with regard to milk products, if he intends to bring out by that the tendency of the monopoly as it now exists?

Judge HAINER. Well, that is argument you are suggesting there. You can argue that later. We want to develop the facts here.

Mr. STEVENS. But this is testimony tending to show that.

The CHAIRMAN. Well, there is no testimony here to show, or no conclusion that there is an existence of a monopoly. All of your questions are assuming that.

Mr. STEVENS. Well, I wanted to ask Mr. Bode.

Judge HAINER. Your question was leading in assuming and asking for a conclusion. You say: Well, if so and so, wouldn't it amount to so and so?

Mr. STEVENS. No. I was not asking for a conclusion. What I wanted to bring out was what Mr. Bode's intention was in testifying—

Judge HAINER (Interposing). I assume, Mr. Bode, at the time you prepared your memorandum you assumed that was prohibited by this decree?

Mr. BODE. Yes; and if it is not, I say that it should be included.

Judge HAINER. That which is right.

The CHAIRMAN. Proceed.

Mr. BODE (reading):

"From the position of one handling practically no rice Armour & Co. became the greatest rice merchant in the world, and made an increase of \$9,500,000, in its sales of canned goods, this increase being more than one and a half times as great as the total sales of canned goods by two of the largest independent wholesalers in the country, concerns which have built up their trade in the course of a long period of business enterprise."

That appears on page 22, Part I, of the Federal Trade Commission's report.

Judge HAINER. Now, Mr. Bode, on that question, on the subject of the rice, what was the total output of the rice in that year? That was in 1917, was it?

Mr. BODE. That was in 1917, yes.

Judge HAINER. Can you state what it was?

Mr. BODE. I think the statement, Judge, was presented here. I have not got the figures, but it is in the records here.

The CHAIRMAN. Well, is the statement which Mr. Campbell presented correct or incorrect?

Mr. BODE. Well, I am not in a position to say without a reference to the records of the trade. Those are obtainable.

Judge HAINER. Mr. Campbell in his opening statement stated that it amounted to merely one-ninth of 1 per cent. Is that correct?

The CHAIRMAN. One-ninth or one-tenth?

Judge HAINER. One-ninth of 1 per cent.

Mr. STEVENS. But Mr. Lichty testified on that. I don't think you were here then, Judge.

Mr. BODE. No; you were not here at the time when Mr. Lichty testified on that subject.

The CHAIRMAN. We are asking what you know.

Judge HAINER. What do you know about that? What do you know about that specific fact?

Mr. BODE. With reference to his handling of rice?

Judge HAINER. No, no; the amount of the output of rice that year.

Mr. BODE. Well, I will put it this way, Judge, that he was the largest single purchaser of rice, but what the per cent was I am not in a position to say.

Judge HAINER. Well, the report states that, but we are asking you for an independent fact on which that was based.

Mr. BODE. Well, that was the knowledge given us by brokers that called on us thinking that Armour had bought such a large quantity of rice that—

Judge HAINER (interposing). Yes; but Mr. Campbell here states that it only amounted to one-ninth of 1 per cent of the total output. Now what we ask you is the fact whether that statement is correct or incorrect?

Mr. BODE. One-ninth of 1 per cent?

Judge HAINER. Yes.

Mr. BODE. I will say absolutely it is incorrect, so far as the product of the United States was concerned.

Judge HAINER. Well, what was the amount then?

Mr. BODE. Well, I can not give you that offhand.

Judge HAINER. He based his statements upon official reports furnished in the Year Book of the Agricultural Bureau of Markets. Would you say those reports are incorrect?

Mr. BODE. Well, Judge, I will answer it this way, by referring to the testimony of Mr. George Lichty, who received the reports from the Food Administration for that year, of which administration he was one of the directors, and assembled the facts.

Judge HAINER. Has he testified?

The CHAIRMAN. Yes; he testified

Mr. BREED. The exact figures were given, Judge.

Mr. BODE. Yes; the exact figures were given.

Mr. BREED. The numbers of bags and all.

Judge HAINER. Well, I didn't hear that.

Mr. BODE. I can look them up and give them to you.

Judge HAINER. I suppose the record will show that, if it has been offered in evidence.

Mr. BODE. Yes.

Judge HAINER. Did he state the amount?

The CHAIRMAN. Yes, he gave figures.

Mr. BODE. Here is a statement that appears on page 235 of Part 1 of the Federal Trade Commission Report [reading]:

"ARMOUR'S CONTROL OF RICE.

"Armour's drive into the rice market in a single year is perhaps the most striking instance of the potentialities in this direction. Early in 1917 Armour & Co. first undertook the handling of rice, and in that one year sold more than 16,000,000 pounds of rice, thus becoming at a single move, on the statement of the vice president of the company, 'the greatest rice merchant in the world.' During this period the wholesale price of rice increased 65 per cent."

Now, that is the conclusion. We know that after Armour entered the rice market and did buy, to our knowledge, a large block of rice, the price commenced to jump.

The CHAIRMAN. Do you know whether the price to the producer increased?

Mr. BODE. The rice was out of the hands of the producer at that time. It was in the hands of the rice sellers, and the Louisiana Rice Selling Association, the largest organization of its kind, can give you the facts with regard to that.

Judge HAINER. Well, 16,000,000 pounds of rice is a comparatively small part of the total.

Mr. BODE. Of the total, yes.

Judge HAINER. What would you say?

Mr. BODE. I would say about 10 per cent, in round figures, of the American rice. Now, there were rice importers here.

Judge HAINER. How much?

Mr. BODE. Japan rice.

Judge HAINER. Were there millions of pounds imported?

Mr. BODE. Quite a large amount of rice.

The CHAIRMAN. Well, the consumption of rice in the United States, which is the greatest part of it, domestic or imported?

Mr. BODE. Domestic rice. There is quite a lot of Japan rice brought in here, but it is of a different character than the Louisiana rices. There is some rice grown in California which has a market.

The CHAIRMAN. Proceed.

Mr. BODE. Federal Trade Commission report, Part 4, page 217, on the question of rice [reading]:

"Rice: The spectacular entry into the merchandising of rice in 1917 by Armour & Co., which became within the year 'the largest rice dealer in the world,' is indicative of the power which such an organization can on short notice exercise in the marketing of any food commodity. Prior to 1917 little rice had been sold by this company, and such as was handled was solely on the initiative of branch houses, some of which are permitted to trade to a limited extent in a product which because of local conditions can be handled profitably and which the general office in Chicago is not buying in a large way for the branch house."

Judge HAINER. Let me ask you there. You have examined the Federal Trade Commission report in reference to that rice transaction, have you?

Mr. BODE. Yes, sir.

Judge HAINER. Now does their report show the total amount of rice during 1917?

Mr. BODE. Well, I will read you their report. It does not show the total of rice:

"During 11 months sales of a little more than 16,000,000 pounds of rice were made by Armour & Co. through branch houses, for which \$1,163,306.93 was received. This, however, does not include direct sales or sales by car-route or selling agencies other than the branch house, representing perhaps 5 per cent of the total sales.

"In the 4½ months prior to February, 1918, during which purchase of over 20,600,000 pounds of rice were made, sales were effected of less than 6,000,000 pounds. Roundly, 15,000,000 pounds were accumulated in this period of rising prices."

In other words they sold 6,000,000 pounds, and they accumulated 15,000,000 pounds during the period of the rising prices.

Judge HAINER. But what I would like to know is whether the report shows what the total output of the rice was.

Mr. BODE. I think it does, Judge. I will have to look a little further on that.

Judge HAINER. I wish you would call our attention to it if the report shows. I have not been able to find it myself. I would like to see whether or not they do state it. I might have overlooked it, however.

Mr. BODE. Well, I will look that up.

On page 604 of the hearings on Senate bill 5305, part 1, Mr. Armour testified in answer to Senator Norris's question, that he owned 51 per cent of the Loudon Packing Co. of Terre Haute, Ind., manufacturers of catsup, and so on.

In the same hearing, at pages 712, 713, and 714, part 1, hearings on Senate bill 5305, Mr. Heney questioned Mr. Armour, and the following occurred [reading]:

"Mr. HENNEY. You have other interests in California, rather large interests, too, have you not?

"Mr. ARMOUR. Packing interests?

"Mr. HENNEY. No; rice lands, I think they are intended to be.

"Mr. ARMOUR. I do not know what it will grow, but we own some land near Sacramento.

"Mr. HENNEY. It is a pretty large enterprise, is it not—sixty millions, something like that?

"Mr. ARMOUR. Sixty what?

"Mr. HENNEY. Sixty millions?

"Mr. ARMOUR. Of what?

"Mr. HENNEY. Dollars.

"Mr. ARMOUR. What? Sixty million dollars?

"Mr. HENNEY. Yes.

"Mr. ARMOUR. No.

"The CHAIRMAN. What is the difference?

"Mr. ARMOUR. Figures do not seem to count for much here anyway. No. We own some land near Sacramento—I say 'we' do. There is a company in which we are interested. We are trying to make that land better for California.

"Mr. HENNEY. I have no doubt of that.

"Mr. ARMOUR. And trying to irrigate it.

"Mr. HENEY. Incidentally, though, while making it better for California, it put a lot of little fellows out of business by flooding back?

"Mr. ARMOUR. I do not think it has. I think they have had all the difficulties that go with any new industry that starts.

"Mr. HENEY. That was merely incidental and I would not have said anything about that except for the fact that you said it was for the benefit of California.

"Mr. ARMOUR. Is it not?

"Mr. HENEY. I think any development is for the benefit of California—the territory; but whether it is for the benefit of the people living in it would depend very much on how it is going to affect them in the long run, and I thought we might have a different viewpoint, and it is hardly worth discussing. Is it not the expectation and hope that this is to be rice lands?

"Mr. ARMOUR. They have been growing beans there.

"Mr. HENEY. They are growing rice just above, or below, or both?

"Mr. ARMOUR. We have not any rice there that I know of, but they have grown most beans.

"Mr. HENEY. They will supply a canning factory, then?

"Mr. ARMOUR. I hope so.

"Mr. HENEY. Have you any canning factories in California at the present time?

"Mr. ARMOUR. That we own?

"Mr. HENEY. Yes.

"Mr. ARMOUR. No, sir.

"Mr. HENEY. Do you lease some?

"Mr. ARMOUR. No. We may buy the output of some, but we do not own any.

"Mr. HENEY. Are you trying to buy the outputs of any of the big ones?

"Mr. ARMOUR. No, sir.

"Mr. HENEY. Have you tried to make arrangements to buy the California Packing Corporation output?"

Judge HAINER. What corporation is that?

Mr. BODE. The California Packing Corporation; that is the largest canning corporation in the United States.

Mr. Armour states: "No, sir. You mean the large one, the one that Bentley has charge of out there?"

"Mr. HENEY. Yes.

"Mr. ARMOUR. No. They will not sell it to us.

"Mr. HENEY. How do you know? Did you try?

"Mr. ARMOUR. We would be glad to buy it if he would sell to us, but he will not.

"Mr. HENEY. Did you try?

"Mr. ARMOUR. I suppose we must have, or we would not have known.

"Mr. HENEY. That is what I thought. That was last year, was it not?

"Mr. ARMOUR. Yes, sir.

"Mr. HENEY. Did you say anything at that time to the effect that if you did not get to buy it you were going in there yourself?

"Mr. ARMOUR. No, sir. We are not going in there ourselves, except as to any cooperative arrangement we may make with the growers."

Indicating that they were going to get around that proposition by going direct to the growers.

Mr. BREED. And they did thereafter take an interest in the California canneries by loaning them \$250,000, did they not?

Mr. BODE. I have a report on that here, Mr. Breed.

Mr. BREED. Well, is it a fact?

Mr. BODE. It is a fact.

On page 251 of part 4 of the Federal Trade Commission report are shown the packers' operations in salmon, reading:

"As has been indicated, the meat packers' control at the point of production is as yet far less in extent than is their control of distribution. Here they differ from some other large salmon packers, who, while controlling a large pack at the source, dispose of this through brokers to wholesale grocers and other distributors. The meat packers, on the contrary, are in the market as buyers of the packs of others. They buy from brokers representing fish packers and also use brokers as buying agents to represent them in securing the output of salmon plants. From the canners' or brokers' point of view the meat-pack-

ers are classed as most desirable customers, since they buy enormous quantities of goods. It is, therefore, not a difficult matter for the meat packer to secure a large supply in addition to his own pack and to step between the wholesale grocer and the latter's former source of supply.

"It has been estimated by brokers, who are in the best position to judge the extent of distributive control, that of a pack of approximately 10,000,000 cases of salmon packed on the Pacific coast during the year 1917, the meat packers secured control of almost 4,500,000 cases."

Pages 27 and 28 of Federal Trade Commission report:

"Packer activity in food specialties reaching out from distribution to manufacture: The discussion in this section has been confined almost wholly to the distribution of specialty foods by the five large packers. The fact, however, should not be lost sight of that, though this expansion in distribution has already gone far and is therefore more apparent, the more marked and more significant movement just at present is in the manufacture of these specialty foods. More significant because all that is manufactured by the packers will, in addition to what is purchased, be distributed by them, and because also control over the distributive processes becomes more certain the nearer to the sources of production control reaches.

"This movement in the direction of the manufacture of specialty foods appears in the packing of poultry products obtained directly from the growers; in the manufacture of dairy products from milk bought from the producer; in the putting up of cereals and breakfast foods in package form; in the manufacture of butter and lard substitutes; and in the canning of fruits, vegetables, fish, pickles, condiments, etc. In the manufacture of all these specialty lines this report shows the packers' increasing activity. In the canning of foods, the one most recent and outstanding development is Armour's proposal to finance a cooperative fruit-packing plant in California (see p. 241.)"

Judge HAINER. Does that refer to this California Cooperative Canneries?

Mr. BODE. Yes; that refers to the California Cooperative Canneries. (Continuing:) "And his organization in 1919 of the National Fruit Canning Co., Seattle, Wash., a subsidiary of Armour & Co."

On page 1406, part 2, hearings on Senate bill 5305, Mr. Weld, Swift's economist, states—

Judge HAINER (interposing). Does that bill refer to this packers' control bill?

Mr. BODE. That was the investigation and statements by packers of their business.

Mr. BREED. In the packers' control bill hearing.

The CHAIRMAN. That was an early bill.

Judge HAINER. An early bill; yes, sir.

Mr. BODE. Mr. Weld, the economist for Swift & Co., testified at that hearing.

Judge HAINER. And the outgrowth of those hearings is this packers' control bill?

Mr. BREED. Yes; this packers' control bill is the outgrowth of those hearings.

Mr. BODE. He said [reading:] "Now, a word about branch houses. The Federal Trade Commission recommended that branch houses be taken over by the Government. There seems to be a feeling that these branch houses are not much more than freight houses. As a matter of fact, they are not like railroad freight houses at all. Each branch house has to have its selling organization, its accounting force, its refrigeration facilities, its salesmen who go out to the trade, and its delivery equipment. Goods are delivered on track in car lot, and taken by the packers to their branch houses. The goods have to be held for indefinite periods. Small orders of various items have to be removed from the stock from day to day and from hour to hour, and the meats have to be cut up to a certain extent. In other words, branch houses are practically merchandising establishments, and entirely different from ordinary freight houses. Even if the railroads should be required to furnish refrigeration facilities and refrigerated warehouses for dressed meats at their terminals in the large cities, it would still be necessary for the packers to have their branch houses."

To illustrate the point I am making that they make one more move than the wholesale grocer in this distributing medium. Now, in addition to meats they store in these places the unrelated lines. Now, common sense must tell anybody that an additional move costs money, and an additional move, if it costs money, must be paid for by somebody.

The CHAIRMAN. Well, what about in the procurement of the supplies they handle? Do they make the same number of moves that are made by the wholesale grocers?

Mr. BODE. If you will bear with me just a minute, I have got a point on that.

The CHAIRMAN. All right; go ahead.

Mr. BODE. On page 970, part 4, of hearings on H. R. 13324 Mr. Weld said: "Our policy has been to select the products that are absolutely allied to or affiliated with our business, either in the manufacturing end or in the selling end. It is a problem as to how far we should go in taking on other products. Let me say this: If we should take on a full line of wholesale groceries, our expenses would increase"—now here is Swift's economist—"Our expenses would increase so that we would probably have no advantage over the wholesale grocer."

Judge HAINER. Yes; but Mr. Bode, that is a matter of economics, and has Congress ever gone that far, or any legislative branch of the Union, that you must confine yourself to those matters?

Mr. BODE. No.

Judge HAINER. Aren't you stating a matter of economics, and not a question of either national or state legislation?

Mr. BODE. You are considering the present proposition from the standpoint of whether or not for the interests of the people you should amend this decree.

Judge HAINER. I understand our duties in that respect, but I am asking this as your opinion with reference to that matter.

Mr. BREED. Well, might I interject by asking Mr. Bode if Mr. Campbell in his opening testimony did not state that the packer was more efficient as a distributor than the wholesale grocer?

Judge HAINER. I am just asking his opinion and his views on those matters, not with any intention of—

Mr. BREED (interposing). Well, does not Mr. Campbell's testimony show that?

Mr. BODE. Absolutely.

Mr. BREED. And are you offering this in rebuttal of that testimony?

Mr. BODE. Yes.

Judge HAINER. I am not criticizing, but I want to bring out the fact of the matter and try to clarify the point.

Mr. BODE. I quite understand, but Mr. Campbell's argument and his testimony was that the packers should be allowed to distribute all these unrelated lines because they could do it better, cheaper, and more efficiently.

Judge HAINER. And whether or not they should be prohibited from doing it, that is, competing with them; not absolutely monopolizing the industry, but competing.

Mr. BODE. On page 971, part 4, hearings on House of Representatives 13324. Mr. Hamilton asks Mr. Weld [reading]:

"Take your canned goods; do you sell cheaper than the wholesale grocer?"

"Mr. WELD. That is a very difficult question to answer. Our list prices, which we try to get, are undoubtedly approximately the same, quality for quality, with other dealers. We are going to get, of course, as good prices as we can for our products.

"Mr. HAMILTON. But you can sell cheaper?"

"Mr. WELD. I believe we probably could, and come out fairly well. I mean on our whole business. Another thing, it is very difficult to allocate costs, what it costs to sell meat and what it costs to sell canned goods.

He opened the gates there exactly to what we believe—that they use one article to sell another. They might sell groceries to-day cheaper while our competition lasts, and to-morrow up goes the price when our competition is killed.

He continues on the same page, in answer to the following question put to him by Mr. Hamilton:

"Do you sell canned goods to local grocers cheaper than the wholesale grocer sells them?"

"Mr. WELD. Not if we can help it. We get what we can."

Mr. BODE. Pages 254 and 255 of part 4 of Federal Trade Commission Report shows the purchase by Libby, McNeill & Libby of the Mullen-Blackledge-Nellis plant, and shows a letter from Mullen-Blackledge-Nellis Co. to one of their best customers indicating that they had sold out their business, and they would have to buy their goods from some one else.

(The quotation is as follows:)

"Unfair and questionable practices.—The packers are versatile in the methods employed to secure control of the markets.

The purchase of canning factories, to remove from the field a competitor who is dependent on such factories for supplies, is at least questionable even though it complies with the strict letter of the law.

An example of this occurred in the purchase of the physical properties of Mullen-Blackledge-Nellis Co. at Brazil, Ind., Effingham, Ill. and Paducah, Ky., by Libby, McNeill & Libby, whereby a number of wholesale grocers were deprived of supplies of catsup, chili sauce, and kindred tomato products, especially manufactured for these firms for sale under their own labels. The following letter to one of the former wholesale grocer customers of the factories attempts to smooth over the announcement that a competitor of the customer is to get the latter's supply in the future:

[William F. Mullen, Albert S. Blackledge, Milton C. Nellis. Mullen-Blackledge-Nellis Co., packers of tomato products and food specialists "worth while."]

BRAZIL, IND., April 19, 1918.

HARVEY & EDDY Co., Troy, N. Y.

GENTLEMEN: It is a matter of greatest moment and regret to advise that we will be deprived of the usual satisfaction of booking and caring for your valued order for Ruby Brand Pure Food Tomato Products, the packing of which has been entrusted to us for so many years, having sold our plants to the good house of Libby, McNeill & Libby. We trust that a most suitable and satisfactory source of supply may be found by you, and that our pathways may find another crossing in some future year, and our erstwhile pleasant business associations renewed with even greater mutual satisfaction, should such be even a remote possibility.

We inclose memorandum showing Ruby labels which we have on hand, and which we will be pleased to ship to you promptly at our last year's cost, which is much lower than the price at which they can be duplicated now. We also inclose samples of labels. Kindly let us hear from you promptly regarding this.

Again thanking you for the abundance of genuine good will and friendship accorded us, and praying your further kind thoughts and favors, we are,

Very truly yours,

MULLEN-BLACKLEDGE-NELLIS Co.

Mr. BODE. Page 215 of part 1, Federal Trade Commission report, shows the production of refined cottonseed oil by the packers [reading]:

"Refined oil: The output of the Big Five packers forms an important factor in the production of refined cottonseed oil. They manufactured in the season of 1916-17 nearly one-third (31.8 per cent) of the total output reported to the Federal Trade Commission by all producers, which amounted to 201,389,000 gallons."

Page 228 of part 1, the lard compounds and lard substitutes and oleomargarine, by the packers [reading]:

"Lard compounds and lard substitutes: The figures for the first half of 1917 show a much larger proportion of production by the Big Five and much smaller by the cottonseed oil manufacturers. * * * For this later period the Big Five had an output of 236,836,000 pounds, or 49.4 per cent of the total. * * *"

"Oleomargarine: These four packer interests therefore produced in the fiscal year 1916 over two-fifths of the total oleomargarine for the country."

Judge HAINER. Now is that a grocery product, and related to the grocery business?

Mr. BODE. Oh, yes, we sell largely lard compounds, lard substitutes, and substitute oil.

Judge HAINER. Always has been part of the industry?

Mr. BODE. Yes. Page 224, Part IV, of the Federal Trade Commission report. The distribution by Swift & Co. of the Libby pack:

"With the exception of part of the pack of Libby, McNeill & Libby, the meat packers distribute their own pack of canned fruit, as well as the canned and dried fruit purchased from others. through their own branch houses and car routes directly to the retail dealers.

"Swift & Co. in the same manner distributes a large part of the pack of Libby, McNeill & Libby, but the latter firm also distributes its goods, especially where its brands are not already known, through wholesale grocers. This method of distribution has been used in some instances merely to get its goods introduced. Thereupon Swift & Co.'s branch house, in competition with the wholesale grocer who has bought and is distributing the goods of Libby, offers the same goods to the retail trade at a lower price than the wholesaler paid to Libby, McNeill & Libby.

"It is also complained that when Libby, McNeill & Libby is overstocked with any line of goods, the surplus is sold at reduced prices by Swift & Co., in order that Libby can claim that it is not cutting prices.

"The meat packers are large speculators. With their control of capital and credit they are enabled to buy as much of the output of canneries as is available, withdrawing this supply from other distributing channels, and then reselling upon a market in which their purchases have forced up the price. They purchase direct from the producers and through brokers they buy futures and in the spot market."

Mr. BODE. Pages 23 and 24, Part IV, Federal Trade Commission Report, gives the sales of butter, cheese, eggs, and dressed poultry by Armour & Co., and further information regarding the canned foods:

"Nor would it be particularly enlightening to make comparison of the total volume of the wholesale grocery business in the United States with the total volume of the packers' specialty lines. The total volume of the wholesale grocery business includes the two items of sugar and flour, not largely carried, if at all, by the packers, but constituting about 35 per cent of the grocers' volume. On these items there is little net profit and often loss. It is in the specialty lines where lies the possibility of largest profit, and in these lines the packer is particularly active.

"Armour & Co. has widely announced in its newspaper advertising of recent months that 'our participation in grocery lines represents only 4.6 per cent of our total business.' Inquiry on the part of the commission elicited the explanation that this statement was for the fiscal year 1918, and that these grocery lines included the following four groups:

"(1) Canned fish, canned vegetables, and sundries (including canned fish of all kinds, cured fish, barreled salmon, canned vegetables of all kinds, sauerkraut, rolled oats, spaghetti, noodles, pancake flour, corn flakes, rice, raw beans and peas, bean flour, coffee, corn sirup, molasses, evaporated milk, solid tomatoes, and table condiments).

"(2) Canned and dried fruits (including all fruits so packed).

"(3) Fruit preserves (including extracts, phosphates, syrups, crushed fruits, nuts in shell, and all soda-fountain supplies).

"(4) Grape juice (including grape juice only).

"The following items, not primarily related to meat packing, all of which are grocery items and all of which are handled by Armour & Co. were not included in the lines comprising the 4.6 per cent of the company's total sales: Compound lard (vegetable), cooking oils (vegetable), oleomargarine (vegetable), salad oil (vegetable), canned fowl (chicken and turkey boned), and peanut butter. On these items, with the exception of peanut butter, Armour & Co. stated that it was unable to furnish its sales. The sales of peanut butter alone, one of the items of lesser importance, amounted to \$575,000.

"Nor did the 4.6 per cent include the four produce items—butter, cheese, eggs, and dressed poultry, all food specialties, though all not now carried by wholesale grocers. For the fiscal year 1918 Armour & Co. reported the sales on these items as amounting to \$77,853,268.22, or 9 per cent of the company's total sales of \$860,861,838.17 for that year.

"This, if the sales figures for the specialty items above mentioned not included in the 4.6 per cent (all primarily unrelated to meat-packing and all now or once handled by wholesale grocers) were available and included, the percentage would be many times greater."

Mr. BODE. Armour & Co. advertised, according to the Federal Trade Commission report, Part I, page 230, in the New York Mail, on December 31, 1917, as follows:

"ARMOUR FOODS FOR MEATLESS DAYS.

"It used to be that people associated the name of Armour & Co. only with the preparation of meats. To-day, however, the intelligent housewife has come to realize that the Armour name is synonymous with virtually every food she

needs for her table—even though the day be Tuesday. For, under the protection of this big name in foods, she can now secure practically everything for every meal in the week—including the meatless day!

"Soups, fish, vegetables, fruits, condiments, beverages—she can obtain them all under the guaranty of the Armour name and under the famous oval label, which marks the top grade of each kind of product.

"Nor has it been mere chance that this is so. It has been because Armour & Co. recognizing the degree in which the nation has looked to them to safeguard its food supply, has shouldered its responsibilities to the full."

They took upon themselves quite a privilege there.

A statement was made by some one in the trade that with the modification of the consent decree the way was open for one of the finest little corners in food products ever seen.

"The small production in many lines is inviting to big capital just now. Turn the meat packers loose in the canned goods market to-day and in 60 days from now there would not be a case of first-hand stuff available to the wholesale grocery trade, and the people would foot the bill."

The CHAIRMAN. Well, who says that?

Judge HAINER. Is that your statement?

Mr. BODE. No; this was a publication that I read.

Judge HAINER. You ought to state that, because I took that to be your statement.

Mr. BODE. No; this statement was recently made.

The CHAIRMAN. This is merely an opinion?

Mr. BODE. This is merely an opinion, yes; that is all.

Judge HAINER. Will you kindly state, if you are quoting, what the source is that you are quoting from?

Mr. BODE. I read that from a report; I think that was in a report by Mr. Seaton of Peoria, Ill. Referring to this question of purchasing. Future purchasing has been the custom of trade by the wholesale grocers ever since canners entered the field to pack during the season of growing and to take care of the wants of the people during the fall and winter months and spring. All jobbers, with few exceptions, buy goods from canners by placing their orders in the early spring for their future needs. And it covers the entire range of their canned goods wants for the year. A contract is made with the various canners based upon what the jobber estimates his requirements would be.

Mr. BREED. That is, the requirements of the retail trade in his locality.

Mr. BODE. His requirements for his trade wherever he may sell them. That estimate is usually based upon his previous year's sales and his assumption of an increase for the year. A contract is closed with the packer through his broker, and sometimes direct with the packer.

Mr. BREED. What packer do you refer to?

Mr. BODE. With the vegetable or fruit packer.

Judge HAINER. I see; you refer not to the meat packer?

Mr. BODE. Not to the meat packer. And the contract provides for a pro rata delivery in the event of short pack. Short packs are quite frequent. They may not be in corn this year, but they possibly may be in tomatoes, or they may be in peas. So that it is more or less of a problem how much the jobber may be able to get under that pro rata contract.

Sometimes the contracts are limited to a 75 per cent delivery. And if a delivery is tendered less than the 75 per cent, then either a penalty of a certain amount per case or per dozen is provided, or the privilege is given to the jobber to go out on the market and buy and charge the canner the difference. But the 25 per cent leeway between 75 per cent and 100 per cent is usually considered a fair leeway to trade on so that the canner would not be subject to great loss.

Now in turn the jobber goes out and sells against his purchases to his retail customers, and in the fall when these goods are delivered, deliveries are made to the trade and the surplus that the jobber has purchased takes care of his spot business during the fall, winter, and spring. No jobber can estimate about how much that spot trade requires. Sometimes his sales during the summer will clean out a certain line, or when the fall shipments have taken place he finds that he must go into the market and buy the spot goods. Well, there are always spot goods available, at least our experience has been so.

Mr. DAILY. How does he usually find the cheapest lot of spot goods in the country, Mr. Bode?

Mr. BODE. Well, he makes inquiry of the brokers who are accustomed to call on him, and he ascertains what they may have of certain lines, and in that way learns the channels of supply. That has been a custom of trade ever since the purchasing of futures was started by the jobbers.

When the packers entered the field, either in the fall of 1916 and the spring of 1917, or the fall of 1917 and the spring of 1918, the jobbers, including ourselves at Chicago, sought to supply their needs. A particular item was tomatoes. The market, if I recall right, was around 85 or 90 cents for No. 3's. No. 3's are so-called 3-pound tomatoes. We found none on the market. We found no one offering us, and we called several brokers in and they said, "Why, the packers have cleaned up the market." In fact, two brokers in Chicago had during that period received carte blanche to buy all the canned goods available. When that fact became known there was a scramble among the wholesale grocers to get canned goods, and they found none.

Mr. BREED. For their local trade?

Mr. BODE. For their needs to cover their winter and spring supplies over and above what they had bought on futures.

Judge HAINER. When was that, Mr. Bode?

Mr. BODE. I think it was either the fall of 1916 and spring of 1917, or the fall of 1917 and spring of 1918. I have not got that clearly in mind. But the market on tomatoes jumped 50 per cent inside of one or two weeks.

Mr. HALL. Was that for the trade of 1917 or 1918, Mr. Bode?

Mr. BODE. It was for the spring trade; as I stated, after we shipped our futures and the spot business has taken all these extra purchases that we have made, away from us, then we go into the market to buy up any surplus goods that may be available, and we found none available, especially in tomatoes, and the market jumped up. Mr. Daily probably has the record of just exactly what that situation was. Tomatoes jumped up to I think \$1.30 or \$1.35 a dozen inside of a week or 10 days. Then we ascertained that these two brokerage concerns had been engaged to buy up the canned goods supplies available in our market, and generally throughout the United States.

Mr. BREED. Engaged by whom?

Mr. BODE. By the packers who engaged in the canned goods line, principally Wilson, Armour, and the Swift Co. Morris and Cudahy, also. That developed a scramble between our jobbers to find goods to supply our trade. In our business approximately 10 to 15 brokers call on us every day offering the various supplies that they wish us to buy—products of the canner or other producer.

Mr. BREED. You are referring to Reid, Murdock & Co., are you, Mr. Bode?

Mr. BODE. Yes. And generally through the trade. There was not a broker called on us for weeks because they had nothing to offer, excepting to come in and pass the time of day with us. There was not a case of goods hardly available, excepting odd lots here and there. I think Mr. Daily understood that condition pretty generally. But it illustrated the power that wealth and desire to monopolize a very important source of supply might develop into.

There was a statement made about the curtailed buying in 1921. The financial stringency was one reason. The carry-over from 1920. The sale of Government surplus stocks had a large influence on the jobbers not buying very much, and the fear of liquidation throwing large blocks of food products on the market—all these things influencing us to withhold buying. So the cannery have really no reason to complain of our stopping to buy, but all these things influenced our judgment.

Mr. BREED. And your ability, as well, to buy, did it not?

Mr. BODE. Well, that would be a question of financial ability.

Mr. BREED. You are speaking of financial ability?

Mr. BODE. That would be a question of financial ability. Nearly all the jobbers of the country are worse off to-day than they were two years ago.

If the packers reentered the field we would not have equal opportunity. Their unlimited wealth would place them in position to control forces of supply.

Judge HAINER. Is that your statement, or is that from the Federal Trade Commission report?

Mr. BODE. No, this is my statement. The United States Steel Co., a recognized monopoly of steel, in the control of their line, that goes into the construction of building, such as cement, brick, lumber, glass, roofing, etc., would develop, in our judgment, a protest at once that they should be estopped from going into those unrelated lines, as far as their own business was concerned, but related

to the building interests, and an avalanche of protests, in my judgment, would come down here to stop their desire for monopoly.

The CHAIRMAN. Do you know to what extent they went into those lines that you mentioned there?

Mr. BODE. I say, if they did. This is my conclusion. I believe the food industry of this nation presents a much more serious situation than that.

We talk about power of great wealth and monopoly. We have in Chicago one man who, at the present time and under existing conditions, controls in a large measure the business destiny of many of its large firms, such as Sprague, Warner & Co., Reid, Murdock & Co., Franklin MacVeagh, many of the dry goods houses, boots and shoes and other lines, and that man is Mr. Armour. By simply lifting his finger he could interfere with the business service now being rendered by these firms to their trade.

We have in Chicago what is known as the Illinois Tunnel Co., a tunnel system in extent approximately 50 to 60 miles under the streets of Chicago, about 60 feet down. When people wanted the advantage of that tunnel system for delivery to the various railroad depots of their out of town shipments, they located on the lines of this tunnel company, built their buildings like we did, and had a shaft put down so that we could receive the tunnel cars by elevator up to our floors, load them for a certain railroad, send them down, assemble them at the bottom of our shaft, and then periodically, through the day the tunnel trains would come along and take our cars, deliver them to a common terminal or assembly plant, and reassemble those for the various railroads. Then they would take the cars destined for the Chicago & North Western, the Rock Island, the St. Paul, and all of the lines that are connected with that tunnel, and deliver them under the terminals of those railroad companies. And when the railroad companies had relief from the current business by wagons, they would call up those tunnel cars and take the goods off, and put them into the cars for destination.

Mr. Armour could lift his finger and say, "Stop the delivery of those cars from your terminal" to every railroad, if he was so disposed.

The CHAIRMAN. How? Does he own this company?

Mr. BODE. He owns every dollar of stock in the Illinois Tunnel Co.

The CHAIRMAN. Is it subject to regulation by any public body, such as the public service commission.

Mr. BODE. It is subject to regulation by the Interstate Commerce Commission, but the difficulty of ascertaining the cause of delay must be apparent to all. There was a period during the strikes there where we were delayed three and four days in the delivery of a tunnel car from our buildings to the railroads, and I had to go up and plead with the vice president of Armour & Co. to help us relieve that situation. Now the service is very good, and I don't believe that Mr. Armour would ever take advantage of that situation. But I only—

The CHAIRMAN (interposing). Was it their fault that you were so delayed during this strike?

Mr. BODE. No, it was not their fault, but I only illustrate that when the power is in the hands of one man to control the deliveries of merchandise, it may interfere with another trade. It is possible. I do not think it would be probable, however. But it does put in the hands of one man the possible blocking of distribution that may interfere with another trade.

The point I wanted to bring out is this, that we utilize that method of distribution to the extent of 95 per cent of our country shipments that are what are termed l. c. l. shipments.

If I may be pardoned for this statement: Napoleon, during his career, never had as great an ambition for control as it appears that Mr. Armour has. In the yearbook published by Armour & Co., of 1918, is a wonderful display of control and power. Their advertising department, undoubtedly with the consent of the company, have taken the map of the United States. They have placed on this map every plant that they control and every source of supply that they have for their plants.

They show the sardines, the fish of the sea, flowing into their plants in Maine.

They show the salmon of the sea flowing into their canning plants on the Pacific coast.

They show the tuna fish flowing into their plants in California.

They show every part of the United States covered by his sources of supply and his factories. And an explanation is made.

This map indicates the principal food products grown in the various sections of the country by a reference to the code below. Armour & Co.'s plants and their supply sources can be readily located.

It also shows the various ships of the sea coming from every country on the globe, bringing peanuts and ginger from Japan, egg albumen from China, pepper and cinnamon from India, pineapple from the Hawaiian Islands, nitrate of soda and beans from Chile, sardines from Norway, mustard seed from England and Russia, walnuts and cherries from France, peanuts and peppers from Spain, pepperoni and garlic from Italy, sage from Greece, cloves and seeds from Africa, cloves from Zanzibar, cocoa and coconuts from the West Indies, coffee from Brazil and Colombia, roots and herbs from Central America, and red beans from Honduras.

If there ever was a greater affront to the commercial interests of this country thrown in their face I would like to see it.

Judge HAINER. What is the date of this publication, Mr. Bode?

Mr. BODE. This is Armour & Co.'s 1918 Yearbook.

Mr. BREED. I should like to offer this book in evidence.

Mr. BODE. Well, I had one at home, and I knew the Federal Trade Commission had one, and so I borrowed it from them. Now, I would be very glad to give you an original. I have the original at home.

The CHAIRMAN. All right, send it in.

Mr. BODE. Yes.

Mr. BREED. That can be marked then. You can offer the map, can you?

Mr. BODE. Yes, I would like to offer the map; I will offer this copy of the map that has been made from this original, in evidence.

(The copy of the map presented by Mr. Bode is here placed in the record and marked National Wholesale Grocers' Association Exhibit A, Witness Bode.)

Mr. BODE. I would like for the committee to see that colored map, which is so indicative of control that it is almost appalling.

Mr. BREED. I would also like to have the book which is marked—will you read it?

The CHAIRMAN. "Armour & Co., 1918."

Mr. BREED. Beginning with the picture of J. Ogden Armour on the first page, and opening with an article entitled what?

The CHAIRMAN. "The Armour Ideal of Service."

Mr. BREED. May that be marked, Mr. Chairman, with the understanding that Mr. Bode will substitute one?

The CHAIRMAN. Yes, that may be marked, and Mr. Bode can substitute one for it.

Judge HAINER. Yes, the map and the yearbook. You call that the yearbook, do you not?

Mr. BODE. The yearbook and map, yes.

(The yearbook was marked National Wholesale Grocers' Association Exhibit B, Witness Bode, and will be furnished to the committee by Mr. Bode.)

Mr. BODE. I would like to add in connection with this exhibit, that a publisher on the Pacific coast has taken this map and written an article on it. This book and its maps have gone into the hands of the public and the press of the country have commented upon it. One particular publication issued in Portland, Oreg., called "Duncan's Trade Register"—and we do not indorse his comments; they may be biased, they may be otherwise—but he has taken a copy of this display of control of all parts of the country, he has eliminated the reference to the United States, and he has termed this map "Armourland," indicating by that reference that Armour has changed the name of the United States.

The CHAIRMAN. Well, does that map indicate that Armour controls those particular things?

Mr. BODE. No, he wished to display by this in an advertising way, in our judgment, to our disadvantage, that he has such a wonderful source of supply—"you buy from me, because you can buy best."

The CHAIRMAN. Aren't these same sources of supply open more or less to other persons engaged in the same business?

Mr. BODE. No, not if Armour has those plants.

The CHAIRMAN. Well, does he own all of the industries that are represented by this thing?

Mr. BODE. He states there——

The CHAIRMAN (interposing). In other words—may I make myself clear—are there not other people besides Armour that can get peanuts and ginger from Japan?

Mr. BODE. Oh, surely.

The CHAIRMAN. And aren't there other people, for example, that can get cocoa and coconuts from the West Indies?

Mr. BODE. Oh, yes.

The CHAIRMAN. And aren't there other people that can get chickens from Kentucky?

Mr. BODE. I presume so.

The CHAIRMAN. And fruit from California?

Mr. BODE. Yes; possibly to a limited extent, though.

The CHAIRMAN. Then it does not indicate that he controls those things?

Mr. BODE. Not entirely.

The CHAIRMAN. It merely indicates that he has service available to him in those various places.

Mr. BODE. No, it does not in my judgment refer to that. It would indicate to me by that display of map that he controls the sources of supply.

The CHAIRMAN. Well, that is not the fact, though, is it?

Mr. BODE. Well, to a very large extent, a considerable extent, as I have stated to you before, that the minute he buys up the plant from whom I have purchased, my opportunities of buying from that plant are gone.

The CHAIRMAN. But there are other plants available.

Mr. BODE. But then I have got to hunt them up.

Mr. BREED. Doesn't the map contain these words: "Explanation.—This map indicates the principal food products grown in various sections of the United States. By reference to the key below, Armour & Co.'s plants and their supply sources can be readily located."

Mr. BODE. Yes.

Mr. BREED. A circle, "Meat Packing"; another kind of circle, "Beverages"; a circle with a triangle in it, "Dairy products"; a circle with a white spot in it, "Sea foods"; a circle with a cross in it, "Cereals"; a circle with a square in it, "Vegetables, fruits, nuts, and condiments"; a circle with a straight line in it, "Fertilizers." Does it?

Mr. BODE. Yes, sir.

Mr. BREED. And do you understand that map to show the plants of Armour covering these different lines of trade?

Mr. BODE. That is what it states on his own map printed by himself.

Mr. BREED. Does it show the plant of the California Cooperative Canneries?

Mr. BODE. It locates a plant in the section where that plant is understood to be.

Mr. BREED. Where is that?

Mr. BODE. That is in Santa Clara County, but it is not mentioned here as Santa Clara County.

Mr. BREED. But is there a circle there with a square in it?

Mr. BODE. Yes, indicating vegetables, fruits, nuts, and condiments, as a plant controlled by them. Or from which it receives its supply.

Judge HAINER. It covers everything from soup to nuts, does it?

Mr. BODE. Yes. Well, in that same connection, gentlemen, I would like to read from pages 241 and 242 of the Federal Trade Commission report, Part IV. And it refers, gentlemen, to the California Cooperative Canneries:

"Announcement was made through the public press in April, 1918, of the intention of Armour & Co. to enter the fruit-canning industry in the Pacific coast territory with the building of two of the largest canneries in the country, one at Los Angeles, and the other at San Jose. These plants to be completed within a year, each to have a capacity of from 20,000 to 30,000 tons of fruit a year. More recently Mr. Armour publicly stated that 'It will interest producers to know that in order to help the fruit growers of California to get more for their products without it costing the consumer more, we have under consideration a plan to aid them to finance a cooperative fruit-packing plant of their own. We expect to do the distributing for them.'"

From this public statement by Mr. Armour it would appear that Mr. Campbell's statement that he secured—now get this clear—he made the statement that he secured for the California Cooperative Canneries a contract with Armour & Co., only after great effort—that statement is without any foundation, in my judgment.

The CHAIRMAN. Was Mr. Armour's statement made prior to the time this contract was secured?

Mr. BODE. It was made, according to this, in April, 1918. Oh, no, subsequent to April, 1918.

Judge HAINER. Well, when was it made, then?

Mr. BODE. The date is not mentioned, Judge. It is simply a quotation, probably, and I will ask that you obtain from the Federal Trade Commission the date that that statement was made by Mr. Armour.

Judge HAINER. I wish you would have them produce it. They have been requested to come here.

Mr. BODE. All right. Mr. Breed will you please have that done?

Judge HAINER. I am not in search of evidence. I just want to know what is brought here.

Mr. BREED. Of course we would like very much indeed to have some ruling by the commission on the question as to whether we are to have the contract, and to know the date of the contract between the California Canneries and Armour.

Judge HAINER. I have not seen the contract myself.

Mr. BODE. I would like to submit a table of industries representing the following number of persons emphatically opposed to the modification of the decree, according to the best knowledge that I can gather. Whether or not it is accurate in its entirety would be determined only by how able we were to get the information. But I will give it to you according to our best knowledge and belief.

The number of plants or persons engaged therein aggregate 391,700. That means canners, so many; manufacturers; brokers; wholesale grocers; wholesale-retail groceries; retail grocers and chain stores. The total of those aggregates 391,700.

We have estimated the number of average employees in these various institutions. We have estimated their total, and they total in all those establishments about 2,377,400 employees.

And according to the census rate per family published by the Census Bureau, which is 4.4 persons per family, the aggregate total of persons interested in connection with these industries is 10,460,560.

Mr. BREED. Who would be affected by the modification of this decree?

Mr. BODE. Whom we believe may be affected by the modification of this decree. I give it to you for what it is worth, according to our best judgment. (The table presented by Mr. Bode is as follows:)

Table of industries representing following number of persons emphatically opposed to modification of decree.

Function.	Number of plants or persons engaged.	Average number employed.	Total number individuals employed.	Number of individuals affected at rate 4.4 persons per family.
Canners.....	3,400	50	170,000	748,000
Manufacturers.....	1,500	50	75,000	330,000
Brokers.....	800	3	2,400	10,560
Wholesale grocers.....	4,000	50	200,000	880,000
Wholesale-retail grocers.....	2,000	30	60,000	264,000
Retailers.....	350,000	5	1,750,000	7,700,000
Chain stores.....	30,000	4	120,000	528,000
Total.....	391,700	.....	2,377,400	10,460,560

Mr. BREED. Let me ask you a question on that exhibit. About how many canners do you estimate are involved in the canning business—fruits, vegetables, etc.?

Mr. BODE. About 3,400.

Mr. BREED. And about how many manufacturers do you estimate there are in the United States interested in the manufacture of food products handled by wholesale grocers.

Mr. BODE. About 1,500, other than the canners.

Mr. BREED. And have the brokers testified to the number of persons engaged in the brokerage business?

Mr. BODE. Their testimony shows 800, approximately.

Mr. BREED. And about how many wholesale grocers?

Mr. BODE. About 4,000.

Mr. BREED. And about how many wholesale-retail grocers?

Mr. BODE. About 2,000.

Mr. BREED. And about how many retailers?

Mr. BODE. Three hundred and fifty thousand..

Mr. BREED. About how many chain stores?

Mr. BODE. About 30,000, a total of 391,700.

Mr. BREED. You have carried this out on the census figures to show some 10,460,000 people which would be affected by this decree?

Mr. BODE. Yes, sir.

Mr. BREED. Do I understand that it is your opinion that these people would be adversely affected?

Mr. BODE. Adversely affected.

Mr. BREED. And are these people all dependent for their livelihood upon these industries and their continuance?

Mr. BODE. So far as I know, more or less.

Mr. BREED. So that you have given these figures to give your opinion of the parties that would be directly affected by the modification of this decree?

Mr. BODE. That is what I believe.

The CHAIRMAN. Have you heard from all those 3,400 canners?

Mr. BODE. No, we have not. That is simply estimating.

The CHAIRMAN. How did you arrive at your basis of estimation, or what did you take as your basis of estimation?

Mr. BODE. Well, for instance, the reports from the National Canners' Association.

The CHAIRMAN. Well, has the National Canners' Association taken any action on this?

Mr. BODE. No, they have not.

Mr. DAILY. When is their convention?

Mr. BODE. Their convention is in January. But with those with whom we have talked—if it illustrates the views of the prominent men in the trade, and their views are usually reflected back to the smaller canner and they most all, in our judgment, hold the same views.

The CHAIRMAN. In other words, you feel that no canners are in favor of this modification?

Mr. BODE. No, no canners. There may be a few, but I don't know.

The CHAIRMAN. Well, how do you count those canners that have requested the modification, and after the conference at Chicago have withdrawn their request?

Mr. BODE. My belief is they were influenced by a certain gentleman interested to get such a conclusion on record.

The CHAIRMAN. And influence at Chicago was stronger than his influence? Mr. BODE. No; the truth made known to people changes their belief very materially.

The CHAIRMAN. Well, if they assert that since the Chicago conference that certain arrangements have been made which are satisfactory to them, then what would you say about it?

Mr. BODE. I say that a man that would change his views on that score ought to be ostracised from the commercial and business field.

Judge HAINER. His testimony should be rejected?

Mr. BODE. Absolutely.

Mr. BREED. Isn't the fact to the contrary; and do they assert that there was no such agreement?

Mr. BODE. So I have heard the testimony.

Mr. BREED. Before this committee?

Mr. BODE. Anyone, in my judgment, that would reverse a conclusion of that kind based upon making a threat, his testimony should be wiped out.

The CHAIRMAN. I just wish to state we have letters of that kind in our files.

Mr. BREED. What kind?

The CHAIRMAN. The kind that I stated; that since the arrangement at Chicago they wish to withdraw their request for a modification.

Mr. BREED. Possibly a great many people will withdrawn their preconceived opinions with respect to the modification of this decree after they study the effect of the modification upon their business.

Mr. BODE. I believe, gentlemen, that to have the fact made known as to the effect on the respective businesses is a matter of duty from those that know to those that do not understand. In other words, the minute I acquaint you with the facts that I have got here and you believe what I tell you is true, you are going to change your opinion, and that is what the canners did in Chicago. And any effort that may be charged by the grocery interests in giving light to this question as to the modification of the decree to the canner should be commended and not condemned, in my judgment.

Mr. BREED. You are referring to a change of opinion, Mr. Bode. You are referring to an original opinion by 18 men as opposed to a reversed and opposite opinion by some 250 men that were at the second convention, are you not?

Mr. BODE. Yes, sir. Now I have only a very little more here, gentlemen. I would like to put it in, because I want to make my afternoon train. Cost. It has been stated by packers generally in order to get trade that they can deliver at less cost. Delivery at less cost is a delusion and a snare. It is absolutely impossible. From a packer's standpoint, the advantage that he gets from a railroad is an added profit by reason of increased business that he puts in his pocket.

Going back to the sources of supply, the supply and demand always govern prices, always will in spite of what the Federal Trade Commission—or at least the Federal Government did during the profit control here. They can say that you must buy your goods at this price from such a producer, but if he would not sell it to us we could not get it; we would have to pay him his price. So that supply and demand govern prices. Always have and always will. Unless monopoly steps in.

Now we buy as cheap as the packers. There isn't any question about that. And to illustrate that I will say this, that there have been no large fortunes made by canners or the small producers in their fields of endeavor. We, in buying from them, have the competitive field before us and the markets before we make an offer, and we buy from him just as cheap as we can consistent with those various offerings. There is no monopoly in our position to beat him down.

Mr. BREED. Have any large fortunes been made in the wholesale grocery trade, that are generally known?

Mr. BODE. Not that I know of. But I am getting at now the price paid to the producer. We buy as cheap as the packer does, or any one else. Therefore he can not sell any cheaper unless he wants to use the sale to his advantage in selling other goods.

Now we, by paying the canner or producer his reasonable price, enable him to live, and the industry goes on from year to year. If the packer, by reason of monopoly or otherwise, should seek to control that supply there, and gets me out of the market as a buyer, and is the only one to buy, then he can beat that man down just as far as his ability to press him down will permit.

Now, after the goods are purchased, the goods have the same classification, the transportation costs are the same. Now, with the packer, he has a common center, Chicago is his common center. He has one at Omaha, one at Kansas City, and several other places. Now these goods that he has bought at no less price than mine go to these common centers. They are handled in and out of his warehouse. He can not do that with his great machinery as cheap as I can in a smaller way.

The outgoing transportation, if shipped through the regular channels of the railroads, would cost just the same, but when shipped by him in special cars, he has an advantage over me. But he makes one more move in the main. He sends his carload of miscellaneous goods to a distributing point, and that distributing point has got to take the goods out and store them and reship them again.

Mr. BREED. That is his branch house?

Mr. BODE. That is his branch house. He makes one more move than I, and his costs of labor are just as large as any one else's. So the proposition that he can handle the goods cheaper than the wholesale grocer is an untruth. He can not do it. And for him to live he must get as much as his goods cost him originally, in the handling of same, and a reasonable profit besides.

We ship our goods direct to the trade. He ships them in the main to the branch house and redistributes.

I would like to present one situation here which would indicate a desire to monopolize on the part of the packers the sources of supply. Mr. Thomas, of the California Raisin Association, was their selling agent. He called on the Chicago trade two years ago, I think it was. He came into my office; I talked with him on general conditions, and he told the buyers of dried fruit in Chicago, including our buyers, that Mr. Armour had offered, or rather, the Armour company had offered to buy all the spot stock of raisins available when they were ready to market their product. And offered him one-half cent a pound more than the prevailing price if they would give him one-half of their product. Mr. Thomas stated that upon consideration they refused to sell Armour & Co. this block of raisins, by reason of the fact that they would put Mr. Armour in the field to compete with their own private brand of "Sun-Maid Raisins."

The CHAIRMAN. And this same raisin association now has a suit pending against it for violation of the anti-trust act, hasn't it?

Mr. BODE. Yes; that is, in the assembling of their goods. I do not approve of their methods, but I am only illustrating the desire of holders of large capital to buy and sell the supply.

Some one testified here with reference to the Llewellyn Bean Co., of Grand Rapids, Mich., an Armour concern, wherein Armour had purchased 100 cars of sugar—a product that they had never dealt in up to that time, excepting to use for their manufacture, but never as to sale. My salesmen reported to me in the spring of 1920 that Armour & Co. were reported to have shipped in to Michigan 100 cars of sugar with which to attract business to them and their lines as against us.

In the spring of 1920 sugar was very scarce. All the jobbers of the country were able to get but a very limited supply periodically. We cut out shipments to our trade down to one bag at a time. And sometimes to only 50 pounds, or half a bag at a time. Mr. Armour, by direct statement to our salesmen, through the Llewellyn Bean Co., of Grand Rapids, as offering to supply their trade all the sugar they wanted, provided they would reciprocate with all their business. They stated that Armour's representatives were going to their trade and offering to supply them all the sugar they wanted provided they would reciprocate with all their business. Now, how thorough or general that was I am not in a position to state, and whether 100 cars were shipped into that State or not I don't know.

But get the significance of this purchase, if it was made. A thousand bags of sugar to a car, 100 pounds each—100,000 pounds. And at that time not less than 20 cents a pound, probably 23 or 24 cents—but say 20 cents a pound, that would be 20,000 pounds to a car, and 100 cars would be the great sum of \$2,000,000 to invest in sugar to use for the benefit of the trade to the disadvantage of their competitors, at a time when it was extremely difficult to get sugar.

The CHAIRMAN. And your point is that they could only do that because of their vast amount of capital?

Mr. BODE. Yes.

Judge HAINER. Was that in 1920, you say?

Mr. BODE. That was in the spring of 1920. The significance of it is this. That I want to call your attention to—what the power of monopoly or money will do. The big sugar refineries from whom we have been receiving sugar, and whom we have been giving millions of dollars for years and years, turned from us to a nonselling sugar company and delivered them 100 cars of sugar, as against us one car of sugar.

Mr. DAILY. Not all the refineries, though; not the real big ones, Mr. Bode.

Mr. BODE. Well, I don't know. It was said to be the American Sugar Refining Co.

Mr. DAILY. No, I think not. I know that Franklin would not sell me any sugar for Armour; and which is a subsidiary of the American.

Mr. BODE. Well, I only give you that for what it is worth.

Judge HAINER. Are you stating that as a fact, or is it based on rumor or hearsay?

Mr. BODE. What, Judge?

Judge HAINER. The sugar purchase, the sugar deal.

Mr. BODE. The sugar, by actual statement from the representatives of our concern, came in competition with ours; we came in competition with this sugar. That was stated to their own customers, and in turn stated to me by our representatives.

Mr. DAILY. Wasn't that brought out in the testimony yesterday or the day before?

Mr. BODE. Well, I don't know how clearly it was brought out. I didn't get it as clear as I am trying to make it.

Judge HAINER. Well, you obtained that information from your representatives, did you?

Mr. BODE. Yes, I obtained that information from our representatives in the field.

Judge HAINER. That is what I wanted to get at.

Mr. BODE. Now, gentlemen, that concludes my presentation.

The CHAIRMAN. Have you any questions, Judge Hainer?

Judge HAINER. No.

The CHAIRMAN. Any questions, Mr. Hall?

Mr. HALL. I have some, but I do not want to keep the committee.

The CHAIRMAN. Go ahead.

Mr. HALL. Now, is your objection to the modification of the decree, Mr. Bode, based on the distributing system of the packer or fear of the control of production?

Mr. BODE. Both.

Mr. HALL. Can't they distribute cheaper than you can?

Mr. BODE. No, sir.

Mr. HALL. Do you think if the meat packer was prevented from going into the source of supply and production that he would continue to distribute?

Mr. BODE. To distribute what, Mr. Hall?

Mr. HALL. Distribute the unrelated lines.

Mr. BODE. Well, I should say if he was not permitted to go into the purchasing—

Mr. HALL. Go into the production—I mean the canning business, etc.; that was your fear?

Mr. BODE. My fear was that he would not only go into production, but he buys these goods in competition with us, develops a business that requires an extraordinary proportion of the products of the country, because of his capital.

Mr. HALL. He can not buy any cheaper than you can?

Mr. BODE. He can not buy any cheaper, no; but, as I said this morning, service is the largest element in the matter of competition.

Mr. HALL. So it is the quickest service, then?

Mr. BODE. It is the quickest service. That is the main feature.

Mr. HALL. All right.

The CHAIRMAN. Anything else, Mr. Breed?

Mr. BREED. No.

Mr. DAILY. Just one question, and I don't want to keep you any longer. Mr. Bode, would the results be any more favorable if the decree was modified so that they could operate on a commission basis rather than unrestrictedly as heretofore?

Mr. BODE. I think it would be vastly worse than it is to-day to the interests of the country. A commission basis does not contemplate a sale or a purchase. And there is no commission or sale made until the delivery has been consummated. Now, it would withhold all the funds now received by the canner from his possession until those goods were absolutely sold.

Mr. DAILY. Couldn't they, by reason of their vast wealth, make advances so that they could control these outputs the same as now?

Mr. BODE. They could do that, but that would be again to the advantage of the wholesale grocers of the United States.

Mr. BREED. Wouldn't it also be to the disadvantage of the canner, who would not know whether he had sold his goods at any price until after the—

Mr. BODE (interposing). Well, it is unthinkable that the packer should advance money against a possible future sale on commission. If such a sale was impossible, what would become of the goods?

Mr. BREED. As well as what would become of the canner?

Mr. BODE. Yes, as well as what would become of the canner. If he could not sell them, then the canner would have to reimburse the packer, and the opportunity for sale would be lost. Absolutely impracticable.

Mr. DAILY. Now, you spoke a little while ago of Mr. Seaton's circular, which is not available. I thought I maybe had it among my papers, but I have not got it. Just what would happen, as an illustration, to-day, if some concern

possessed of vast wealth would go in and buy canned tomatoes? First of all, what was the packing condition on tomatoes during the past season?

Mr. BODE. Well, it was just fair.

Mr. DAILY. Wasn't it a very small pack?

Mr. BODE. Well, it was; but I say "fair" compared as to the needs of the country.

Mr. DAILY. On account of economic conditions were not the buyings of tomatoes very slight?

Mr. BODE. Very.

Mr. DAILY. Consequent with the small stock on hand, if somebody who was not feeling that financial stringency would now walk into the market and buy, what would happen to the market?

Mr. BODE. They would boost it up anywhere from 10 to 15 per cent.

Mr. DAILY. That is all, Mr. Chairman.

The CHAIRMAN. Anything else, Judge Hainer?

Judge HAINER. No.

The CHAIRMAN. That is all. We will meet at 2 o'clock this afternoon.

(Whereupon, at 12.45 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day, Tuesday, December 6, 1921.)

AFTER RECESS.

The hearing was resumed at 2 o'clock p. m., pursuant to the taking of recess.

The CHAIRMAN. Mr. Breed, is there anything further?

Mr. BREED. Mr. Chairman, we have no other witnesses from the National Association of Wholesale Grocers, although we would be very glad to have an opportunity of offering testimony in rebuttal, if it is proper.

I should like to read into the record, however, a telegram that came to us to-day from the Cocoa and Chocolate Manufacturers' Association, as follows:

"Impossible to get to Washington. You may enter protest and objection on part of the Cocoa and Chocolate Manufacturers' Association of the United States against modification of packers' decree.

"GEORGE D. ZAHN, *Secretary*."

I should also like to inquire if the committee has received a protest from the National Retail Grocers' Association, an association representing some two or three hundred thousand retailers.

The CHAIRMAN. I have a recollection that we have received such a protest, in the form of a resolution. However, I do not want to be positive about that, but I will look it up and inform you in the morning.

Mr. BREED. If so, may it go into the record? Otherwise we might have to communicate again with their executive committee.

The CHAIRMAN. Yes; it may go in the record.

Mr. BREED. It has been suggested by one of our members that, as evidencing the spirit of our petition here to the Government not to modify this decree, we conclude with this prayer, which I would like to have read into the record.

Judge HAINER. You may read it for the benefit of the committee.

Mr. BREED. This is headed "A Prayer as is a Prayer";

"I penned this prayer in 1916," writes D. C. W. to B. L. T. in the Chicago Tribune; "four-fifths of it is original:

"O Lawd, give Thy servant this mornin' de eye of de eagle and de wisdom of de owl; connect his soul with de gospel telephone in de central skies; 'luminate his brow with de sun of heaben; pizen his mind with love for de people; turpentine his 'magination; grease his lips with 'possum oil; loosen his tongue with de sledgehammer of Thy power; 'lectrify his brain with de lightnin' of de Word; put 'petual motion in his ahms; fill him plum full of de dynamite of Thy glory; 'noint him all over with de kerosene oil of Thy salvation, and sot him on fire. Amen! [Laughter.]

The CHAIRMAN. The prayer will be received, and I hope answered. [Laughter.]

STATEMENT OF MR. FELIX COSTE, SECRETARY NATIONAL COFFEE ROASTERS ASSOCIATION, NEW YORK CITY.

The CHAIRMAN. Where do you live, Mr. Coste?

Mr. COSTE. In the city of New York.

The CHAIRMAN. What is your business?

Mr. COSTE. Secretary National Coffee Roasters Association.

The CHAIRMAN. Whom do you represent at this hearing?

Mr. COSTE. National Coffee Roasters Association.

The CHAIRMAN. Just proceed in your own way, Mr. Coste.

Mr. COSTE. I am also one of the committee, composed of F. C. Russell, of Russell & Co., New York; Albert J. Dannemiller, of the Dannemiller Coffee Co., Brooklyn, N. Y.; and J. W. Motley, of the Levering Coffee Co., Baltimore, appointed by the president of our association to appear before your committee and protest against any modification of the so-called packers' consent decree. Such committee was appointed by our president pursuant to a resolution adopted at the eleventh annual convention of the association, held in New York November 1 to 3, 1921. Such resolution is as follows [reading]:

"Whereas on February 27, 1920, there was entered in the Supreme Court of the District of Columbia a consent decree, under the terms of which the Big Five meat packers were forever enjoined and restrained from manufacturing, wholesaling, and retailing food products generally, including coffee; and

"Whereas, certain canning interests in California, in reality representing Armour & Co., have petitioned the Attorney General of the United States to set aside the said consent decree in order to permit the Big Five meat packers to handle all kinds of food products without restriction; and

"Whereas, the contemplated modification of the consent decree would reopen to the Big Five meat packers the manufacturing, wholesaling, and retailing of food generally, including coffee; and would result in the meat packers obtaining control of the food supply of the country: Now, therefore, be it

"Resolved, That the National Coffee Roasters Association emphatically protests against any modification of the consent decree, believing that the effect of such modification would be the concentration in the Big Five meat packers of the Nation's food supply and the creation of a monopoly which would destroy the business of the independent producer, manufacturer, and distributor to the irreparable injury of the public: And be it further

"Resolved, That members of this association continue forcefully to present their objections to the proposed modification of the consent decree to the Attorney General of the United States, and that a copy of this resolution be forwarded to him: And be it further

"Resolved, That the president be authorized to appoint a committee of this association to attend the hearings before the representatives of the Department of Justice, Department of Agriculture, and Department of Commerce and oppose any modification of the decree."

The National Coffee Roasters Association was organized in 1910 and is composed of about 300 members scattered throughout the United States. In order to be eligible to membership a party or concern must be in the business of roasting and wholesale distributing of coffee. Our members all buy green coffee, either importing the same into the United States or else buying from importers in the United States. The coffee is roasted by our members and is then sold chiefly to retail grocers.

No coffee is grown in the United States but is imported from foreign countries. The normal importation of coffee is about 9,000,000 or 9,500,000 bags of 132 pounds each, which, at a normal value of \$16 per bag has a total value of \$150,000,000. Seventy per cent of this production of coffee is grown for the most part in South and Central American countries.

Prior to the entry of the consent decree the Chicago meat packers, particularly Armour & Co. and Wilson & Co., were engaging in the business of handling coffee and were rapidly increasing their sales of this product. Not having had access to the files of the meat packers, it is of course impossible for me to present any exact data with reference to their sales. I would call attention, however, to the report of the Federal Trade Commission on the meat-packing industry, page 259 of Part IV, the following statement being made with reference to the sales of coffee [reading]:

"Both Wilson & Co. (Inc.) and Armour & Co. are handling coffee on a large scale, one of the grocers' most profitable lines. Wilson, in its grocery department, carries in packages two brands of coffee each prepared in three styles (steel-cut, whole bean, and pulverized), and two brands of blended coffee in 100 pound bags and drums, both steel cut and whole bean. Wilson is especially pushing its coffee business through all its selling agencies. At the close of its fiscal year November 2, 1918, at which time the packers aim to carry the smallest stock of goods, the inventory of Wilson & Co. (Inc.), showed the following quantities on hand:

"At Chicago, green coffee, 654,809 pounds, valued at \$90,766.14 and roasted coffee, 64,099 pounds valued at \$11,318.94; at Los Angeles, California, 7,853 pounds valued at \$1,625.33; at Kansas City, 5,859 pounds valued at \$13,331.33; and at Oklahoma City, Okla., coffee valued at \$5,016.98.

"These inventories showed rather some wide differences in valuation. Thus Blue Label coffee, whole bean, was valued at 20½ cents per pound in Chicago, and 24½ cents per pound at Oklahoma City, a difference far greater than justified by freight charges. Red Label coffee whole bean, on the contrary, showed a difference of only seven-eighths of a cent, being valued 18 cents in Chicago and 18½ cents at Oklahoma City.

"Armour & Co. is the only other meat packer who is as yet known to have become interested in this field. The following items from its branch house price lists indicate the range of coffees carried: 1-pound Veribest brand, fiber cases; 1-pound Veribest brand, wood cases; 3-pound Veribest brand, fiber cases; 3-pound Veribest brand, wood cases; 50-pound drums Veribest brand; 100-pound drums Veribest brand; 1-pound Helment brand, fiber cases; 1-pound Helment brand, wood cases; 3-pound Helment brand, fiber cases; 3-pound Helment brand, wood cases; 50-pound drums Helment brand; 100-pound drums Helment brand; 1-pound shield brand wood cases; 60-pound paper bags Glenwood brand; 100-pound paper bags Glenwood brand; A. & Co. blend BBB 50-pound drums; A. & Co. blend BBB 100-pound drums; A. & Co. blend CCC 50-pound drums; A. & Co. blend CCC 100-pound drums; A. & Co. blend DDD 50-pound drums; A. & Co. blend DDD 100-pound drums; A. & Co. blend EEE 50-pound drums; A. & Co. blend EEE 100-pound drums."

In this connection, I would like to quote the following from a letter received from one of our members under date of November 30, 1921, with reference to the handling of coffee by the packers [reading]:

"I have your letter of the 25th in regard to the reentry of the packers into the coffee business. This would be a great blow to the present roasters. For a period of a year previous to October 1, 1919, we did roasting for Wilson & Co. and rented them space where they did their own packing. Their business got up to 500 to 700 bags a week. Our present superintendent was the superintendent for Wilson & Co. at that time. He states that most of the coffee was trucked from our plant to the stock-yards and was there packed in refrigerator cars with meat. This gave them an undue advantage for prompt delivery. About October, 1919, Austin, Nichols & Co., took over the Wilson business and since that time we have no information.

"We understand that Armour & Co. are having coffee roasted by H. H. Hixon & Co. but we do not hear of them from the trade. In 1919, however, they were very active and created considerable havoc by giving away quantities of coffee free to get a foothold. They injured our trade in one of our territories very materially by these methods.

"I think that every method should be employed to prevent a modification of the packers decree, as I have been told that some of them have roasters ready to go after this business at the first opportunity."

It is evident that some of the packers at least are handling coffee, as the Armour magazine for October, 1921, contains the following article on page 27 [reading]:

"SELL COFFEE WHEN IT IS FRESH.

"The value of coffee as a beverage lies primarily in its strength and flavor. Green coffee will keep indefinitely but such is not the case after it has been roasted. Roasting brings out the flavor and aroma. Coffee becomes stale because of loss of these aromatic principles by evaporation. When this has taken place the coffee is practically worthless.

"The parchment-lined container we use in packing Veribest and Helment brands retains the strength of the coffee for a reasonable length of time only. This is true also of tin. Berry coffee should be sold within 60 days, and steel cut, within 30 days—the quicker the better.

"We, therefore, can not emphasize to emphatically the importance of keeping your stock moving. Don't overlook that it costs 8 per cent to carry the stock. The quickest way to ruin your coffee business is to deliver stale stuff.

"We are roasting and packing coffee for current requirements only, realizing that essentially coffee must be fresh to prove satisfactory. Order frequently—keep it coming—keep it going."

The reasons why our association is opposed to the setting aside of the consent decree is because we believe that the packers will seize the first oppor-

tunity to again enter upon the business of roasting and distributing coffee and we fear that they will be able to secure the control of a very large proportion of the coffee sold in this country. The meat packers already have agencies in South American countries. For example, Armour & Co. is interested in [reading]—

"Companhia Armour de Brazil, Santa Anna de Livramento, Brazil; Swift & Co. in Companhia Swift de Brazil; and Wilson & Co. in Continental Products Co., Sao Paulo, Brazil; (Wilson & Co.) Frigorifico Wilson de Brazil, Brazil—"

to mention only the Brazilian companies. The agencies already exist therefore whereby the packers could purchase at the source large quantities of green coffee. Moreover, as above stated, the total value of coffee consumed in the United States is \$150,000,000 and it would be a comparatively easy matter for the packers with their large resources and with their already existing agencies to secure a very large proportion, if not all, of the production of the coffee available for importation into the United States. Needless to state, if such a situation arose, it would be impossible for many of our members to obtain coffee and to continue their business in this product. Moreover, a purchase of any large quantity of coffee by any one concern would have the inevitable result of greatly increasing the price of coffee and would raise to a material extent the cost of coffee to consumers in the United States. At the present time this product is being handled by over three hundred concerns among whom there is the keenest competition.

As an example of the effect of large purchases upon the price of coffee, I desire to cite the recent action of the Brazilian Government. The market price of coffee had fallen below the cost of production. In order to assist the planters the Government during the past six months has been buying coffee on the market and storing same. The result has been an increase in the market price of coffee from 33½ to 50 per cent, and coffee which the Brazilian Government has paid about \$20,000,000 for now has a market value of about \$40,000,000. The further effect upon the price of large purchases by the meat packers can easily be imagined. With strong banking connections the meat packers could finance purchases such as those made by the Brazilian Government with cash outlay of \$2,000,000 to \$3,000,000.

We very greatly doubt whether there is any other product the control of which could be so easily obtained by a large organization with great resources at its command. We feel that from our observation of the rapid strides which the meat packers were making just prior to the entry of the consent decree in the handling of coffee that our fears in this respect would be realized.

Wholly apart from the injuries which our trade might suffer from such unfair acts as that of giving away free coffee referred to in the letter above quoted, I desire to lay emphasis on the great advantage which the meat packers have in the ownership of private refrigerator cars. Roasted coffee, of course, needs no refrigeration, but placing roasted coffee in refrigerator cars together with fresh meat, it is possible for the meat packers to secure the same expedited service for their coffee as is accorded to fresh meats, and to avoid the delays which other shippers have at initial transfer, and terminal points.

Our members are not able to get this expedited service and feel that they are at a great disadvantage by reason of what they believe to be a most unfair special privilege.

We therefore ask the most serious consideration of your committee for opposition in this matter and respectfully urge that no change be made in the terms of the consent decree.

Mr. HALL. What business is this Brazilian concern in that you mentioned?

Mr. COSTE. In the refrigerating and slaughtering business.

Mr. HALL. No; I mean the Brazilian concern. Are they in the meat-packing industry?

Mr. COSTE. These Brazilian concerns that I mentioned? Yes, sir; slaughtering business and cold storage.

Mr. HALL. Not with reference to coffee?

Mr. COSTE. No; no reference to coffee, other than that they already have in the largest coffee-producing country strong organizations and strong facilities, which we fear would enable them very readily to go into the Brazilian market and control the product there.

Mr. HALL. Have you ever experienced any difficulty in the Brazilian market in securing your green coffee?

Mr. COSTE. No.

Mr. BREED. I think the question Mr. Hall put referred to the Brazilian Government, which you mentioned.

Mr. HALL. No; I referred to the Brazilian concerns which he mentioned, and in which the packers are interested.

Mr. BREED. I would like to ask one question. You said something about Austin, Nichols & Co. taking over the Wilson business. Who are they?

Mr. COSTE. Why, it is my understanding that the grocery or unrelated part of Wilson & Co.'s business was sold to Austin, Nichols & Co. It is generally understood in the coffee trade that that is simply a name for the business of Wilson & Co. in these unrelated products.

Mr. BREED. Austin, Nichols & Co. are wholesale grocers.

Mr. COSTE. Wholesale grocers; yes, sir.

Mr. BREED. Of New York, Chicago—

Mr. COSTE (interposing). New York, Chicago, and other places. I believe.

Judge HAINER. What would you say was the cause of the higher price of coffee in Oklahoma City? How do you account for that?

Mr. PACKERS. Why, I account for that by the statement which was made here this morning and entered in the record by an employee. I think, of one of the big packers, in which he said that they get all they can and when they can.

Judge HAINER. Is it to be inferred from that that the packers had any influence on the price of coffee in Oklahoma City?

Mr. COSTE. No.

Judge HAINER. What is the price in New York City?

Mr. COSTE. I would have to know what grade you referred to.

Judge HAINER. Well, the same grade.

Mr. COSTE. I do not know, sir, what grade of coffee that refers to.

Judge HAINER. You are from New York City?

Mr. COSTE. Yes.

Judge HAINER. Has coffee declined in price?

Mr. COSTE. No, sir; coffee has advanced from 35 to 40 per cent in the last six months.

Judge HAINER. What is that due to?

Mr. COSTE. Due to the entry into the market of the Brazilian Government. The price of coffee in the Brazilian market has declined to a point where it was no longer profitable for the planter. The Brazilian Government, in order to assist the planters in its chief industry, entered the market and have purchased up to date about three and a half million bags of coffee, and as these purchases were made the price advanced. It goes to show what any large purchase, or what any aggregation, whether it be a government or other aggregation of capital, can do by entering the market.

The CHAIRMAN. You say that coffee raising had ceased to be profitable?

Mr. COSTE. Yes; that is the statement that comes from Brazil.

The CHAIRMAN. At the same time coffee was very high in this country, was it not?

Mr. COSTE. At that time?

The CHAIRMAN. Yes, sir.

Mr. COSTE. No, sir; coffee was at a low price here. I will give you the exact figures of a standard coffee, for instance, which was selling at from 8½ to 9 cents—

The CHAIRMAN (interposing). At wholesale?

Mr. COSTE. For importation. That same coffee to-day is costing from 12½ to 13 cents. That is green coffee, and a low grade of green coffee.

The CHAIRMAN. And after that it has to be roasted?

Mr. COSTE. Yes.

The CHAIRMAN. And then distributed?

Mr. COSTE. Distributed—and packed in a great many cases.

The CHAIRMAN. And the difference between that 8 or 8½ cents and the market price is the cost of roasting and distribution, with the profits incident to such processes?

Mr. COSTE. Yes, and the other incidentals which go in. For instance, some of it is sold in 1-pound bags, some of it is sold in 1-pound cartons, and some in 1-pound cans, and so on.

The CHAIRMAN. What would that same grade of coffee cost on the retail market?

Mr. COSTE. Well, that same grade of coffee is being sold in New York at from, I think, 18 or 19 to 25 cents.

The CHAIRMAN. Has not coffee generally been high at retail in this country for the past year or year and a half?

Mr. COSTE. I do not think you could say that, no, sir. I have a number of evidences in my bag of prices at which coffee is being retailed to-day, which would indicate that it is being sold at a very reasonable price.

Mr. BREED. You mean, considering the price of the raw product?

Mr. COSTE. Yes.

A VOICE. Did not the biggest decline occur in 1920?

Mr. COSTE. In 1920, yes; I think there was a very low market. There have been violent fluctuations in the coffee market, so violent that it was impossible for the changes to be reflected very promptly in the price to the consumer.

It is suggested that I make a further statement here that might otherwise be overlooked. It must be considered in determining the price of roasted coffee that there is a loss of 16 per cent in shrinkage in the roasting process, and there is further loss in cleaning, separating, etc.

The CHAIRMAN. Thank you very much, Mr. Coste. Is Mr. Gillaspie here? (No response.) The Ohio Wholesale Grocers' Association are next on the list. We will return to Mr. Gillaspie when he comes in.

STATEMENT OF MR. JOSIAH BINDLEY, MARION, OHIO, REPRESENTING OHIO WHOLESALE GROWERS' ASSOCIATION.

The CHAIRMAN. Where do you live, Mr. Bentley?

Mr. BINDLEY. Marion, Ohio.

The CHAIRMAN. What business are you engaged in?

Mr. BINDLEY. Wholesale grocery business.

The CHAIRMAN. Whom do you represent at this meeting?

Mr. BINDLEY. The Ohio Wholesale Grocers' Association.

The CHAIRMAN. Proceed, Mr. Bentley.

Mr. BINDLEY. Some time ago the Ohio Wholesale Grocers' Association received notice of the hearings to be held by the committee appointed by Attorney General Daugherty to hear the views of business men on the question of modifying the court decree under which, I understand, the packers were to go out of the grocery business in February, 1922. I have been delegated by Mr. Hills, the president of the Ohio Wholesale Grocers' Association, to appear here as representative of that association and to state that they are opposed to any modification of the decree. Our association consists of about 80 members, all doing business in the State of Ohio. Many of these merchants have been in business for more than half a century.

Yesterday I listened to the testimony of Mr. Bode, representing the National Wholesale Grocers' Association, and he has so thoroughly covered several of the points I had expected to present that I will not take your time repeating them. I would say, however, that I thoroughly agree with the statement which he has made with respect to the unfair methods adopted by the packers in connection with the sale of their food products and also the many special privileges and advantages which they possess in the matter of transportation which make it very difficult for us to compete with them upon a fair basis.

I would like to impress on the members of this committee the very important fact that service has much to do with the success of our business. The retail grocer, usually a man of small capital, must buy his goods often and must have prompt delivery; and when I tell you that the packer in his peddler car can give better service into Marion, Ohio, a distance of 180 or 200 miles from Chicago, than I can give by rail to Caledonia, a small town 10 miles from Marion, you may realize the advantage in transportation which is given to the packers.

Judge HAINES. That is, unless you use a truck?

Mr. BINDLEY. Yes; but I am talking about rail transportation now. That comes about by the fact that the railroads hold your shipments until they get a carload. Possibly a shipment might go out to-day or it might not go out for a week, whereas the packer could have his car in there in a day and a half.

We believe that if this decree is modified and the packers are allowed to withdraw their consent not to extend their monopoly into the unrelated food lines, that it will be only a short time when they will control the general source of production in many food lines, notably canned foods, dried fruits, and cereals, all of which will mean the gradual extinction of the wholesale grocer.

To show what I mean by "control the source of production" I will just cite one of the kind of dealings that they try to put over. A canner of corn located in central Ohio who had his entire estimated pack sold to wholesale grocers of

our State was approached by a representative of Armour & Co. and offered 2½ cents per dozen in advance of the price if he would sell them his entire pack and cancel the jobbers' orders. This man is a personal friend of mine, and I know this is true. There is no question about it.

Of course, that canner did not sell, as he appreciated that he would lose his many customers, and if he tied himself to the one he might find his prices in future years dictated by this one customer.

Another point that I think worth bringing out in this connection is that should the packers have bought this corn the consumer would have been the one who would have had to pay the premium secured by the canner. The consumer would have had to pay that, because I do not think any preferential freight rate could have been received, and without preference I am sure the wholesale grocer must distribute his merchandise in competition with any fair distributor.

While it may seem as though our opposition to a modification of this decree might be prejudiced, we believe that we have a right to fight for our business life. We also believe that it is much better to have the general food business of the country distributed through the active competition of thousands of canners and wholesale grocers than to have that food supply controlled by a monopoly of four or five meat packers, with their special privileges and the power and control which their vast capital gives them in the matter of the purchase of supplies and control of markets. I am therefore asked to respectfully enter protest of the wholesale grocers of Ohio and to ask the committee not to recommend a modification of the decree.

MR. HALL. Is the better service that you speak of a quicker service or a cheaper service?

MR. BINDLEY. Well, both quicker and cheaper.

MR. HALL. The packer, then, can distribute cheaper than you can?

MR. BINDLEY. He can in his special peddler car. He can ship his goods cheaper in a peddler car than a wholesale grocer can from Chicago—

Judge HAINER. In a box car?

MR. BINDLEY. Yes.

MR. HALL. And deliver to the retail trade cheaper?

MR. BINDLEY. Yes; he would have a lower rate on freight from Chicago.

MR. BREED. I might ask if that is not due to the fact that he is able to put these unrelated food products into his refrigerator and peddler cars?

MR. BINDLEY. Yes, sir; that is the only reason.

MR. BREED. And also that the refrigerator and peddler cars carry a lower minimum in carload lots than the minimum allowed to wholesale grocers when they ship a carload?

MR. BINDLEY. Yes, sir.

MR. DAILY. Would it make it less objectionable to have them continue in these unrelated lines on a brokerage or commission basis?

MR. BINDLEY. Oh, I do not think so.

Judge HAINER. The practical effect would be the same?

MR. BINDLEY. That would be my opinion.

The CHAIRMAN. Thank you very much, Mr. Bentley.

MR. BINDLEY. I thank you, sir.

The CHAIRMAN. The next on the list is the Maine sardine interests. Are they represented here? [No response.] The next is the retail coffee people.

STATEMENT OF MR. G. B. SCHORM, JAMAICA, LONG ISLAND, N. Y., REPRESENTING NATIONAL RETAIL TEA AND COFFEE MERCHANTS' ASSOCIATION.

The CHAIRMAN. Where do you live, Mr. Schorm?

MR. SCHORM. Jamaica, Long Island, N. Y.

The CHAIRMAN. And what business are you in?

MR. SCHORM. I am in the retail tea and coffee business.

The CHAIRMAN. And where is your business conducted?

MR. SCHORM. In Jamaica, Long Island.

The CHAIRMAN. What organization, if any, do you represent here?

MR. SCHORM. I have been appointed chairman of the committee representing the National Retail Tea and Coffee Merchants' Association.

The CHAIRMAN. Just proceed now in your own way, Mr. Schorm.

MR. SCHORM. We have here certain resolutions, almost identical with those that Mr. Coste read. If you want me to read them in the record.

Judge HAINER. You might put them in the record.

The CHAIRMAN. Does your statement show how many members belong to your organization?

Mr. SCHORM. Yes, sir; I am going to state that.

The CHAIRMAN. Proceed then. You may consider the resolutions as read into the record.

(The resolutions referred to are as follows:)

"The National Retail Tea and Coffee Merchants' Association, having called a meeting of its executive committee to appoint a committee to oppose any modification of the decree entered in the Supreme Court of the District of Columbia on February 27, 1920, forever enjoining and restraining the Big Five meat packers from manufacturing, wholesaling, and retailing food products generally, including coffee, and said meeting having been held an Indianapolis on November 1, 1921, the following resolution was adopted:

"Whereas, on February 27, 1920, there was entered in the Supreme Court of the District of Columbia a consent decree, under the terms of which the Big Five meat packers were forever enjoined and restrained from manufacturing, wholesaling, and retailing food products generally, including coffee; and

"Whereas certain canning interests in California, in reality representing Armour & Co., have petitioned the Attorney General of the United States to set aside the said consent decree in order to permit the Big Five meat packers to handle all kinds of food products without restriction: Now, therefore, be it

Resolved, That the National Retail Tea and Coffee Merchants' Association forcefully protests against any modification of said consent decree, believing that the entry of the Big Five meat packers into the coffee business would be adverse to the interests of the public, and that it would ultimately result in forcing the independent dealer from the field; and be it further

Resolved, That the president be authorized to appoint a committee of this association to attend the hearings before the representatives of the Department of Justice, Department of Agriculture, and Department of Commerce and oppose any modification of the decree."

Mr. SCHORM. The National Retail Tea and Coffee Merchants' Association is comprised of 135 individual retail coffee concerns operating over 2,000 wagons and serving about 2,000,000 families in the United States (or practically one-tenth of the population of this country) with coffee, tea, spices, extracts, and a limited grocery line. It has no buying or selling agreement amongst its members. There is no arrangement as to price, terms, or any general understanding in dealing with the consumer. There is unrestricted competition and differences in prices on all the items sold direct to the consumer. The main object of the organization is to instruct its various members how to conduct their businesses in the most efficient way so as to reduce operating cost to a minimum and to distribute good coffee to the consumer at a moderate price. We may add that during the recent war not one of our 135 members was accused of profiteering.

About 70 per cent of our business is in coffee. We operate to a great extent through the small towns and rural districts. We furnish the consumer regularly and in small quantities with fresh roasted coffee delivered to the home. We are coffee specialists and feel we render an indispensable service to the consumer. Our association employs more than 4,000 men. We have as competitors the grocer, the department stores, drug stores, market stands, mail-order houses, as well as competitors operating under our own method. For our business we rely on fresh roasted coffee, quality, and service. With unrestricted competition as it now exists we are selling coffee and tea at substantially the pre-war prices.

It is easily within the power of any of the Big Five meat packers individually to control the entire coffee business of the United States. With \$25,000,000, a sum well within the means of any one of the Big Five, coffee could be manipulated almost at the will of the packers. With a fund of \$25,000,000 in hand, any one of the packers could get a loan of 80 per cent of his coffee valuation from the banks. Now, in view of the fact that the entire coffee industry of this country amounts to about \$150,000,000 per annum, it is a simple matter for the packers to control it.

A market subject to moderate and normal fluctuations enables the distributor to maintain a uniform price to the consumer. This uniform price appeals to the housewife, especially so when the price is moderate, and it follows that a low market is the best basis for the retailer in the coffee business. When prices to the consumer fluctuate widely, customers become dissatisfied. It must be emphasized that the housewife likes to be assured that her coffee will

cost her the same price each week, and in order to maintain this uniformity of price the distributor assimilates the slight fluctuations of a normal market.

The various booms and reactions which have afflicted the coffee trade within the past 10 years have in each instance been mainly caused by manipulated coffee to the detriment of the public and the dealer. Instead of normal and moderate fluctuations which can be attributed to actual crop conditions, we have fluctuations of such a violent nature that the distributor is forced to change his prices to the consumer. It invariably occurs in this situation, that a considerable part of the increase in the market price of coffee is assimilated by the distributor, to such an extent that coffee distribution becomes unprofitable. No one gains except the manipulator. The public and the distributor are the losers.

With coffee distribution largely lodged with the packers, a situation could be brought about whereby through his own widely advertised brand of roasted coffee the packer could put the distributor where the latter would have to sell this special brand at a price not covering operating expenses, and at the same time the packer could put green coffee so high that the independent distributor could not market his own private brands profitably.

It is our firm and conscientious belief that a monopoly created in the coffee industry would not alone be the means of driving out of business thousands of independent merchants who now distribute to the consumer, but would also result in an advanced price to the consumer, as has always resulted in the past, when strong financial interests sought and gained control of the situation.

If the petition of the packers is granted, it may lead to the packers entering the coffee business again, as they have done in the past, and we voice our protests to any modification of the consent decree being granted. We believe that any modification would be adverse to the interests of the public in a matter highly important to the public welfare, and that it would ultimately result in a dangerous monopoly of the coffee industry which would eliminate the independent dealer from that field of commerce, without benefit to the consumer, but, on the contrary, to his ultimate detriment.

The CHAIRMAN. Mr. Breed, have you any questions?

Mr. BREED. No.

Mr. DAILY. I have no questions.

The CHAIRMAN. Thank you very much, Mr. Schorm.

Mr. SCHORM. I have here, if you care to hear it, just an instance of how a manipulation of this sort took place.

The CHAIRMAN. We would be very glad to have that.

Mr. SCHORM. I am just stating it—not that the packer has manipulated it, but in the past other interests have manipulated coffee with not such large sums of money, and it has created these high prices that you have been paying during the war. We as distributors have operated our business during all that high-price period without a profit.

An instance in our business career in which coffee was monopolized was about the year 1910, when strong financial interests with a fund of about \$45,000,000 removed some 7,000,000 bags of coffee, about one-third of the world's visible supply, from distribution. This was termed the "valorization" plan.

At the time this manipulation took place coffee was and should have remained for quite a period at a very low price, from which the consumer was deriving the benefit. What took place after that manipulation occurred was that coffee went up over 100 per cent in a few months time, so the dealer had to assume part of the raise and had to pass part of it on to the consumer. The consequence was that for a year and a half distributors were distributing coffee at a loss and the consumer was paying almost twice as much for his coffee as market conditions warranted.

The final outcome of the entire scheme was that after about a year and a half the final 1,000,000 bags remaining were sold by these interests to large roasters and wholesalers, and no sooner had they contracted for this coffee. the very day they bought it, the market slumped and kept on slumping rapidly until it resulted that the profit of years in the coffee business was lost in a few months time. In one instance it was to the interest of the manipulators to monopolize coffee and double the price, and in the other instance it served their purpose to ruin their competitors by creating a sudden and violent reaction.

Mr. BREED. Mr. Schorm, you used the words "if the petition of the packers to modify this decree is granted." Did you understand the packers were applying to have this decree modified?

Mr. SCHORM. I understood that certain canning industries were making an appeal to have this decree modified, but these interests in reality were Armour & Co.

The CHAIRMAN. Mr. Gillaspie, we will hear you now.

STATEMENT OF J. W. GILLASPIE, OF J. W. GILLASPIE & CO., CANNERS, BEDFORD, VA.

The CHAIRMAN. Mr. Gillaspie, where do you live?

Mr. GILLASPIE. I live at Bedford, Va.

The CHAIRMAN. And what is your business?

Mr. GILLASPIE. I am a canner.

The CHAIRMAN. And what products do you can?

Mr. GILLASPIE. I can tomatoes.

The CHAIRMAN. How large a pack do you put up?

Mr. GILLASPIE. In 1920—I did not operate this year. In 1920 I packed 140,000 cases.

The CHAIRMAN. And you have not operated this year at all?

Mr. GILLASPIE. Two plants, but not under my name. My corporation is J. W. Gillaspie & Co. Those plants were small and scattered from Florida to Virginia; I had 14 plants.

The CHAIRMAN. Why did you not operate this year?

Mr. GILLASPIE. I had no sale for the product.

The CHAIRMAN. Just proceed in your own way.

Mr. GILLASPIE. Gentlemen, I have not got my statement written out, and if I get off the subject you can just call me down. I have been in the canning business for 21 years. The last two years the canning business has been in the worst condition that I have ever seen it. We have not been able in the last two years to get the cost of our product that we put up, and we attributed it to some cause, and by an investigation of it we decided that it was on account of the facilities for distribution.

When I went into the canning business 21 years ago I always could sell all the futures that I wanted to sell—something like 50 to 75 per cent of my expected output. I did that until two years ago. In the last two years I have been unable to sell 20 per cent of my output, except in 1920 I made a tremendous effort to sell futures and sold 40,000 cases of the 140,000 cases that I packed. I was able to make 75 per cent delivery on the 40,000 cases that I sold.

I had those tomatoes sold from Florida to Ohio, but I was just unable to get the jobbers to take the tomatoes on contract. They claimed that they just could not take them at the price they were bought at. They were sold on 100 per cent delivery, on no graduated scale, nor subject to revision of price. We sold on a straight out stipulated price. I was just unable to get them to take the goods at the price named in the contracts, and on about half of the sales I had made I had to reduce the price until the price was no more than the cost of production.

Now, we have in my State about 500 little canneries. They are not large canneries like they have in the west. We have about 500 tomatoes canneries—

Mr. DAILY. What State do you mean?

Mr. GILLASPIE. Virginia. We have about 500 small canneries. In 1921, this year, only about 15 per cent of those canneries operated, and judging from the present condition of things right now in the distribution of goods not more than 40 per cent of them will operate next year.

The CHAIRMAN. What will be the effect of the reduced operation of these canneries upon the price of this commodity?

Mr. GILLASPIE. Well, it is hard to tell, with the distribution we have for disposing of our goods.

The CHAIRMAN. I mean the price the consumer will have to pay.

Mr. GILLASPIE. Well, you heard it stated here this morning—a gentleman from Chicago wanted to know what would be the effect on the price of canned tomatoes with the small pack that we just had the past season, if the five meat packers were allowed to handle them like they did a few years ago. I think the gentleman from Chicago stated—

Mr. DAILY. May I correct the gentleman, Mr. Chairman?

Mr. GILLASPIE. Go ahead.

Mr. DAILY. He was quoting me. The question was, What would be the effect if somebody with large capital walked in and bought their supply?

Mr. GILLASPIE. Well, we have had an extremely small pack the past season, and after having that we can not sell tomatoes to-day at what they cost us to pack them. That shows to me, and it seems to me it would to any other reasonable man, that the line of distribution is rotten. We have got no line of distribution. It is absolutely rotten. With our small pack that we have had, and no production in canned goods—the pack we had in 1920 was only 10,000,000, and the pack in 1921 is estimated to be 4,500,000—and with goods selling to-day under cost of production, there is something wrong somewhere with the distribution of them.

In the last few years, as I have stated, I can not sell futures. I have never delivered short on a contract that I have sold yet. I went on the market one year and bought goods to fill my contract where I sold on 100 per cent delivery. I only sold goods two years on a pro rata contract. We packers in Virginia, in Tennessee, and in Florida can not pack without we can get some sale for futures. We can not go into it.

The CHAIRMAN. Do you then favor or oppose this modification?

Mr. GILLASPIE. I favor it.

The CHAIRMAN. Why?

Mr. GILLASPIE. Because I think it will give the packers a better line of distribution, so they can dispose of the goods at a reasonable profit, so they can continue in the business.

The CHAIRMAN. Are you afraid that the packers will get a monopoly or control the distribution of these goods?

Mr. GILLASPIE. I am not; I never have been an advocate of that doctrine.

The CHAIRMAN. Are you afraid they will control the canning of them?

Mr. GILLASPIE. I am not.

The CHAIRMAN. Do the packers own any stock in your companies, any of them?

Mr. GILLASPIE. No, sir.

The CHAIRMAN. The meat packers, I mean.

Mr. GILLASPIE. No, sir.

The CHAIRMAN. Do you own any stock in the meat packers?

Mr. GILLASPIE. Not a cent.

The CHAIRMAN. Do you have any contracts with the meat packers now?

Mr. GILLASPIE. Not a one.

The CHAIRMAN. Have you ever distributed through them?

Mr. GILLASPIE. Very few.

Mr. BREED. I would like to ask the witness a question or, two. How long have you been in business, Mr. Gillaspie?

Mr. GILLASPIE. Twenty-one years.

Mr. BREED. And how did you sell your canned goods prior to the last two years?

Mr. GILLASPIE. Sold them through brokers.

Mr. BREED. What kind of brokers?

Mr. GILLASPIE. General canned goods merchandise brokers.

Mr. BREED. Did you ever sell any of them to wholesale grocers?

Mr. GILLASPIE. I have sold practically all of my goods—I never did sell many of my goods to the meat packers.

Mr. BREED. No; I mean to the wholesale grocers. Did they ever buy any of your goods?

Mr. GILLASPIE. Practically all. I sold a good many goods direct myself. I either sold by myself directly to the jobber or through a broker to the jobber.

Mr. BREED. And you did that up to when?

Mr. GILLASPIE. I have done it up to the present time; that is, I quit packing practically after 1920. I had 14 plants that stood still in 1921—this year.

Mr. BREED. Are you not packing this year?

Mr. GILLASPIE. I packed at two places, but neither one was operated under J. W. Gillaspie & Company.

Mr. BREED. Did you pack last year?

Mr. GILLASPIE. Yes, sir; I packed 140,000 cases.

Mr. BREED. How did you sell them?

Mr. GILLASPIE. I have got some of them yet. I sold them through brokers, as I stated, and myself—I maintain an office, and I sell a good many of my own goods direct.

Mr. BREED. Up to last year you say you sold to the wholesale grocers. Would you characterize the distribution during those years as rotten?

Mr. GILLASPIE. I never did consider it rotten until 2 years ago.

Mr. BREED. Did you ever hear anything about business in canned goods being rotten during the past two years?

Mr. GILLASPIE. Oh, yes. Of course there was depression in all business and business was not as good as it had been in former years.

Mr. BREED. Mr. Gillaspie, you know pretty well about the business. Were you in Washington at all, during the war, having to do with the Food Administration?

Mr. GILLASPIE. Yes, sir; many a time, and the Federal Trade Commission once or twice.

Mr. BREED. Did you ever hear about the Government having at the conclusion of the war a large surplus stock of canned goods—tomatoes?

Mr. GILLASPIE. Yes, sir.

Mr. BREED. Do you know about how large that stock was?

Mr. GILLASPIE. Well, I think I know. My opinion may be different from some others. I claim it was about six million cases.

Mr. BREED. Now, those 6,000,000 cases were offered for sale by the Government immediately after the war, were they not?

Mr. GILLASPIE. Yes, sir—well, I would say in something like a few months after the war—some of them, not all of them. They were offered along for several months.

Mr. BREED. And the sale of the entire lot has not yet been completed?

Mr. GILLASPIE. I think so; all that is any good. I don't think what they have got is any account.

Mr. BREED. Well, in your opinion, did the offering of those 6,000,000 cases by the Government have any effect upon business being rotten in the tomato or canned goods line?

Mr. GILLASPIE. Oh, yes; that would have the effect of lowering the price of tomatoes; putting that many cases upon the market at one time would have the effect of causing the price to decline, and we did not expect anything else. But we do not consider that right now there is a normal amount of canned tomatoes on hand. Take the amount on hand now; it is less than the average at this time of the year for the last ten years.

Mr. BREED. How many wholesale grocers did you use to sell your pack to prior to 1920.

Mr. GILLASPIE. Well, I reckon I have on my books about 60 or 75.

Mr. BREED. Have any of them gone out of business in the last two years?

Mr. GILLASPIE. Well, very few. I can only recall some one or two that have gone out of business, but very few—not in the last two or three years.

Mr. BREED. What did these wholesalers do with your goods after they got them?

Mr. GILLASPIE. Well, they did this. I sold McCord, Stewart & Co., Atlanta, Ga., as high as 34,000 cases of tomatoes one year—

Mr. BREED. Were those futures?

Mr. GILLASPIE. Futures. I could not sell those people two cars at a time now. They have, I consider, ceased to be legitimate distributors of canned goods, but are more on the order of a peddler. I sold the other day in Richmond to five jobbers a carload of tomatoes. Usually I would sell those people a car each, but they would only buy a pool car. Five of them went in together and bought the car.

Mr. BREED. What I mean is this. The wholesaler used to sell your goods to the retailer?

Mr. GILLASPIE. Sure; well, he does that now.

Mr. BREED. And the retailer sold them to the consumer?

Mr. GILLASPIE. Yes.

Mr. BREED. Is it to the interest of the wholesaler to carry all the goods that the retailer advises him the consumer wants to buy?

Mr. GILLASPIE. Well, I don't know whether—

Mr. BREED. Suppose I change my question to make it a little more clear. Whoever distributes canned goods can not sell any more than the people want to buy, can they?

Mr. GILLASPIE. Well, they can not, but you have got to keep those things before the customer for him to buy them. Now, if you will pardon me, I have a factory at Lynchburg, Va., and I have canvassed that town for the last nine months, and the jobbers tell us right in our face that they will no longer

carry canned goods. They say, "You have got to carry them yourselves; we used to do it, but we are not going to do it any more." Sometimes they get entirely out. You have got to keep those things before the consuming public to get them to buy them. They will substitute something else if you don't. It was to the advantage of the meat packers when they were distributors of canned goods, that they kept them before the consuming public all the time. I do not believe the consumption of canned food is as great as it was two or three years ago.

I am now manager of a lithograph label plant, and I travel over about eight States. I find this condition where I have to visit the packers of different fruits and vegetables, and they tell me that they can not sell their stuff. In the last three weeks the sweet potatoe canners in the South have closed their factories, practically every one of them. There is no overproduction in canned sweet potatoes; the jobbers simply won't buy them. The jobbers claim they have no money, but I notice they buy other stuff when they want to. Pine-apple is very high, but they are buying it, all that they can get.

There has been an antagonistic spirit between the canner and the jobber for the last two years that ought not to have existed. But it does exist, and it is very strong in my State and in the States in which I cater to the trade in canned fruit.

Mr. BREED. You say that some of the jobbers that you used to sell through told you that they were not able to buy these goods? Is that right?

Mr. GILLASPIE. No; they don't say that. I say that is also argued, but the statement I made just now—in Lynchburg they said, "We are not going to carry canner goods now; you have got to carry them yourselves."

Mr. BREED. From whom did you get the argument that the jobbers were not financially able to buy now?

Mr. GILLASPIE. Oh, I have heard them make that statement myself. I visit them every month, and I see them in different places and talk to them.

Mr. BREED. Now, this antagonistic spirit which you refer to—do you not think it is due to the fact that some of the jobbers dealt with did not wish to buy in advance?

Mr. GILLASPIE. Well, no; I do not think it is altogether that. You know we have had several incidents, which you are well aware of, that have developed in the last two years on certain things—on future contracts for one thing. You know there was a big fight for two or three years over future contracts. Then you come up to the inspection proposition, and there was a big fight over that. I never was an advocate of that. Different things, I think, have created some of this antagonistic feeling.

Mr. BREED. Would you think it would be well to turn the distribution of canned goods over to the packers?

Mr. GILLASPIE. I think it would be the greatest thing in the world to the consuming public to give them the right to distribute canned goods as any other legitimate distributor—and I consider that they are one, and the most logical branch that I know of.

Mr. BREED. Did you ever sell to the packers?

Mr. GILLASPIE. I sold to the packers when they were buying canned goods, but not heavily.

Mr. BREED. Did the packers use to enter into future contracts with you?

Mr. GILLASPIE. Yes, sir. I have a gentleman with me who will tell you something about that, who did sell to the packers very heavily.

Mr. BREED. Did you rely upon these future contracts largely to finance your business?

Mr. GILLASPIE. Absolutely.

Mr. BREED. You relied upon it?

Mr. GILLASPIE. Yes, sir.

Mr. BREED. Do you not think it is very necessary for the packer to do his business on future contracts?

Mr. GILLASPIE. Do I think it necessary? Well, it can not be done in my territory where we operate without we sell futures.

Mr. BREED. You sometimes sell futures?

Mr. GILLASPIE. Yes.

Mr. BREED. As a matter of fact, as a canner, you help the growers, do you not?

Mr. GILLASPIE. When we make a contract with the growers for their raw product we advance them money all along from the time the contract is made in February or March until the goods are delivered to our factory.

Mr. BREED. And prior to that time you have already made your future contracts?

Mr. GILLASPIE. I have sold, as a rule, about 60 to 75 per cent of my normal output.

Mr. BREED. And it was upon the credit of the future contract that you were able to advance money to the growers, was it not?

Mr. GILLASPIE. Sure. I would not have done it without I had.

Mr. BREED. And you thoroughly approve of that system?

Mr. GILLASPIE. Of selling futures?

Mr. BREED. Yes, sir.

Mr. GILLASPIE. I certainly do. I think it is the only salvation of the business, regarding the small packer. The large packer probably can get through without that, but the small packer can not. And there are so many small packers that it is going to cripple the canning industry when they are cut off. It will cut down the production of canned fruit, I think—I may be wrong—50 per cent.

Mr. BREED. What would?

Mr. GILLASPIE. If they can not sell futures.

Mr. BREED. In other words, you disapprove of letting the packers enter the business on the theory of doing business on a commission basis?

Mr. GILLASPIE. Why, I have not ever given that phase of it any study. I would rather see them enter the canned fruit field just like the jobber is handling it. I have never given the commission basis any study, and I don't know. I could not answer that now.

I might say for your information that I have also been a broker at one time, and I have also been a wholesale grocer at one time, and I do think I know a little about the business.

Mr. BREED. You know some of their troubles?

Mr. GILLASPIE. Well, I know some of their troubles. When this matter one time was brought up before our association——

The CHAIRMAN. Was that the grocers' association?

Mr. GILLASPIE. Yes, sir—of Virginia.

Judge HAINER. How large an association is that?

Mr. GILLASPIE. Well, we have about 500 members in our association. Well, we have in the State of Virginia about 500 canners, but they are small. The factories of Virginia are small. We have in my county 125 factories. Out of those 125 factories only 40 operated last year.

Judge HAINER. What county is that?

Mr. GILLASPIE. Bedford. In Bedford, Roanoke, Botetourt, and Franklin Counties we have about 400 canners.

What I aimed to state just now was this. The matter came up in our association at one time when this matter was first being agitated about their doing the handling of the canned goods, and I was not very strong about their continuing to handle them, because I never had any trouble about selling my own goods, futures, to the jobbers. Up to that time we got along fine, and I could dispose of them, and I thought if the jobbers could handle them like they should I had no objection. But I do know in the last two years what I have been up against.

Mr. BREED. But you also know some of them have been up against it pretty hard themselves, too, do you not?

Mr. GILLASPIE. Oh, yes; I know that.

The CHAIRMAN. Mr. Gillaspie, you say you are familiar with the canners of your State?

Mr. GILLASPIE. Yes; I think I am.

The CHAIRMAN. Have you talked with very many of them about the modification of this decree?

Mr. GILLASPIE. I reckon I have talked with about half of them.

The CHAIRMAN. What are their views?

Mr. GILLASPIE. I have talked with half of them, I think—not in the last few weeks, but in the last few months—and I have not talked with one but talked enthusiastically of the big meat packers; they want them coming back on the market and buying canned goods once more.

The CHAIRMAN. You say you have traveled over eight States?

Mr. GILLASPIE. Yes; to the people I visit, selling labels.

The CHAIRMAN. Have you talked with those people to any extent?

Mr. GILLASPIE. Outside of Tennessee and Virginia, not much. When I go to see a person it would be strictly on business, and sometimes I talked a little, but not much, outside of those two States.

The CHAIRMAN. What do you say about the attitude of the people in Tennessee?

Mr. GILLASPIE. The people of Tennessee—I have not conversed with any half of them, but those I have conversed with seem to be largely in favor of it. Stokely Bros. are the second largest cannery in Tennessee. Three of us own a factory in Tennessee which is the third largest; we call it the Columbia Canning Co. Stokely Bros. are the second largest in the State. I could not tell you how they stand; I have not talked with them. But the majority I have talked to favor the modification of this decree.

The CHAIRMAN. Mr. Gillaspie, it has been stated here that the wholesale grocers have attempted to influence the attitude that the cannery should take on this modification of the consent decree; do you know anything about that?

Mr. GILLASPIE. I think absolutely they have.

The CHAIRMAN. Do you know anything they have done to do that?

Mr. GILLASPIE. Well, the association tried to get me to take up with the department here, and use my influence with my Senators—and to tell you the fact, I am a little of a politician up in my State—and with my Congressman, and do anything I could to keep this decree from being modified. I even had brokers throughout the State to write me, which I knew when it came where it came from, asking me to use my influence in this respect. And I tell you what I believe, though you may take it for what you think it is worth, I don't no more believe that the cannery of the West could have reversed themselves from an honest, broad opinion of the wholesale grocers than I have of flying to Heaven this night. I know the cannery too well.

Mr. BREED. Didn't you say, yourself, a moment ago that you would not have had any trouble with the wholesale grocers if they had continued to buy futures?

Mr. GILLASPIE. I haven't had any trouble with them no more; only I can not get them to buy goods.

Mr. BREED. You can not get them to buy futures?

Mr. GILLASPIE. No; when the price goes down—this is a meat packer; I don't know of a single instance where you sold to a meat packer when the price went down that they refused to accept the goods. I have had trouble with the grocers. I have shipped as high as 22,000 cases of tomatoes and never had but a few straight-out rejections.

Mr. BREED. Most of those were sold to the wholesale grocers?

Mr. GILLASPIE. Most all; maybe 30 or 40 cars sold to the meat packers.

Mr. BREED. You were asked about the influence of the wholesale grocers. When did you first learn of this modification that is proposed?

Mr. GILLASPIE. Oh, I knew it was on; that is, this matter was going to be brought up—that is, I thought it would be—for the last two or three months. These love letters I have been getting have been for the last two months, and telling me what great friends they were to the packers, which I must say, that is my channel of distribution now. I may be cutting my head off for coming here, but I can't help it.

Mr. BREED. I think your statement is very fair. I would like to ask you if you have talked with or have seen Mr. Campbell?

Mr. GILLASPIE. I had one letter from him. I do not know the gentleman, and never saw him. I would like to see him. I never met him. His statement, you know, when they wouldn't let him speak in Chicago until after the vote was taken—his statement appeared to me very frank and very honest.

Mr. BREED. You have heard a good deal then about Mr. Campbell?

Mr. GILLASPIE. Not so much. Some. I have, too, in reading all the canning papers.

Mr. BREED. And his statement—

Mr. GILLASPIE (interposing). How is that?

Mr. BREED. You have read his statement?

Mr. GILLASPIE. I have not read so much of his statement. I won't go into personal affairs here, but I could mention some instance that happened with one of the wholesale grocers that made such a strong speech there.

Mr. BREED. Did you attend the convention?

Mr. GILLASPIE. No, sir; but I know these things.

Mr. BREED. You know them by long distance?

Mr. GILLASPIE. I know he rejected goods from me, and it was—

Mr. HERSCHER (interposing). Mr. Chairman, when Mr. Gillaspie is through, I would like to answer some of his statements.

The CHAIRMAN. You will be given permission at the proper time to answer any statements.

Mr. HERSCHER. He is referring to me, and I can take care of myself.

The CHAIRMAN. You will be given an opportunity at the proper time to answer any statements.

Mr. BREED. Were you referring to him, Mr. Herscher?

Mr. GILLASPIE. Mr. Herscher rejected some goods of mine, which he had to pay for later. He reported to me on one car that he had 50 cases of leaks and swell, and when they came back to me they could only find 20. And then he wrote to know whether I wanted the empty cans back, and I told him I wanted everything that was rejected, and I got only 20. So a man that says that he had 50 cases of rejected goods, he ought to know whether there are 50 or 20.

The CHAIRMAN. How does this condition that you say now exists affect the grower and producer?

Mr. GILLASPIE. Well, the grower will not be able to grow tomatoes in our State. He can not get contracts to grow them.

The CHAIRMAN. Why is that? Because he can not get distribution?

Mr. GILLASPIE. We can not get distribution. I have with me, in my party, a tin-can manufacturer who will tell you about it; he can not sell cans.

Mr. BREED. And you can not get distribution because of this decree?

Mr. GILLASPIE. I didn't say because of this decree. I think we would be selling futures like always if the meat men had not been taken off the market.

The CHAIRMAN. Have you any questions, Mr. Daily?

Mr. DAILY. Yes, Mr. Chairman, there are a few questions I would like to ask. Mr. Gillaspie, in the course of your testimony you stated that you were at one time in the brokerage business?

Mr. GILLASPIE. Yes, sir.

Mr. DAILY. Where were you located?

Mr. GILLASPIE. Located at Thaxton, Va.

Mr. DAILY. Under what name did you operate?

Mr. GILLASPIE. J. W. Gillaspie & Co.

Mr. DAILY. What was the name of the exchange in Virginia which handled tomatoes during the Food Administration?

Mr. GILLASPIE. The Virginia Cannery Exchange. I was president of that and helped to organize it, but had no connection with it while the war was going on.

Mr. DAILY. How did they market their goods?

Mr. GILLASPIE. The Virginia Cannery Exchange were straight-out brokers, and never handled any differently.

Mr. DAILY. Was their license revoked by the Food Administration?

Mr. GILLASPIE. I understand they did have some trouble, but it was reinstated after a few days. I was not connected with that.

Mr. DAILY: You were not connected with that?

Mr. GILLASPIE: No, sir.

Mr. DAILY: Was that, or was it not, connected with a transaction in which the Emery Food Co. was mixed up?

Mr. GILLASPIE: Yes; that is what I understand.

Mr. DAILY. What was your answer?

Mr. GILLASPIE: I understand it was.

Mr. DAILY: The Emery Food Co., do you know who they were?

Mr. GILLASPIE. Why, I don't know. I understand that they were practically owned by Libby, McNeill & Libby, but they bought out this company and operated in that name. That is all I know about it.

Mr. DAILY. Mr. Gillaspie, you said that you were interested in selling lithographing matter?

Mr. GILLASPIE. Yes, sir.

Mr. DAILY. Is there any other business in which you are interested?

Mr. GILLASPIE. No, sir; not very important.

Mr. DAILY. Well, I mean to bring out this: I want to get your opinion as to general business conditions. Were you interested in coal, for instance?

Mr. GILLASPIE. I have some stock in some coal land; yes, sir.

Mr. DAILY. How has that business been?

Judge HAINER. How is that material? We can not go into that here.

Mr. DAILY. If it please your Honor, my object in putting that in is to show that the canned food industry is no different from any other whatever, or is not suffer-

ing any worse. I wanted to show whether the meat packers were any more responsible for food than coal. I am willing to accept your Honor's decision on the point.

The CHAIRMAN. I think it is pretty argumentative, to say the least, Mr. Daily. Mr. DAILY. Very well; I will not press the question.

The CHAIRMAN. We all know that business has been pretty bad, and we all know that the packers haven't much to do with the coal business yet.

Mr. DAILY. The statement made by you, Mr. Gillaspie, that your pack consists of 140,000 cases in 1920, produced in 14 plants; do you own all those plants, Mr. Gillaspie?

Mr. GILLASPIE. I am interested in all of them.

Mr. DAILY. Will you kindly describe the nature of those plants; are they large or small plants?

Mr. GILLASPIE. They could not be large, having 14 plants; I consider a large plant in these States would can 25,000 to 40,000 cases; so they are not large.

Mr. DAILY. What would be the average production of these 14 plants; they would average how many cases per plant?

Mr. GILLASPIE. That would be an average of 10,000 cases. But they averaged from 5,000 cases to 30,000 cases in some.

Mr. DAILY. Mr. Gillaspie, are any of those plants conducted on the farms where the tomatoes are grown?

Mr. GILLASPIE. No, sir.

Mr. DAILY. You say there are 500 canners in Virginia?

Mr. GILLASPIE. I think there are that many and probably more, or right close to that.

Mr. DAILY. And you have talked to 50 per cent of those in some few months back?

Mr. GILLASPIE. Yes, sir.

Mr. DAILY. Did you ever talk with F. D. Bolton, of Fincastle, on this subject?

Mr. GILLASPIE. Yes, sir.

Mr. DAILY. Where does he stand?

Mr. GILLASPIE. From all I have heard him make a statement, and every time he has made a statement, he has stood for the meat packers to remain and continue to buy canned food.

Mr. DAILY. How would you say your association stood as a whole on this subject?

Mr. GILLASPIE. I never heard a man express himself opposing the meat packers handling the goods, so everyone that I talked to favored it. When we had our meeting of the executive committee, which is composed of 20 some members, there was not a dissenting voice on the committee, but they voted in favor of the letter which they sent to you [indicating the Chairman].

Mr. DAILY. Mr. Gillaspie, are you familiar with the total pack of canned foods in the country in 1914?

Mr. GILLASPIE. No; I don't know what it all amounted to.

Mr. DAILY. Or in 1919?

Mr. GILLASPIE. I can tell you in those years what the tomato pack was, but I could not give you—

Mr. DAILY (interposing). Do you know the total pack of all kinds of vegetables and fruits in the State of Virginia in 1914 and in 1919?

Mr. GILLASPIE. No; I don't know all kinds. We do not pack practically anything in Virginia but tomatoes. We pack some sweet potatoes down on the Eastern Shore, but very little anything else is packed in Virginia to amount to anything.

Mr. DAILY. Let me put it this way: I have before me figures which we have culled from the United States census reports for 1914 and 1919. This is the report of the United States Census, the Division of Manufactures, canning and preserving. They show that in 1914 in Virginia there was a pack of 14,774 cases of string beans, 12,660 cases of lima beans, 1,584 cases of corn, 17,540 cases of peas. And then 133,463 cases of sweet potatoes, 1,025,447 cases of tomatoes, 434 cases of okra and tomatoes, 22,656 cases of apples, 7,140 cases of blackberries. And in 1914, no figures were given for either cherries, peaches, or pears. And in 1914 the figures are given as 7,429 cases of oysters, making a total pack of all kinds of fruit and fish in 1914 of 1,246,127 cases. The total, without taking your time to read it all, in 1919, the total, not going over each one of these items, outside of the fact that your tomato pack de-

creased from 1,025,447 cases to 860,800 cases, and your sweet potatoes increased from 133,463 to 155,038, your total was 1,168,220 cases.

Mr. BREED. For 1919?

Mr. DAILY. That is the report for 1919 and 1914. Now, the same census report gives the pack of all products excepting milk and meats in the United States, in 1914, at 98,925,000 cases; and in 1919 at 98,912,000 cases. And, figured on that basis, Virginia's production in 1914 was 0.01274; and in 1919, 0.01174, and possibly a little over. In other words, is it true, or is it not true—of course, we can not go back of the Government records—but, are you aware of the fact that the State of Virginia's record in the whole pack is approximately a little over 1 per cent; in other words, 0.01174?

The CHAIRMAN. Just what difference does that make?

Mr. DAILY. I want to show—

The CHAIRMAN (interposing). Even if they pack only 10 cans, they have a right to say how they feel about it.

Mr. DAILY. That is true.

Mr. GILLESPIE. We do not pack anything much but tomatoes.

Mr. DAILY. My only object in putting that in was to show the relative importance of the State of Virginia to the whole industry in asking for a change so vital.

The CHAIRMAN. It may go in the record for that purpose, but I do not think there is anything that the witness need answer in that connection.

Mr. DAILY. It does not change his status at all, but I wanted to get in the record the relation of the State of Virginia to the whole industry.

The CHAIRMAN. We will be very glad to have it in the record for that purpose.

Mr. DAILY. Then, if I may, I will ask to put these figures in the record.

The CHAIRMAN. They may go in the record for that purpose.

(The figures referred to are as follows):

Pack of all products, excepting milk and meat, for the State of Virginia, for the years 1914 and 1919.

[Reports of United States Census of Manufactures, Canning and Preserving.]

	1914	1919		1914	1919
String beans.....	14,774	14,286	Blackberries.....	(¹)	1,812
Lima beans.....	12,660	(¹)	Cherries.....	(¹)	12,121
Corn.....	1,584	970	Pears.....	(¹)	12,077
Peas.....	17,540	(¹)	Oysters.....	77,429	(¹)
Sweet potatoes.....	133,463	155,038	Roe.....	(¹)	14,808
Tomatoes.....	1,025,447	860,800	Total.....	1,246,127	1,168,220
Okra tomatoes.....	434	(¹)			
Apples.....	22,656	94,075			

¹ Figures not shown.

Total pack of all products, excepting milk and meat: 1914, 98,925,000 cases (approximately); 1919, 98,912,000 cases (approximately). Virginia: 1914, 1,246,000 cases (approximately); 1919, 1,168,000 cases (approximately). Virginia's per cent of total pack: 1914, 0.0127; 1919, 0.0117.

Mr. DAILY. I don't know that there is anything else I want to ask, Mr. Chairman.

Mr. BREED. May I ask just one question, then?

The CHAIRMAN. Yes.

Mr. BREED. Do the canning factories in Virginia have to pass an inspection?

Mr. GILLASPIE. Oh, yes; we have a State inspection, and also a national inspection, too.

Mr. BREED. A national inspection by what?

Mr. GILLASPIE. By the National Government; they have their men sent there by the National Government also.

Mr. BREED. During 1920, did all of your factories pass inspection?

Mr. GILLASPIE. Yes; I never had one questioned; never have had one questioned.

Mr. BREED. In 1921, too?

Mr. GILLASPIE. I did not operate in 1921.

Mr. BREED. That is all.

The CHAIRMAN. That is all then, Mr. Gillaspie. We thank you very much. Now, we will hear the gentleman who is with you.

Mr. GILLASPIE. I will ask you to hear Mr. Gillian.

The CHAIRMAN. Very well, we will hear Mr. Gillian.

STATEMENT OF MR. R. A. GILLIAN, MONTVALE, VA.

The CHAIRMAN. Mr. Gillian, what is your full name?

Mr. GILLIAN. R. A. Gillian.

The CHAIRMAN. And where do you live?

Mr. GILLIAN. Montvale, Va.

The CHAIRMAN. What business are you engaged in?

Mr. GILLIAN. Cashier of the Bedford County Bank, at Montvale, Va.; and I can tomatoes.

The CHAIRMAN. Whom do you represent here; yourself or some one else?

Mr. GILLIAN. I represent myself and the R. A. Gillian Co., and a good many others in my section who have asked me to express their views when I came up here.

The CHAIRMAN. You may proceed in your own way.

Mr. GILLIAN. I have been in the canning business for 11 years, myself, and in close touch with the canners in my section that ship most of their tomatoes. And prior to the ruling that barred the five packers from buying tomatoes we had practically no trouble in our shipments. I never knew a shipment consigned to one of the packers that was ever rejected. I never knew a future contract for tomatoes that the whole contract was not taken. I never knew a time that our factories were glutted with canned goods throughout the entire year up until the packing season came the next year, until this ruling was made.

It is immaterial to us canners in my section who handle the canned goods, as long as they are handled, but we feel it is just as much of a monopoly for the wholesale grocers to have entire control of the canned goods as it is for the packers, and more so.

The packer is a farmer, mostly, in our country, with a good deal of real estate behind him, with not a great deal of money.

The CHAIRMAN. You mean the vegetable packer?

Mr. GILLIAN. Yes; and he lives in a section of other farmers, and he has a market for their product. He will let the contract in the spring of the year for so many acres of tomatoes at such a price, and he is compelled to take those tomatoes when the time comes to deliver them at that price. And he usually sold from 50 to 75 per cent of his pack on future contract, which enabled him, when the fall of the year came, the settling day, which has almost always been set as November 20, to pay his growers, the tin people, and the labor account, and any other incidental expenses necessary to canning.

In the last two years he will go to the man who will contract naturally for four carloads of goods, and about the time that he gets to packing, or during the packing season, he can sell only one car. The other three cars, if that man has got no contract, the packer has got to carry him. During the winter time—we have no frost-proof warehouses—our goods become frozen, and the roads become impassable, and it is practically spring before he can sell any of his goods. And then it comes along to June and July, with the goods in his house, and probably he can not sell them then. As I say, it is immaterial to us who handles these goods, so long as they are handled. It has never been that the market has been glutted; there has been no surplus on the market, but now the goods are in the packer's hands, who had not been heretofore forced to carry the surplus. It was not fear they had, in any sense of the word, but most of them, on account of their poor houses, have shoved these goods on the market at any price they could get.

I have many friends and relatives in the wholesale grocery business, and I have the utmost respect for them. But if the condition of the past two years was continued for some time it will practically wipe out our county, which in 1920 packed more goods than any county in the United States. It is the source of the greatest distribution of money of any business we have.

We have about 500 packers in our State; 500 in the State, and last year practically all of those people were out of business. There was only a small per cent ran in our county. The five factories that I was interested in packed more goods than all the rest of the packers in the country. We packed 5,000

cases at one place, and we have 5,000 cases; we packed 6,600 cases at another place, and we have 8,600 cases. We packed 5,000 at another place, and we have 3,000 cases of those. We packed 5,000 at another place, and we have 3,000 of those. We sold a few cases this year, but they were 1920 packed.

We have wholesale grocers who will offer contracts to ship in 30, 60, or 90 days. I have contracts offered me now to accept for January, February, and March shipment, which is not at all plausible or profitable for us to accept.

I never came up here to argue for the packers or against the National Wholesale Grocers Association, or any other association. It is immaterial to us who handles these goods, and who does this business, but we feel we are absolutely being put out of business under the present conditions. I know business is bad. I was in the bank that had to take care of these people to keep them from being sold out of business. I know all about it. But nowhere was business so bad as in the canning business in Virginia. And it is ultimately coming down to rest on the producer. We have people in our State this year that practically have no means for their support. Their land is adaptable to tomato raising; is high arid, rich land, that produces the finest and most abundant crops of tomatoes, and last year they were unable to get sufficient contracts for tomatoes at any price at all, and those tomatoes were the same as in other sections where they were not contracted for, and when canning time came they were lying in the field and rotting. It has affected the producer more than any other man we have. Production has absolutely been cut off in our section.

The CHAIRMAN. Is that all; are you ready for questions?

Mr. GILLIAN. Yes, sir.

The CHAIRMAN. Do you think it would help any if this decree was modified?

Mr. GILLIAN. I was president of the Virginia Cannery Association last year, and I was intimate with and had intercourse with many of the packers, and the gentleman that has been referred to here, Mr. F. D. Bolton, of Fincastle, who represents his county in the State legislature, is emphatic in his expression that it is the only way the problem can be solved.

The CHAIRMAN. Mr. Breed, have you anything to ask?

Mr. BREED. Have you any customers of your bank that are wholesale grocers?

Mr. GILLIAN. Yes, sir.

Mr. BREED. Did you find during the past year or so that they needed help, as well as the canners?

Mr. GILLIAN. I saw that they needed help, but their financial embarrassment should have been borne by themselves and not passed down to the poor packer and the producer on the farm.

Mr. BREED. The packer did not pay any of the wholesale grocers' bills?

Mr. GILLIAN. I know; but he said he couldn't get the money to buy them, and you couldn't sell them to anybody else.

Mr. BREED. Of course, the modification of this consent decree would not put the wholesale grocer in position to buy in 1921, when he did not buy in 1920, would it?

Mr. GILLIAN. It would probably put somebody else in position which did have the money to buy, which would have been the case.

Mr. BREED. Then your wholesale grocer customers in your bank were also hard pressed?

Mr. GILLIAN. Necessarily, in this business; they stood deflation and got caught with the prices.

Mr. BREED. Did you have any trouble in your bank with losses sustained by wholesale grocers on sugar?

Judge HAINER. I do not believe that is material, going into the bank's business.

Mr. GILLIAN. I never lost a dollar in my bank at all.

The CHAIRMAN. I don't think it is proper to ask about the customers of the bank.

Mr. BREED. But we are talking about—

Judge HAINER (interposing). Is it the purpose of your question to ask about the accounts of the bank's customers?

Mr. BREED. I don't think it is. I think, however, it is quite material, when a witness comes here and testifies that the canning industry was put out of business because the wholesale grocers did not buy under contracts, to show what condition the wholesale grocers of the country were in at the time they were unable to enter into future contracts.

Mr. HALL. I think he was testifying as to the canners.

Mr. GILLIAN. I am willing to answer any questions the gentleman asks.

Mr. BREED. All I want to ask is, if the wholesale grocers were not equally affected by the financial depression with the canners in your section?

Judge HAINER. We ruled on that.

Mr. BREED. What was that?

Judge HAINER. I think it was clear.

Mr. BREED. You mean——

Judge HAINER (interposing). I thought it was an improper question.

The CHAIRMAN. I think we should not ask him anything that affects the relation of his customers and himself.

Mr. BREED. No.

Mr. GILLIAN. They were not interested the same way, because the wholesale grocer had a market unrestricted for anything that he could sell, and the canner was not allowed to sell his stuff through him.

Mr. BREED. If he could not sell canned tomatoes, you wouldn't blame him for not buying them, would you?

Mr. GILLIAN. He should not keep anybody else from buying. That is too much like a street car strike. "You can't put anybody else on."

Mr. BREED. The wholesale grocer has not said that.

Mr. GILLIAN. He has brought about a ruling that made it so.

Mr. BREED. What ruling do you refer to?

Mr. GILLIAN. The packer is barred from buying and handling canned tomatoes.

Mr. BREED. Have you been informed that the wholesale grocer brought about that decree?

Mr. GILLIAN. I have not been informed, but it seems they are very much interested in it.

Mr. BREED. That is the only basis for your conclusion that they have barred the packer from the business?

Mr. GILLIAN. Never, at all, because I never heard a wholesale grocer express himself in any way only he wanted them off the market.

Mr. BREED. I am trying to get at the basis of your statement that the wholesale grocer barred the packer from this business.

Mr. GILLIAN. I did not mean the wholesale grocer barred him; he was barred by the decree——

Mr. BREED (interposing). Do you know that the United States Government brought suit against the packers, and that the packers, themselves, consented to go out of this business?

Mr. GILLIAN. I knew they brought suit, but usually these suits have a great deal behind them.

Mr. BREED. And do you know that the packer, himself, consented to go out of these unrelated products?

Mr. GILLIAN. It seems he isn't much interested now; I haven't heard much from any of them.

Mr. BREED. I just want to ask you again if you knew they had consented to it?

Mr. GILLIAN. I knew that they reached a conclusion, and this was the result of it, I suppose. But what was bearing on the matter, I never went into.

Mr. BREED. You did state, however, that you never knew a glut of canned goods in the canning factories until this ruling?

Mr. GILLIAN. No, sir.

Mr. BREED. Did you state that?

Mr. GILLIAN. Yes, sir.

Mr. BREED. And that is a fact?

Mr. GILLIAN. It has been the fact ever since.

Mr. BREED. And you attribute this glut to the fact that this decree was passed?

Mr. GILLIAN. I don't see anything else that was instrumental in it at all.

Mr. BREED. And it is upon that theory that you recommend a modification of the decree?

Mr. GILLIAN. I most earnestly recommend a modification, and allow anyone who wants to deal in canned goods legitimately to buy them. I think we are legislated against when we have to sell our production to one class of people. It makes us dependable on them, and on that one market and almost gives them power to name the price. It bars any competition whatever.

Judge, I would say that putting the canners out of business in Bedford County, is a very small matter, in comparison to the hundreds and hundreds

of farmers that you took a livelihood away from, and the only means of profitable operation of their farms.

The CHAIRMAN. Have you talked with those farmers?

Mr. GILLIAN. My bank covers practically half of the county, and nearly every one of those farmers are stockholders in my bank, and I see them, some of them, nearly every week, and nearly all of them two or three times a year.

Mr. BREED. And do you think that all those canners that you have talked with believe that this decree has caused the glut of canned goods in their section?

Mr. GILLIAN. Many of them sold directly to Armour; he bought heavily from them.

Mr. BREED. When?

Mr. GILLIAN. Prior to this ruling.

Mr. BREED. What year?

Mr. GILLIAN. He bought many of them in 1916, and 1915, and 1914.

Mr. BREED. That was during the war?

Mr. GILLIAN. That was before the war.

Mr. BREED. Why didn't he buy in 1919, of the pack of 1920? There was no decree at that time.

Mr. GILLIAN. I suppose they had a good many on hand.

Mr. BREED. This decree was not signed until February, 1920; did Armour buy in 1919, the pack of 1920?

Mr. GILLIAN. Well, the pack of 1920; no. There didn't anybody buy. It has not been bought yet.

Mr. BREED. But he was not barred by the decree from buying long before the decree was consented to and signed.

Mr. GILLIAN. They were given a certain amount of time to get out of business, and a man is necessarily not going to load up.

Mr. BREED. I am referring to the period prior to the date of the decree; why didn't he buy during that period of 1919?

The CHAIRMAN. Was Armour buying in 1919, in Virginia, do you know?

Mr. GILLIAN. I don't remember.

Mr. GILLASPIE. The trouble was then the Government had commandeered our goods, and we couldn't sell them.

Mr. GILLIAN. Armour bought right much goods there. Contracts were signed, and the Government came along and commandeered a certain per cent, and then went up to 45 per cent. I took it up with the Government and told them these goods were sold to Armour & Co., and they wrote me—the depot quartermaster wrote me—to disregard any future contracts we had, and to consider them canceled. Armour wanted the goods. I know some instances I can lead you up to. I know the men, and I have the correspondence. They came to me and I wrote to Armour and told him the circumstances, and he canceled contracts. After the contracts were canceled with Armour & Co., the armistice was signed that fall, and those goods were never sold.

Mr. BREED. And all this relates to something prior to the armistice in 1918?

Mr. GILLIAN. Yes, sir.

Mr. BREED. Were you familiar with the fact that the Government carried a very large stock of tomatoes?

Mr. GILLIAN. Yes; we certainly were.

Mr. BREED. Did you know that the Government offered that stock for sale in 1919, immediately following the war?

Mr. GILLIAN. We knew they not only offered it for sale, but sold it.

Mr. BREED. Do you regard canned tomatoes in the nature of a luxury, or a staple article?

Mr. GILLIAN. They were considered a luxury, but have become a staple.

Mr. BREED. In your opinion, would the existence of this large stock of tomatoes in the hands of the Government, which was offered for sale, have any effect upon the trade buying tomatoes for future delivery?

Mr. GILLIAN. It would have this effect, that they would buy them wherever they could buy them the cheapest.

Mr. BREED. Well, would it have any effect upon the amount they would buy?

Mr. GILLIAN. It can't affect the amount of purchases, because they would buy so many.

Mr. BREED. Well, if there was a large stock of tomatoes hanging over the market for sale, in your opinion would it have any effect on buyers from the canners?

Mr. GILLIAN. Only if they choose to buy from the Government instead of the canners. It would not affect it, only where he would buy them.

Mr. BREED. And you think it would not have any effect on the purchase of a new stock of tomatoes from the canners?

Mr. GILLIAN. Only if they decided to buy from the Government, instead of the canners.

Mr. BREED. Wouldn't that affect the canners then?

Mr. GILLIAN. Yes, of course. But you take the per cent of tomatoes to-day, the number of tomatoes to-day on hand is very limited. Many of the jobbers, and a great many of them wholesale people have a small supply, and yet we haven't any market for them.

Mr. BREED. Have you attempted to sell any future contracts for the year 1922?

Mr. GILLIAN. I haven't thought of beginning on 1922; I have the 1921 pack on my hands, and my houses are full.

Mr. BREED. How many wholesale grocers are there in Virginia?

Mr. GILLIAN. I don't know.

Mr. BREED. How many wholesale grocers did you used to sell to?

Mr. GILLIAN. I sold to both wholesale grocers and to the packers, both.

Mr. BREED. You sold to both?

Mr. GILLIAN. Yes, sir.

Mr. BREED. When?

Mr. GILLIAN. Until the packers stopped buying.

Mr. BREED. When was that?

Mr. GILLIAN. Well, I sold up until the last year—until 1918, I believe I delivered mine to the packers that year, because I had enough with what the Government commandeered above what I had sold. I did not have to cancel my contract. They set a minimum on the commandeering. If a man had a car or two, or a small pack, they took the whole pack. But a large pack, they took 45 per cent of it. I had a large pack, and they took what the Government required of me, and then I filled in addition to that the amount I sold to the packers.

Mr. BREED. Prior to the war, did you have any trouble selling your tomato pack?

Mr. GILLIAN. None.

Mr. BREED. Have you made any attempt to sell any of your future pack to wholesalers, or otherwise, this year?

Mr. GILLIAN. I haven't made any contract; I haven't my contract written for tomatoes. I would not think of entering into a contract for 1922 tomatoes, when I haven't one acre of tomatoes contracted for.

Mr. BREED. With the grower?

Mr. GILLIAN. No.

Mr. BREED. And you always have done business on the future contract basis?

Mr. GILLIAN. I didn't in 1920, because I had no futures sold, and didn't sell but very few of the spots.

Mr. BREED. That is all.

The CHAIRMAN. Is there anything, Mr. Daily?

Mr. DAILY. No, Mr. Chairman.

The CHAIRMAN. Mr. Gillian, have you had any experience with this contention that the wholesale grocers are trying to influence the attitude that the canners shall take on this question?

Mr. GILLIAN. Only as hearsay.

The CHAIRMAN. You do not know anything of your own knowledge?

Mr. GILLIAN. No, sir.

The CHAIRMAN. That is all. We thank you very much, Mr. Gillian.

Now, we will hear the other gentleman who is here with this party.

You may give your name.

STATEMENT OF MR. C. W. GILL, OF THE BEDFORD CAN CO., BEDFORD, VA.

Mr. GILL. My name is C. W. Gill.

The CHAIRMAN. Where do you live, Mr. Gill?

Mr. GILL. In Bedford, Bedford County; with the Bedford Can Co.

The CHAIRMAN. What business are you engaged in?

Mr. GILL. Manufacturing packers' cans.

The CHAIRMAN. Whom do you represent at this hearing?

Mr. GILL. I am representing the Bedford Can Co., but am in favor of the meat packers coming back.

The CHAIRMAN. Just state your contention in your own way.

Mr. GILL. I have only a few remarks to make, and the thing is this: That the can makers in that section sell their cans to the packers, which are small packers, and give until November 1 to pay for them, and that is the way it was before the meat packers were taken off the market, they would have time, by selling futures, to deliver the goods and get the money and pay for their cans. And that is as long as we can carry them—November 1. And they could finance their business by doing that, by selling to the meat packers. But since they have gone off the market they seem to have to hold to the goods longer, and are unable to pay for the cans. And from the present outlook they will not go on the market and can another year; they are not able to finance it, since the meat packers have been taken off the market.

Most of the small packers, a great many of them, sold to the meat packers.

And we have men traveling over North Carolina and Tennessee and Virginia and part of Georgia, and the complaint, from what the salesmen say, is that they can not sell the goods so well since the packers were taken off the market, and some have gone so far as to say they won't can another year, unless the meat packers come back on the market.

And that is about all I have to say, since the others have covered the ground so thoroughly. There is nothing else that I know of.

The CHAIRMAN. Mr. Gill, you stated that you and your representatives covered the canners pretty well in Virginia, Tennessee, North Carolina, and part of Georgia?

Mr. GILL. Yes, sir.

The CHAIRMAN. Could you say what the sentiment of the canners of those States is on this question?

Mr. GILL. Well, the salesmen say that they favor the meat packers coming back on the market. Now, other than that is about all I can say.

The CHAIRMAN. Now, have you talked with them personally?

Mr. GILL. I don't go on the road myself. I stay at the factory. But I have talked with a lot of the packers there in Bedford County that come to the factory.

The CHAIRMAN. What is the sentiment in Bedford County?

Mr. GILL. They are heartily in favor of the meat packers coming on the market again.

The CHAIRMAN. Do you know whether the meat packers own any of these factories?

Mr. GILL. They don't own any, to my knowledge.

The CHAIRMAN. Do you fear that if the meat packers come back into this business again they will obtain a control or monopoly of these institutions?

Mr. GILL. Well, I don't, and I believe by the meat packers coming back it will increase the production. And if they stay off, we do not look for much business, not as much as we would have gotten.

The CHAIRMAN. Do you think that the meat packers, if they come back into this line, that they will get control of the canneries?

Mr. GILL. No, sir; I don't have any fear of that.

The CHAIRMAN. Or of the sources of production, the farmers and growers?

Mr. GILL. No, sir; if I thought so, I wouldn't advocate them coming back.

The CHAIRMAN. Do you care to ask anything, Mr. Breed?

Mr. BREED. When did the meat packers first begin to buy canned goods in the South, Mr. Gill?

Mr. GILL. The meat packers?

Mr. BREED. Yes.

Mr. GILL. Well, I don't know, but I would hear the packers throughout the county say who they would sell futures to, you know. I have been in the business about 14 years, but, as I say, I do not travel. I stay at the factory.

Mr. BREED. Did you ever hear of the meat packers buying these canned goods prior to the war days?

Mr. GILL. How is that?

Mr. BREED. Did you ever hear of the meat packers buying any of these canned tomatoes in any quantity prior to the war?

Mr. GILL. Yes. Well, the packers are small throughout our section. Lots of our trade are small packers, and they would sell a right good per cent of their pack. They wouldn't have very much, to take it all.

Mr. BREED. The packer that I mean is the Chicago packer, the Big Five.

Mr. GILL. The meat packers is what I have reference to.

Mr. BREED. When did you first hear of their attempt to buy canned tomatoes in Virginia in your section?

Mr. GILL. It has been a good while; ever since I have been in the business. I do not recall, but a good while.

Mr. BREED. Just to refresh your recollection, the testimony here given, and the investigations of the Federal Trade Commission show that the meat packers didn't begin to go into the purchase and sale of canned goods until somewhere around 1913 or 1914.

Mr. GILL. It has been several years that they have been on the market, that they have been selling futures to the meat packers and been financing their accounts—well, up to the present.

Mr. BREED. Wouldn't you say they began to buy in quantity during the war?

Mr. GILL. Well, it was before the war, if I recollect right; some time before the war. I don't recollect just what time.

Mr. BREED. Did the canners in your section very generally sell to the packers prior to 1919, or to and through the wholesale grocers and brokers?

Mr. GILL. Quite a lot of it was sold to the meat packers.

Mr. BREED. And they pretty generally sold to the meat packers?

Mr. GILL. Well, I don't know what per cent of them, but a good deal was sold. I didn't keep any tab on how much was sold through them. But all packers that I have any talk with are anxious for the meat packers to come back on the market.

Mr. BREED. Yes, I understand that, but I am asking you if prior to the war the canners in your section generally sold or distributed their product through the wholesale grocer, or the meat packer; which?

Mr. GILL. They sold to both.

Mr. BREED. Both?

Mr. GILL. Yes; that is my recollection.

Mr. BREED. And your idea is that if the packers were to come back into the business that it would increase production?

Mr. GILL. I think it would, yes. I feel satisfied it would.

Mr. BREED. Do you think increased production has anything to do with increasing the consumption of the same article?

Mr. GILL. It seems like to me it would get to the consumer at a less price and probably would increase the consumption of it.

Mr. BREED. That is, the more goods that are packed, do you think that adds anything to the demand or consumption?

Mr. GILL. Well, the cheapness of it, I think, would add some to the demand. I think the less packed there would be the higher it would get to the consumer.

Mr. BREED. How many wholesale grocers are there in your State?

Mr. GILL. I don't know.

Mr. BREED. Do you know anything about the Government having on hand a very large surplus of canned tomatoes following the war?

Mr. GILL. I have only heard it talked of.

Mr. BREED. Did you hear of the Government offering those canned goods for sale generally on the market?

Mr. GILL. Yes, sir.

Mr. BREED. Generally on the market?

Mr. GILL. Yes; I heard it.

Mr. BREED. What?

Mr. GILL. I heard they were offering it on the market.

Mr. BREED. In your opinion, would that have any effect on the price of the goods?

Mr. GILL. At that time?

Mr. BREED. At that time.

Mr. GILL. I think it would.

Mr. BREED. Would it have any effect upon the question as to whether a buyer would care to buy any additional canned goods from the canner?

Mr. GILL. I don't know what effect that would have.

Mr. BREED. Well, if there was a large amount, in volume, of canned tomatoes being offered for sale by the Government, in your opinion would that affect the demand of either meat packer or wholesale grocer for goods from the canner in your section?

Mr. GILL. I except that would check him up some in buying.

Mr. BREED. Are you in the tin business?

Mr. GILL. I manufacture cans out of tin.

Mr. BREED. You do?

Mr. GILL. Yes, sir.

Mr. BREED. I didn't notice that. I am asked to inquire of you what the price of tins was in 1919 and 1920, as compared with 1914?

Mr. GILL. Now, I don't recall just what they were.

Mr. BREED. Was it higher or lower?

Mr. GILL. 1914?

Mr. BREED. Yes.

Mr. GILL. Not knowing, I would rather not say.

Mr. BREED. As a matter of fact, was not the price of tin cans in 1919 and 1920 double what it was in 1914?

Mr. GILL. I think they were higher, but just how much I don't know.

Mr. BREED. In your opinion, would that have any effect upon the demand for tomatoes put up in tins during that period?

Mr. GILL. Well, I think the higher the price of tomatoes are—I think it would have some effect on the consumption of them.

Mr. BREED. You mean the higher the price of tins?

Mr. GILL. The higher the price of the product would go to the consumer.

The CHAIRMAN. If the tin is higher the tomatoes naturally would have to be higher.

Mr. GILL. Yes, sir.

The CHAIRMAN. Are you connected with the meat packers in any way?

Mr. GILL. No, sir.

The CHAIRMAN. They do not own any of your company?

Mr. GILL. No, sir.

The CHAIRMAN. Do you own any of their company?

Mr. GILL. No, sir.

Mr. STEVENS. Do you know whether or not the Government has put any quantity of canned goods on the market at a much lower price than the retailer can sell them during the last few months?

Mr. GILL. I have only heard one broker mention that, is the only knowledge I have of it.

Mr. STEVENS. What did he say?

Mr. GILL. He said there was a shipload of 2's and 3's came over from Europe to this country and were sold to a broker in New York and Richmond at a price—the 2's I remember sold to the wholesaler was at 75 cents.

Mr. STEVENS. A case?

Mr. GILL. A dozen.

Mr. STEVENS. How does that compare, do you know, with the wholesale price?

Mr. GILL. The present wholesale price?

Mr. STEVENS. Yes.

Mr. GILL. They are quoted at 95 cents to a dollar now, but there isn't much being sold at all. There seems to be a lull in the market, and you can't get any sales at any price.

Mr. STEVENS. The consumption has practically stopped?

Mr. GILL. It seems like something has stopped, I don't know.

Mr. STEVENS. May I ask, Mr. Gill, what interest do you represent aside from your own interest as a manufacturer of tins?

Mr. GILL. At present I am in nothing else. My occupation has been a merchant for about 32 years, and I gave that business to my boys a few years ago. But since then I have been connected with nothing but the manufacture of cans.

Mr. STEVENS. What kind of merchandise have you been handling?

Mr. GILL. General merchandise.

Mr. STEVENS. Groceries?

Mr. GILL. No; no groceries; drygoods, clothing, shoes, and so on.

Mr. STEVENS. Are you interested in this hearing, or in this proposed modification as a consumer only?

Mr. GILL. No, sir; I feel like that the meat packers, if they are to be put back on the market, it will increase the production of tomatoes and increase the demand for cans. I am here hoping that the packers will come back on the market so we can find a market for the canned goods and also a market for our cans.

Mr. STEVENS. Well, you think if the packers were now dealing in canned goods that that would stimulate the demand?

Mr. GILL. How is that?

Mr. STEVENS. Do you think if the packers were now dealing in canned goods that that would stimulate the demand?

Mr. GILL. I do; yes, sir.

Mr. STEVENS. Then why does not the Government stimulate the demand when they are selling canned tomatoes at 20 cents a dozen cheaper than the wholesaler can?

Mr. GILL. I don't know what condition the tomatoes were in that were brought back here. I don't know whether they are in good shape when they go on the market or not. Since they are being offered at that price we are not getting any sales for canned goods. Now, the meat packer, as I say, the greatest help—one of the greatest helps—is to help finance it so the small packer can stay in the business. He has been able to sell his goods to the meat packers, and the grocers could—the wholesale grocers and finance his business. But since they are out he is not able to do it.

Mr. STEVENS. Well, do you know anything about the wholesale grocery custom of purchasing canned goods of canners; do you know anything about what they do to help finance the canning industry?

Mr. GILL. If they have done anything I have not heard it.

Mr. STEVENS. You are not really acquainted with it?

Mr. GILL. No, sir.

Mr. STEVENS. Don't know anything about it?

Mr. GILL. No, sir.

The CHAIRMAN. If that is all, we thank you very much, Mr. Gill.

Mr. DAILY. Mr. Chairman, I would like to have permission to put into the record a wire just received in regard to an inquiry made about Mr. Gillaspie. It is from the man who was in charge of that division of the Food Administration in 1918, and really substantiates my idea of the very friendly spirit that the Virginia canners have toward meat packers or their subsidiaries; or, I will put it this way, the close working relations between them.

Judge HAINER. Let me see the telegram, please.

Mr. DAILY. Here it is.

Judge HAINER. That might open up a very wide field of inquiry if you are going to put that in.

Mr. DAILY. This is merely stating a fact.

The CHAIRMAN. Mr. Daily wants to show the friendliness of the Virginia canners to a subsidiary of the packers, the Emery Food Co.

Judge HAINER. It would open up the question of whether or not the license was rightfully revoked.

Mr. DAILY. No; it can be easily proven that the license was provoked.

Judge HAINER. How would that affect the market of the producers or canners?

Mr. DAILY. Not at all except to show that the meat packers are not unknown as customers of the canners, as they had a perfect right to be at that time, but at that particular time they did not have the right to split their brokerage with them. I do not want to go into the question, however, further than is shown by this telegram.

The CHAIRMAN. I think we might as well let it go in for it is worth.

Judge HAINER. All right.

Mr. DAILY. The telegram is dated at Cleveland, Ohio, to-day and is as follows [reading]:

[Western Union Telegram.]

CLEVELAND, OHIO, December 6, 1921.

H. A. N. DAILY,

Care Pouchatan Hotel, Washington, D. C.:

Food Administration, December 10, 1918. Effective 10 days, Virginia Canners Exchange, Roanoke, Va., had its license revoked on charge splitting brokerage with Emery Food Co.

B. W. HOUSUM.

The CHAIRMAN. Who is Mr. Housum?

Mr. DAILY. He was under Mr. Hoover in the Food Administration, having charge of the brokerage division of the Food Administration.

The CHAIRMAN. We will now hear from the next gentleman. What is your name, residence, and business?

**STATEMENT OF MR. PAUL E. KROEHLE, MERCHANDISE FOOD
BROKER, CLEVELAND, OHIO.**

The CHAIRMAN. What official position, if any, do you occupy?

Mr. KROEHLE. I am president of the National Food Brokers' Association.

The CHAIRMAN. Do you represent your organization here in that capacity?

Mr. KROEHLE. I was requested by Mr. Daily to come to Washington, and he was officially appointed as the representative of our association.

The CHAIRMAN. You may proceed with your statement.

Mr. KROEHLE. Mr. Daily suggested that I could possibly help in giving some explanation of the inception and function of the broker.

Way back in the beginning, when food was first imported, it was sold by traveling salesmen. The expense of traveling salesmen, and the fact that they were never in place when wanted proved that that was the wrong system of merchandising, and it was conceived that they might have a resident man at one given point, and then it was shown that even he was a very expensive proposition. To meet that situation they permitted him to take on more than one line.

That situation has gradually grown into the present situation where the broker exists. The broker represents any number of lines, so long as his principals do not object to their confliction.

The CHAIRMAN. Does he ever represent two or more firms or companies engaged in handling the same line of business or the same commodity?

Mr. KROEHLE. Oh, yes. Frequently a large broker may represent 50 people or companies engaged in the same line. There is no restriction in the number unless some packer insists upon limited representation.

Mr. BREED. When you say "packer" who do you mean?

Mr. KROEHLE. I mean canner or food packer. The function of the broker to-day is merely to offer the goods of canners or packers whom he represents, and if he effects sales he is paid, otherwise not. There is no compensation whatever paid to any broker excepting when and if business is consummated by him.

The CHAIRMAN. That is like a sale in the stockyards.

Mr. KROEHLE. It is. And it is near to a profession as could be reached without being a profession.

Judge HAINER. It is the same as any other broker. I mean any broker in any other line of business.

Mr. KROEHLE. Yes, sir. To illustrate the compensation of brokers: In heavy lines like sugar, beans, rice, milk, and many lines of that kind, the broker's compensation is less than 1 per cent. In canned foods, as a general thing, his compensation is about 2 per cent. His only opportunity to make money is in volume.

The thought was conveyed to me that any consideration of a possible modification of the consent decree the meat packers might be permitted to operate in one of two ways: (1) Perhaps on a brokerage basis or a percentage basis; and (2) for export only.

I would like to make mention of a few items along that line.

The CHAIRMAN. In that connection I would say that it has been stated—while we were considering this matter and before we were considering this matter for several years—that perhaps the broker was unnecessary; that he was an unnecessary—

Judge HAINER (interposing). Evil, is what was said.

The CHAIRMAN. Yes; and if you can justify your position we will be glad to learn about it, although I want you to understand that we are not sitting here with critical minds at all toward brokers.

Mr. KROEHLE. I will be very glad indeed to justify the position of the broker, and in that respect I will explain certain details of the brokerage business.

The amount of brokerage charged is entirely within the broker's control, except by reason of the great number of brokers in competition with one another and that the brother broker may work for less. Consequently the rates that brokers are paid are pretty well fixed. One can not get at normal rates of brokerage, because someone else will work less money. A broker could demand almost any amount of brokerage if he were strong enough to carry out his demand and if there were not competition to compel him to do work for less. But that "if" is always there. Territory is unrestricted, except that every jobbing point has local brokers. In other words, competition reduces their territory.

A broker might control the output of a canner or a producer in any line of food if he has sufficient buying capacity. There are no restrictions against the broker, except that he has only a limited capital, he practically has no money, and consequently can not advance the money by which to control the output.

The grand volume of business possible to a broker is unlimited and unrestricted, except by reason of local consumption and the small area covered, and the fact that there are a great number of brokers constantly conflicting and competing. I am trying to bring out that in each of these lines the packers are not allowed to do business if there would be no restriction in area or restriction in compensation as to the business of the broker, except as produced by ability to do business and the competition among brokers and the number of canners and producers.

The area or territory possible to a broker is only limited by his capacity or wealth, and the average wealth of a broker in this country will not exceed \$2,000, and his annual income will not exceed \$2,000 or less, and many of them do business from their own houses, and the possibility of monopoly is consequently very remote.

The CHAIRMAN. He sells his services?

Mr. KROEHL. Yes, sir. It is parallel exactly to the newsboy on the street, who may sell 50 papers or he may sell 500 papers. If the meat packers were permitted to act as brokers, of course, I assume that they would control the food in any line that they might take up. It is my opinion that the meat packers were only beginning to realize their possibilities for world control of food when they were stopped.

I might say right here that they were progressing rapidly toward getting control of the pineapple and asparagus business. Mr. Armour went into the open market to buy control of the Haiku canneries, and if the meat packers were permitted to act only as exporters they would be permitted to buy food and control the markets, because in the market the human element would control, and we need only guess what would happen if the food they purchased represented all the food available and there was no food available for consumption in the United States. That situation is not difficult to visualize.

To my mind a possible modification of this consent decree would cause undreamed-of difficulties—and I mean this particular modification now referred to, to permit them to do business for export only. In that way there is no reason in the world why they could not monopolize the supply; if they could buy for export they could control the supply, perhaps.

Judge HAINER. You mean there would be a danger of their cornering the food supply?

Mr. KROEHL. There is no question about that. They would have the power continuously in themselves to cause starvation or force immediate further modification of this consent decree.

The existing mediums of distribution of food are complete. They are thoroughly competitive. There are about 4,000 wholesale grocers, and, incidentally, there are about 4,000 brokers. It is funny that it comes out as it does, but there is about one broker for every wholesale grocer.

Judge HAINER. Are there not a lot of small brokers?

Mr. KROEHL. Yes, sir. Like Virginia is full of small canners, so North Carolina is full of small jobbers.

The CHAIRMAN. And there are some large brokers?

Mr. KROEHL. Yes, sir; and it is only because of their ability and facilities and service, and so on. I say here that the existing mediums for distribution of food are complete and thoroughly competitive, and they do business at a minimum cost. They prevent any possibility of monopoly, as is illustrated by the fact that there are few large wholesale grocers. There are not 10 wholesale grocers in the United States who do a volume of business in excess of \$10,000,000, and that is practically nothing.

The point I wish to make is that in a difficult situation like that of the last two years anyone suffering is looking for some panacea, and it is the natural thing if one thing will not do we wonder what will do. And the fact that the meat packers consented to cease almost simultaneously with the drop in the market caused certain canners to feel that perhaps that was the cause. But they are only guessing. The cause in my opinion is just the natural finding of its level by the water of business. I might say, if I am permitted—

Mr. DAILY (Interposing). Were not the enormous stocks of the Government released, too?

Mr. KROEHL. There were enormous stocks released by the Government. They were brought back at times, and the public thought they might come back at any unknown time, and naturally it put into the heart of every distributor a fear of an absolute collapse of the market.

I might say that the wholesale grocers' first great loss was in sugar, and that occurred in the spring of 1920, last year. The wholesale grocers of the country then lost millions of dollars. It has been said that the wholesale grocers of this country lost \$300,000,000 in sugar alone. When this tremendous loss faced them they naturally pulled in their horns and said: We must see how we stand before we take a step farther. Before they could find out where they stood, because all wholesale grocers had tremendous quantities of sugar coming to them for five to six months ahead, there came a period of one month, two months, three months, or four months, when there was a cessation of purchases, and the market began to tumble. Of course if there is an entire cessation of buying of any food of any character and some people are forced to sell the market begins to tumble.

Furthermore, the wholesale grocers, speaking of them as a whole, suffered even a greater loss in the fall in price of canned goods than in the loss of sugar. And the loss in sugar was so great that the wholesale grocer feared his solvency, and yet he had to absorb a loss still greater in addition.

You will ask me questions, no doubt, and if I may be permitted to do so, I will anticipate your question as to the wholesale grocers' influence on the canners at Chicago. As president of the National Food Brokers' Association I read a paper there, and at their convention six months before I read a paper, the topic being "The situation as I see it to-day."

And I read very blue paper. I received a very great deal of unfavorable comment on it, and it was a blue paper, I tell you. But the conditions warranted such a paper, in my opinion. On this occasion I read another paper on the same line. Now, in answer to your anticipated inquiry as to whether the wholesale grocers influenced the canners, especially the Western Canners' Association, I want to say to you that I was there and that I was conscious of the whole situation. My paper was wholly on this thought, that there was such a difference of opinion, such a variance of co-interest, of co-sympathy, as between the wholesale grocers and the canners that neither one would longer recognize that the other was an honest man or a good fellow. But that prior to the wholesale grocers' difficulty they were both good fellows; that they confided in one another, and liked each other, and did business. The canners of Virginia sold all their goods to wholesale grocers, almost entirely, and were satisfied. The wholesale grocer suffered a great loss and he took his medicine. He is a proud institution. The wholesale grocer has always been able to take his medicine, and to pay his bills by discount, and so far there have been very few failures of wholesale grocers.

But with the collapse of the market the solvency of practically every wholesale grocer in this country was in doubt. When the 1st of January of this year came their statements were so terrible that they were warned by their bankers to restrict their operations and confine themselves to the lightest possible business so as to conserve. When the 1st of July came around and they took another inventory that inventory showed another terrible loss. At that time there are innumerable instances in this country where bankers' committees were placed in charge of the assets of wholesale grocery houses. And the definite instructions were given, to my knowledge, and this is a concrete situation in my territory, that they could not borrow any more money, that they must reduce their bank loans, and that if the first of this coming January they continued to show a loss, that is, over the inventory of July 1, the probable closing down of their businesses would ensue.

Consequently the 1st of last July all jobbers in my territory and within my knowledge took a very honest inventory. They reduced prices on everything until they were quite sure the market would not go any lower. Almost simultaneously, before their inventories were hardly dry—and it takes several weeks to do the job—there was an appreciation in all kinds of fruits. The result is that in my opinion almost all wholesale grocers will show an inventory on January 1, 1922, that will give a profit in the operation of their business during the latter half of this year; but they will show a loss in the operation of their business for the whole year. There is no doubt about that. I do not think anyone expects to show a profit for the whole year. But I think they will show a profit for the latter half of the year. And then I think the banks will

say to them: "You apparently have worked your way through the storm. Now be careful and proceed."

Mr. Chairman and gentlemen, I want to say to you that in my own territory the inventories of the 1st of this January will not exceed 20 per cent of the inventories of one year ago. Two houses in my territory had inventories one year ago of \$5,000,000 each, of food products of every description. This year each of these houses is under instructions to have its inventory under \$1,000,000.

Now, if you will just consider that situation, how could those men buy foods in the quantities, even approximately, that they used to buy? That will answer the question propounded by our Virginia friend who spoke of five jobbers making up one carload. I might buy a carload of 1's, 2's and 3's Maryland tomatoes for a house in Cleveland which last year did \$18,000,000 worth of business. That merely illustrates that they were buying in the lightest possible fashion, and their only hope was to cause a turnover and yet not increase their stock but permit them to get back their money and reduce their bank loans.

I want to give it as my opinion that there is not a shelf in these United States which has carried in previous years canned tomatoes which does not have on it to-day some canned tomatoes.

Mr. BREED. You are referring now to jobbers?

Mr. KROEHL. I have reference to retailers, not jobbers. The jobbers all carry tomatoes, there is no question about that. But they are not carrying \$15,000 worth, though some have \$1,500 worth. But they have tomatoes, and if a retailer wants tomatoes anyone can buy them.

Just why the demand for tomatoes has ceased to such an ununderstandable extent none of us know. But it is not necessary for a wholesale distributor to have his house filled with 10,000 or 20,000 or 30,000 or 40,000 or 50,000 cans of tomatoes in order to make canned tomatoes sell.

In the situation like the one we have just passed through the canner has suffered, indeed he has. But where he made his mistake was in anticipating another increase in values of food, and it did not come. He just guessed wrong.

But the wholesale grocer, on the other hand, has lost a lot more money than the canner. The wholesale grocer has lost so much money that his entire surplus is gone, and in many instances his common stock is not worth 50 cents on the dollar. But they are functioning just the same, and they will come through if the latter half of the year will reveal a profit so that the banks will again feel they can finance them successfully.

The brokers of this country have no capital. The Paul Kroehle Co. in 10 years has not bought a penny's worth of merchandise; they resell. Yet it has been impossible for us to make money this year, because we could not sell. But we are not discouraged; nor do we think if the meat packers came back to where they were before they would offer any solution to this difficulty.

Now, gentlemen of the committee, I will be glad to attempt to answer any questions.

The CHAIRMAN. Any questions, Judge Hainer?

Judge HAINER. You think it is against public policy, or rather I would say against public interest, to permit the exportation of farm products?

Mr. KROEHL. Do you mean by the meat packers?

Judge HAINER. Yes; or anyone else.

Mr. KROEHL. There is nothing in the world against exporting except the exchange. Do you realize that a can of corn retailing at 15 cents in this country would have to sell at eighty times that price in Germany? If a mark be worth, say, 25 cents, as against \$20, then it is only one-eightieth, and you take a dime of our money and it is worth eighty times that in Germany. How can you in the face of that condition export foodstuffs?

Judge HAINER. What is the extent of the exportation of foodstuffs?

Mr. KROEHL. Right now, do you mean?

Judge HAINER. No; prior to this year.

The CHAIRMAN. Prior to the present situation, I take it you mean.

Mr. KROEHL. Prior to the packers' consent decree I imagine he means.

Judge HAINER. Yes; prior to this decree.

Mr. KROEHL. There was a heavy exportation of foodstuffs.

Mr. BREED. During the war, do you mean?

Mr. KROEHL. Yes, sir.

Judge HAINER. Was there not an exportation of foodstuffs before the war?

Mr. KROEHL. Yes; there were certain products in this country, for instance, apricots in California, 90 per cent of the entire crop was sold in Germany. And there was always a large proportion of the prunes sold over there, but not so much of canned foods.

The CHAIRMAN. Any questions, Mr. Hall?

Mr. HALL. I believe not.

The CHAIRMAN. Did the meat packer use your service to any extent before this consent decree?

Mr. KROEHL. The brokers in Chicago did sell to the meat packers. We in Cleveland did not; that is, my concern did not.

The CHAIRMAN. Do you feel that if the meat packers were permitted to go back into this business there would cease to be a necessity for your services?

Mr. KROEHL. Absolutely, there is no question about that. The situation is this: That if they want something and can not get it in any other way they will buy it through brokers. In other words, if they want something they will get it anyway they have to get it. They bought all their pineapple supply that way to start with but wound up with buying none of it that way. They found some way to absorb the intervening mediums.

The CHAIRMAN. Your theory is that for a while they would utilize the service of the broker but that eventually they would come to such a position that there would be no necessity for the broker?

Mr. KROEHL. Absolutely. And you might put that in another way. There would be no need for the broker to assist them in procuring their supplies, and after getting their supplies they would not need the broker to dispose of them. It is my honest opinion that the meat packer was only beginning to realize the enormous opportunities within his grasp, and that he felt so guilty owing to the fact that monopoly was within his control that he did enter into this consent decree under the circumstances existing.

The CHAIRMAN. You represent as broker a number of canners, I presume?

Mr. KROEHL. Yes.

The CHAIRMAN. Did you ever talk with any of those canners about this consent decree?

Mr. KROEHL. Oh, yes.

The CHAIRMAN. What is the sentiment among the canners with whom you have talked?

Mr. KROEHL. Mr. Chairman, outside of a few canners who have a peculiar thought on the causes of the existing situation, they all say it can not be; that it would mean their destruction, the destruction of the entire fabric of distribution of food products.

I want to say, if I may, that I think at Chicago there were three influences which caused the resolutions committee to pass that first resolution advocating a modification of this consent decree.

Mr. STEVENS. Is that the western canners?

Mr. KROEHL. Yes, sir. In the first place, the chairman of the committee was the representative of the Fremont Kraut Co. On that committee were other men, without mentioning their names, who were—

Mr. BREED (interposing). Why do you mention the representative of the Fremont Kraut Co.?

Mr. KROEHL. Because we know that they were owned by Armour & Co. We knew that unquestionably.

There were three influences, as I have said. There was this first one that I have mentioned. Then there was the influence of these three wonderful men on that committee who said to me it was un-American to refuse the meat packers the privilege of doing what any other company in this country did. Their interpretation of Americanism was their own opinion of the liberty and freedom allowed in this country, and it was not a consciousness of the fact that our interpretation of Americanism must be that exactly as laid down by the laws of this country. Primarily the theory of Americanism is that there shall be no monopoly in this country.

Then the third influence—and I think I am answering the question that you have been asking each one I have heard you question to-day—the third influence was that of pique. The wholesale grocer is so proud and always has been so proud, because money was his middle name, that when he was not able to function as he formerly had functioned, was not able by reason of his financial condition and an unfavorable market, and probably everything else, to order as he had done, he did not come out and tell the real

truth. He thought it was his chance to tell the canner that, by hooky, he was not going to buy futures any more like he formerly did. That statement by the wholesale grocer could not be literally true; the very nature of the wholesale grocery business demands the selling of futures. You can not crowd into a few months the volume which it is possible to have spread over 12 months. Do you follow me?

The CHAIRMAN. Yes.

Mr. KROEHL. But that is what he said. And the canners took him literally. And then this year it was borne out by reason of the wholesale grocer not buying. So the canner said: He said he would not buy, and he has not bought, so he means what he says; and, by heck, we can not finance ourselves, so let us look to heaven—and that is the meat packer of Chicago. It is just a case of the desire in a general sickness for a panacea to meet one's ailments.

In my paper read before the Western Canners' Association, I begged them to remember just a couple of years ago how they got along so beautifully, and how two men, one on either side of the fence, were doing business together, and that they are the same men to-day. I urged them to stop and consider the troubles of the other fellow instead of only thinking of their own troubles.

This is not a case of imagination, Mr. Chairman, but the canner only realized he was in difficulty and could not sell his pack; and, on the other hand, the wholesale grocer only realized that his banker had said: You can not have another nickel, and that he might have to go out of business. And in that situation it was but a case of human nature—each wholesale grocer and each canner was blind to the troubles of the other. He did not care a continental what the troubles of the other were.

But at this convention in Chicago the saner minds in the industry fully realized the conditions confronting them, and had no doubt that within five years if the meat packers were again to reenter the trade and handle these grocery items, they would be put out of business.

Now, the influence of the wholesale grocer of which you speak was there, absolutely, and can you wonder at it? The wholesale grocer said to the canner: Did not we always function? Did not we always get along right? The wholesale grocer was, quite naturally I would say, frightened by the possibility of the reentry of the meat packers into these unrelated lines. It is human nature that the wholesale grocer would say to the canner: If you favor a modification of this consent decree we are both going out of business, and I can prove it.

The CHAIRMAN. So the theory of that Chicago meeting is that as between the canners and the wholesale grocers it was a thought of open confession that was good for the soul.

Mr. KROEHL. It was, absolutely; and it was demonstrated by the retiring of those conference committees, which met and talked over their troubles, and realized they were the same men they had been before, and agreed to bury the hatchet and to fight together this menace which absolutely, without any manner of doubt in anybody's mind, meant an elimination of each.

That it would mean an elimination of the broker is certain, for there would be no place left for him when they get control of this matter; I mean, when the meat packers got control.

To answer your question about the broker, whether or not he is essential, when you consider that if the broker were eliminated the railroads would be clogged and the expense of doing business infinitely increased; and not only would the expense be infinitely increased, but it would be impossible to move goods.

In my paper read at Chicago I said as long as there are independent producers and independent buyers there will be brokers, but when the time shall come that there will be only one producer and only one buyer then there will be no further need for a broker. That would mean the elimination of the wholesale grocer and the elimination of the independent canner.

It is not difficult to conceive, is it, that if Armour & Co. would take over the output of the California Cooperative Canneries—which, incidentally, when they went to them did not mean much, I mean, they did not amount to much, they were inconsequential in quality of production in California; but when they say we must have these fruits and we will finance the opening of various canneries, and you go to it as rapidly as you can, there is a wonderful opportunity for the management of the California Cooperative Canneries. That is a large name, but the business was not much. The vision of the meat packers in Chicago, in the matter of the volume of food which they would require, was so enormous that

it would simply aghast any mortal. When Armour would ask for 1,000,000 cases of choice peaches when there was practically not that many packed in the State of California, they did not know what to think of it. Armour & Co. with their enormous resources could finance anything.

The CHAIRMAN. Any questions, Mr. Hall?

Mr. HALL. Suppose we were to permit them to distribute goods, but keep them out of the canning business?

Mr. KROEHL. Distribute what?

Mr. HALL. Canned goods.

Mr. KROEHL. On the open market?

Mr. HALL. Yes.

Mr. KROEHL. It would be exactly the way it was before the consent decree was entered. He does not have to own if he can buy.

Mr. HALL. That is what you fear?

Mr. KROEHL. No; I merely fear his having control of all things that are for sale.

Mr. BREED. I would like to say in the record, in behalf of the wholesale grocers, that Mr. Kroehle has stated a series of well-known and yet semi-confidential facts with respect to the wholesale grocers' financial condition and their situation in a way that I doubt whether any wholesale grocer could make a better or more honest statement.

I would like also to call attention to the fact, as evidencing the disposition of the banks toward the jobbers of the country, that the Comptroller of the Currency called upon the banks publicly to adopt a policy with respect to insisting upon reduction of inventories, and I will ask Mr. Kroehle if that is not within his recollection?

Mr. KROEHL. Absolutely.

Mr. BREED. I would also call attention to the fact that the bankers have insisted, as the gentleman has stated, that inventories must be reduced, and it not only covered the wholesale grocery line but extended to all other lines.

Mr. KROEHL. Yes, sir.

Judge HAINER. To curtail credit?

Mr. BREED. Yes.

Mr. STEVENS. You stated that if the meat packers were allowed to come back into the handling of unrelated products you thought they could force starvation.

Mr. KROEHL. If they were permitted to operate only in export business, and that was the thought that was particularly conveyed to me in the question, that probably it might result in that. I say if they are permitted to do that they can buy all there is for sale in any line, and if there is nothing left for consumption in this country they can force further modification of the decree.

Now, gentlemen, I thank you very much for this opportunity to be heard.

The CHAIRMAN. The committee is very glad to have heard you.

Mr. BRIGGS. Mr. Chairman, just before you adjourn may I say a word.

The CHAIRMAN. Do you wish to get away?

Mr. BRIGGS. Yes; if you please.

The CHAIRMAN. All right, state your name.

STATEMENT OF MR. W. M. BRIGGS, OF THE GILBERT GROCERY CO., PORTSMOUTH, OHIO.

Mr. BRIGGS. I heard the statement of the Virginia canners about their failure to get a market for their goods, and in reply to that statement I wish to say that during the years 1918 and 1919 these canning machinery men that put up machinery for canning purposes had men going over the States of the North establishing small canneries. One was established in my own county and another one in the adjoining county. I used to buy all my tomatoes mostly from Virginia. Since that cannery was put in I have taken their output and have not bought any tomatoes from Virginia.

Another thing is the slump came in 1919 and those tomatoes I bought they were not all sold until this year. I took their output last year and have over three-fourths of them on hand. I could not take them this year because they will not keep over a year or two in stock. This general slump came at a time when we did not have a demand, and I want to say that we have always had tomatoes whenever they were needed. I believe tomatoes being a luxury is why the consumers are not demanding them as much as they did; they find they can get along without them.

Judge HAINER. They are a necessity, are they not?

Mr. BRIGGS. No, sir; I think they would probably be classed as a luxury.

Judge HAINER. I thought they were considered a necessity.

The CHAIRMAN. The committee will now adjourn to meet again to-morrow morning at 10 o'clock.

(Whereupon at 5 o'clock p. m. the committee adjourned until to-morrow, Wednesday morning, December 7, 1921, at 10 o'clock.)

WEDNESDAY, December 7, 1921.

The committee met at 10 o'clock a. m. in room 704, Department of Commerce, pursuant to adjournment on yesterday, Hon Herman J. Galloway (chairman) presiding.

The CHAIRMAN. Gentlemen, let us proceed with the hearing.

Mr. BARRETT. Mr. Chairman, may I make a little statement?

The CHAIRMAN. Yes. Give your name and whom you represent.

STATEMENT OF MR. N. M. BARRETT, OF THE FEDERAL TRADE COMMISSION, WASHINGTON, D. C.

Mr. BARRETT. Mr. Chairman, I am Mr. N. M. Barrett, of the Federal Trade Commission staff. I would like to furnish some information which the committee asked for on yesterday.

The CHAIRMAN. You may read it.

Mr. BARRETT. Mr. Bode quoted from page 241, part 4, Mr. Armour's remarks:

"It will interest producers to know that in order to help the fruit growers of California to get more for their products without it costing the consumer more, we have under consideration a plan to aid them to finance a cooperative fruit-packing plant of their own. We expect to do the distributing for them."

The question arose as to the source and date of these remarks. Investigation of the trade commission's records shows that Mr. Armour so expressed himself on January 21, 1919, at a hearing before the House Committee on Interstate and Foreign Commerce on H. R. 13324, a bill to regulate the meat packing industry. The quotation was from a carefully prepared statement by Mr. Armour, which he read before being cross-examined. It appears on page 645, part 4, of the record of the hearings.

Mr. BREED. You say in "the hearings" did you mean the Federal Trade Commission hearings?

Mr. BARRETT. No; of the congressional committee. On yesterday Judge Hainer asked a question which nobody seemed to be able to answer offhand. He asked what was the total production of rice in the United States for 1917. I have here the Year Book of the Department of Agriculture, 1918. On page 503 it gives the total production of rice in 1917 of 964,972,000 pounds.

Judge HAINER. How much was exported for the year? Have you got that?

The CHAIRMAN. Suppose you give both the imports and exports.

Mr. BARRETT. The exports and imports were about the same; one about offset the other. The exports were 12,720,845 pounds—as against the 964,972,000 pounds produced in this country. The imports were 11,439,950 pounds.

Mr. BREED. May I ask if that is known as rough rice?

Mr. BARRETT. It says here, on page 506, "mostly cleaned rice." The Federal Trade Commission's report stated that Armour's purchases and accumulations for 11 months ending February 2, 1918, were 31,000,000 pounds.

The CHAIRMAN. Did you say 31,000,000 pounds?

Mr. BARRETT. Yes, sir; against the production in 1917 of 964,972,000 pounds. That 11 months' period is not exactly coincident with the calendar year, but it is obvious that any purchases made in January, 1918, must have been from the 1917 crop.

Judge HAINER. Another thing the chairman asked was the price the consumers received that year.

Mr. BARRETT. These purchases and accumulations of Armour for 11 months figure out 3.2 per cent of the total crop, which is very different from the one-ninth of 1 per cent frequently alluded to on yesterday.

Judge HAINER. That is what Mr. Campbell testified to, was it?

Mr. BARRETT. I think Mr. Campbell was misquoted. He said nine-tenths of 1 per cent and not one-ninth of 1 per cent. Of course, both those figures are very much less than 3.2 per cent.

The CHAIRMAN. Have you the price paid to the producer for rice during that period?

Mr. BARRETT. No; I have the wholesale price per pound. This is all from the Department of Agriculture's Yearbook. We made no original investigations of this matter. This gives the wholesale price per pound.

Mr. BREED. Mr. Chairman, may I ask if the Department of Justice has received any telegram from the National Retail Grocers' Association?

The CHAIRMAN. The department has.

Mr. BREED. May it be read into the record? We understand that the executive committee of that association acted on yesterday.

The CHAIRMAN. We are willing, of course, that it should go into the record if they wish it put in the record of our oral hearings.

Mr. BREED. We would like to have it in the record, as we received a telegram saying that they had taken official action. Being unable to be here, as their executive session is now going on, we thought that we would ask if you had received notice, and if so, what it was.

The CHAIRMAN. I do not feel that we have any authority to read this telegram into the public record of our hearings. If you have any authority from that association authorizing you to do so we will be very glad to furnish you with this telegram so that you may read it in. But the committee has not such authority unless expressly stated, and it is not so stated.

Mr. BREED. We have no definite authority from the National Retail Grocers' Association, and in no sense represent them, but are endeavoring to bring before your committee all the evidence we can indicating the sentiment of the different trades toward modification of this decree. We have received the telegram and it is as follows:

"We, the executive board of the National Association of Retail Grocers of the United States, in semiannual meeting assembled, do hereby enter vigorous protest against any modification of the packers' consent decree. Being in close contact with the consuming public, we feel their interests will be best served if the consent decree remains undisturbed.

"NATIONAL ASSOCIATION OF RETAIL GROCERS,

"H. C. BALSEGER, *Secretary*.

"FRANCIS E. CAMPER, *President*."

The telegram is addressed to Attorney General Harry M. Daugherty and is dated December 6.

I would like to call the committee's attention to the fact that this is a national organization, and that the retail grocers of the United States number somewhere between 300,000 and 350,000 members.

I would also like to read an extract from the National Retail Grocers' Bulletin, which is the official organ of that organization, for November, 1921. It is a very brief statement of their position and found on page 19 [reading]:

"To our affiliations:

"You are no doubt entirely familiar with the much discussed proposition of the Big Five meat packers reentering the wholesale grocery business.

"As you know on February 27, 1920, they agreed with the United States Government to discontinue handling groceries; and you also know what effort is now being made to set aside the agreement made at that time.

"The entire subject has been so thoroughly covered by the grocery trade papers as well as the daily newspapers, that we will not go into detail except to bring to your attention the situation as we see it, for we feel that it is extremely important the retail grocers of the United States express themselves on this matter immediately.

"Now, we have no quarrel with the packers. As a matter of fact, we really have more contentions with the wholesale grocers. But as a matter of public policy and welfare we do not think it is safe or healthy for the Nation for any of our important essential commodities or industries to be controlled by a small set of individuals.

"We take this position without qualification on any line—whether it be foods, manufacturing, transportation, agriculture, as well as government activities.

"The packers are a tremendous factor in the preparation and distribution of meat products. Whether they are a monopoly or not is not the object of this circular. The fact remains, however, that they have things pretty much their own way in the meat business.

"If they were to become similarly entrenched in the wholesale grocery business you can readily appreciate what a tremendous grip a comparatively few men would have on the entire food supply of the United States. Would that be a good thing? It is easy to figure if they had a similar hold on the wholesale grocery business of the country it would be but the first step and but a comparatively simple matter for them to monopolize the entire retail food business as well by consolidating and absorbing the rapidly growing and increasing number of chain systems."

That means the chain retail store systems.

"Now, this is not a far-fetched idea or radical conclusion, the big interests think and plan in such terms and on such gigantic production:

"Then—where would your individual retailer be? What would become of our land of opportunity? The ambitious clerk who is inspired by the hope of some day having a business of his own could no longer look forward to that goal, for the entire food business of the Nation would be so constituted that all we could expect would be to be clerks for a gigantic corporation.

"What would be the incentive or opportunity for initiative of individual enterprise? The creative forces of individual ambition and effort so far as the food business would be concerned would be so badly stifled and handicapped that a man attempting to enter the retail grocery and meat business of his own would have no chance whatever in competition with such a system as we have outlined.

"Just stop and think it over."

Mr. BREED. I thank you very much, gentlemen of the committee.

The CHAIRMAN. Have you anything else you wish to present now?

Mr. BREED. No, sir.

The CHAIRMAN. Mr. Marsh, you may proceed. State your name.

STATEMENT OF MR. BENJAMIN C. MARSH, EXECUTIVE SECRETARY OF THE PEOPLES' RECONSTRUCTION LEAGUE, WASHINGTON, D. C.

Mr. MARSH. My name is Benjamin C. Marsh. I am executive secretary of the Peoples' Reconstruction League, which is a special combination of progressive farm and labor organizations to carry out a program of national legislation, a part of which is involved in the pending discussion before this Interdepartmental Committee.

If I may go back just a little bit to state, Mr. Chairman, why I appear in this matter at this time?

The CHAIRMAN. You may proceed.

Mr. MARSH. The Peoples' Reconstruction League has been working for packer-control legislation, and real packer-control legislation, and we do not feel that the bill enacted at the last session of the Congress goes far enough, but is a beginning.

We urged very strongly, and prior to the organization of the Peoples' Reconstruction League the Farmers' National Council urged, that the provisions, or rather I would say that the suggestions, recommended by the Federal Trade Commission to enable the Government to control the meat-packing industry and its ramifications should be enacted into law, and particularly that the railroads should be required to acquire all refrigerator cars and special-equipment cars. Also to acquire the principal and necessary stockyards.

I mention these things because they have a direct bearing upon the statement which I would make this morning.

Mr. BREED. You say you have urged these things, before whom and when?

Mr. MARSH. Before committees of the Congress considering legislation. I was going on to say that.

Mr. BREED. I beg pardon.

Mr. MARSH. All these matters were presented before committees of the Congress, both Senate and House. We also urged very strongly that whatever agency was created by this packer-control legislation to supervise the meat-packing industry should have power specifically granted it by such legislation to require the meat packers to go out—of course, after due notice and court approval if necessary—to go out of any particular line of industry when it seemed proper for the public welfare that they should go out of any particular line of industry.

We are perfectly content in saying that, although we have opposed the consent decree; and I want to be very frank about it and say that I charged the Attorney General at that time, so that the record may be clear, with having

been in criminal collusion with the packers in making this consent decree. We are completely consistent in now asking that it be not modified, and for the following reasons—

Judge HAINER (interposing). Do you refer to Attorney General Palmer?

Mr. MARSH. Yes; who made the agreement with the packers in the consent decree which was entered by the court.

We feel that we are completely consistent in asking that the consent decree be not modified at this time; we feel that we are perfectly logical in the matter, and for the following reasons: The packers knew that they ought to be afraid of going to jail. Whether they were or not is for them to say, but the situation was such that they ought to have been afraid of going to jail. But I do not need to go into that record. You gentlemen are all very familiar with it. The meat packers knew that very strong groups of producers and consumers were urging legislation such as I have outlined. And it seemed extremely apparent, at least there was a sort of *prima facie* evidence if not complete legal evidence that they felt very nervous over being able to prevent real packer legislation, including legislation to require the railroads to acquire refrigerator and special-equipment cars, and including legislation to empower the administrative or supervising agency of the Government to keep them out of unrelated lines of industry; and that such legislation could best be killed by getting a consent decree entered.

Now, gentlemen of the committee, we are opposed to government by consent decree, or legislation by consent decree. But we do not propose to let the packers get away with their plan to have this consent decree entered so as to kill adequate legislation and then come around like gentlemen who do not like to appear in the daylight, up the back stairs, and have this thing ended.

Now, if the meat packers—

Mr. BREED (interposing). You mean after the packer control bill has been passed leaving out these provisions?

Mr. MARSH. Yes. If the meat packers would now come around and admit the large part which they had in drafting the packer-control bill, and would ask for legislation to require the railroads to acquire the principal and necessary stockyards, and to give the Secretary of Agriculture and his deputies power to keep the packers out of unrelated lines of business, and if we had such legislation on the statute books, then we would not object so seriously to any modification of the consent decree.

But I hardly need remind you gentlemen that the meat packers have for 13 years prevented any real packer-control legislation, and that the present bill is the first splendid beginning. That we concede, because it recognizes the right of the Government, representing producers and consumers alike, that is, all the people, to begin to exercise adequate control over the distribution of the food supply of the country. Now, needless to say, the meat packers will not indorse any such legislation, and their application—perhaps I am not stating this legally, and you know I am not a lawyer, not by any manner of means, but I want to stick to the facts, and I know that in the long run no law can remain on the statute books which is uneconomic. But the meat packers do not want any interference with their business.

I just cite this: The meat packers were strong enough to prevent legislation to control them. In other words, they were strong enough to prevent legislation permitting any Government agency adequately to control them. The meat packers have to-day, if I remember the figures correctly, and I do not know that I am up to date, but they had quite recently about 93 per cent of the refrigerator cars. They were strong enough to kill legislation which was proposed to require the railroads to acquire all the refrigerator and special equipment cars, so that all distributors of products carried in such cars could have equal access to them.

Now, gentlemen of the committee, it seems to us thoroughly illogical, and so I say improper, to further centralize and increase the control and power of the meat packers, who, to-day are so strong that they have been able to prevent the enactment of proper legislation by the Congress to control them.

Gentlemen of the committee, this issue does not seem to me to be a question at all between the wholesale grocers and the meat packers. We do not hold a brief for either. We are dealing with the immediate situation, which is this as we view it: We are trying to get, the American people are trying to get, the producers and consumers alike are trying to get something like a common-sense approach to sanity, efficiency and economy in our methods of distribution.

How we can travel; how can we travel farthest along that line? We do not believe—yes, I will put it positively, so I will say we are confident we can not make progress along that line by letting the meat packers go back into the distribution of these food products under present conditions.

You see, gentlemen of the committee, our opposition is all promised upon the fact that there is no legislation to enable the administrative branch of the government, Judge Hainer, and the Secretary of Agriculture, in the Department of Agriculture, to administer the packer control bill in regard to these things. There is no legislation to enable them to carry out the avowed intent of this consent decree, and until there is such power, definitely and specifically vested in the Department of Agriculture, which department is now charged with the control of the packers, we are opposed to any change in or modification of the consent decree as asked in the application before you.

I want to say further, gentlemen of the committee, that there are some men who, perfectly honestly and sincerely, advocate this modification. I know of some Congressmen who are perfectly sincere and whose integrity is absolutely unquestioned, and they are rated as very progressive, extremely progressive, and yet they favor it. May I cite one case, and I like to look at all sides of a question and reach my decision after hearing all I can.

One Congressman said: Our pea growers and other farmers in our State are having difficulty in getting some of their goods shipped. That is, in finding some purchaser for all their products, and they sent them to these canneries. I concede that, but I doubt if that situation is going to be permanently helped by this proposed modification of the consent decree. For instance, I can not see—I will say, we can not see, as I am not speaking personally but am speaking after conference with our officials—we can not see how we are going to improve the situation and our present distributing system by letting this matter get further into the control of a group of men, who have a certain amount of efficiency it is true, but who it seems to us have not permitted the results to inure to the benefit of producers and consumers.

Now, gentlemen of the committee, efficiency for the sake of speculative profit does not benefit the American people. We have got to have efficiency, as well as honesty, devoted to public service and rendering public service at reasonable cost before we can worship at the shrine of efficiency.

Moreover, the meat packers have not demonstrated the 100 per cent efficiency which they credit to themselves.

We believe that the best way out of this situation is to develop direct trading between farm producers and city consumers; to have commodity marketing of farm products through cooperative organization. We believe that very sincerely.

Why, gentlemen, when we see the chaos in the present system of distribution we feel that Bernard Shaw was justified when he said that this earth after all was only an insane asylum for the cosmos, because we waste hundreds of millions if not billions of dollars in our distributive system, and nobody is satisfied.

If there were no alternative system for the distribution of farm products—that is, canned goods, sticking to the proposed modification of this decree here sought or asked for—if there were no alternative but going back to the meat packers, we would think that this application might be seriously considered. But there are several alternatives. There are some distributing agencies to-day, and the farmers are rapidly creating their own distributing agencies.

I think it has a direct bearing on this matter, and I would like to cite a fact. After making a rather extended trip through the West and Northwest last summer, when I got back here we got in conference with representatives of farm and labor organizations, and we went to the Secretaries of Labor and Agriculture, and we said to Secretary Davis, of the Labor Department: "Now, you have a record of thousands of cooperative consumers' organizations in the cities. Please make that complete, because we want them to buy directly from the farmers." Then we went to Secretary Wallace, of the Department of Agriculture, and we said: "You have a record of thousands of farmers' cooperative organizations, producers' cooperative organizations, which are ready to sell directly to the consumer in the cities. Will you bring that up to date?" Mr. Wallace agreed to do it, and in a very few weeks he brought that list up to date, and agreed to give that information to any labor or other cooperative consumers' organization in the cities. And we want to establish a roster and establish a direct exchange.

Now, gentlemen of the committee, it will interest you to know that the president of the People's Reconstruction League is a bona fide farmer. He is the president of the Michigan Potato Growers' Exchange, and is a Republican State senator, and a very progressive and influential man.

Mr. BREED. State his name.

Mr. MARSH. Hon. Herbert F. Baker. I am just back from a western trip, and he told me they had sold about 3,500 carloads of potatoes. They tried to sell those potatoes in carload lots to central labor bodies in the different cities of Michigan. We purpose to extend that work and—

Mr. DAILY (interposing). May I ask you a question there?

Mr. MARSH. Surely, if the committee is willing.

The CHAIRMAN. Would you rather not be interrupted until you finish your statement, Mr. Marsh?

Mr. MARSH. It does not bother me at all. I merely wanted to see if the committee is willing. And I would like to know who is asking me questions.

The CHAIRMAN. This gentleman is Mr. Daily, who represents the National Food Brokers' Association. Mr. Breed over here represents the National Wholesale Grocers' Association, and Senator Smith represents the Southern Wholesale Grocers' Association, and Mr. Stevens represents the Vermont Wholesale Grocers' Association.

Mr. MARSH. I asked that question because if I know who is questioning me perhaps I may bring in some statements in answer to their questions which would more thoroughly meet their questions.

Mr. DAILY. I realize it is not quite right to interrupt the line of thought, and the question I intended to ask can be asked later.

The CHAIRMAN. You may proceed then, Mr. Marsh.

Mr. MARSH. We are very sure that this direct trading and commodity marketing in a cooperative way is just beginning in this country.

Judge HAINER. Your theory of cooperative marketing is to reduce the overhead cost to a minimum, from producer to consumer, and eliminate as nearly as possible the brokers and middlemen; is that the idea?

Mr. MARSH. Exactly that, Judge Hainer. You appraise it exactly. But we do not propose, and I think this is a point that we emphasize, we do not propose to scrap every existing agency for doing it until we have a substitute.

Now, gentlemen, I feel that we should be profoundly grateful to Russia for showing us how not to try to do certain things. We want to bring about some changes, and very fundamental changes, but we are not going to try to skip a generation or two, and we have to remember that the farmer out on his farm is absolutely broke this year.

I have heard the most tragic stories from farmers, who walked 6 to 8 miles in order to hear me talk—they did that the first time but probably will not do it a second time—because they did not have car fare or the cost of gasoline. We can not work out the millenium for them in a month. We have to have some system. There must be some people intervene, admittedly. There must be some agency between the individual producer on the farm and the individual consumer in the city. Organized, they are an army; disorganized, they are a mob. We are not attempting to scrap the agencies which are now serving them. But every agency which claims to be rendering public service is going to be called on to prove that it is in fact rendering public service at a reasonable cost.

Now, gentlemen, the point about the meat packers is this: They have been convicted—I do not think that is the word, because I do not mean it in a legal sense—they have been proven to be inefficient and not to have rendered service. Now, I do not hold a brief for the wholesale grocer or the retail grocer or the broker.

Judge HAINER. Mr. Marsh, the Secretary of Agriculture, through his representative, held hearings recently at Portland, Denver, Fort Worth, Kansas City, and Chicago with reference to supervision and control of stockyards and market agencies and had under discussion tentative rules and regulations for the carrying into effect of the packers and stockyards act. At Chicago we met with great opposition on the part of commission men and dealers; and in their discussion they criticised very vehemently the farmers' cooperative marketing associations and referred to the legislation called the packers control act as nasty legislation because it attempted, presumably, to interfere with the private business of commission men and dealers in the stockyards. The whole theory of their argument was that the cooperative marketing associations had no legal rights, in other words, that they are interfering with the private busi-

ness of the commission men in handling the great live-stock industry at Chicago; and the principal opposition is through that source there. It is the commission men and dealers who are objecting most strenuously. And last week they filed two bills in equity to enjoin the Secretary of Agriculture from enforcing the packers and stockyards act on the ground—

Mr. BREED (interposing). The packers' control bill, do you mean?

Judge HAINER. Yes. On the ground that it was unconstitutional and interfered with private business, and that Congress had exceeded its constitutional power in attempting to regulate these agencies. Now, what is the sentiment and feeling and effect of these farmers' cooperative agencies in handling this great industry? Would you say it is for the public interest? I would like to hear from you on that.

Mr. MARSH. Judge Hainer, there have been very few measures, so far as I know, and I have followed legislation pretty closely for the past five or six years; there have been very few measures as to which there has been such unanimity of indorsement on the part of labor and farm organizations, consumers' organizations, and women's organizations as is the case with the packers control bill.

Of course you have a job, we concede it, and we pledge you our help in making your administration successful. But the very action taken by those commission men, who in many cases are tied up with the meat packers—their action is an argument against modifying this consent decree. While I am not a lawyer, yet it sometimes looks to me as if when one can get a little excuse for shaving off something from an act or modifying it, then the portal is thrown wide open for all sorts of amendments by which to make the act inoperative.

Judge HAINER. Do you think that behind the screen of the commission men is the dominating influence of the packers in attacking this packers and stockyards act or packers control act, as it is called?

Mr. MARSH. Well, I am afraid so. I would not need to have legal evidence to convince me what their gain is. I have read a good deal of the report of the Federal Trade Commission. And, why, just to indicate how clever they are, a bill was introduced down here while the Haugen packers control bill was before the House Committee on Agriculture, introduced, I might as well say, on behalf of an alleged farm organization, the American Farm Bureau Federation, and there was a provision in it that the meat packers, even if found guilty of violation of the law, should not be punished until a second offense. I charged that the meat packers' attorneys helped to draft that vill. They denied it, more or less. Finally I turned to General Lightfoot—

Mr. BREED. And who is General Lightfoot?

Mr. MARSH. Counsel for Thomas E. Wilson, Wilson & Co. I asked what a certain section meant, and he knew perfectly. Then I had enough of an answer. Later it was admitted that they had drafted the bill together. The meat packers are not omnipresent, but I hope nothing else will be so nearly omnipresent as the packers' baneful influence.

Judge HAINER. But, Mr. Marsh, under this packers control act at Chicago the packers have all registered and are cooperating with the Department of Agriculture; and so are the stockyard men. The commission men are the ones who are fighting it, and very bitterly, not only in Chicago but at Denver and Kansas City; and not only the commission men but the live-stock exchange, and their talk is that they are fearful of the Farmers' Cooperative Association taking away their business.

Mr. MARSH. They have reason to be.

Judge HAINER. I wish you would explain the cooperative marketing system as bearing upon this question. That was the purpose of my question.

Mr. BREED. Would it be improper for me, Judge Hainer, to inquire who are the lawyers representing those live-stock associations in the action to enjoin the Secretary of Agriculture from carrying out the provisions of the packers control bill?

Judge HAINER. Mr. Levy Meyer represents the traders and dealers, 2,000 of them, over the big market places; and Mr. Godman's firm represented the commission men. Mr. Levy Meyer devoted about four hours to argument before the court and Mr. Godman about an hour and a half, and they permitted me to close on behalf of the Government in about an hour's argument.

Mr. MARSH. Isn't Mr. Levy Meyer counsel for Armour & Co.?

Judge HAINER. I am not advised. I never met him before. Mr. Breed would probably know.

Mr. McLAURIN. He is.

Mr. MARSH. If he is not he has recently been dropped.

The CHAIRMAN. I do not believe that would be conclusive. Mr. Breed used to represent some packers, but I do not think we could assume from that that he is doing so now. I do not think that would be conclusive anyway.

Judge HAINER. It simply goes to show that they know a good lawyer when they see him.

Mr. BREED. No answer.

Mr. MARSH. Mr. Chairman, I can not go into detail in answering Judge Hainer's question as to these cooperative live-stock organizations, but of course their purpose in the main is to organize producers of live stock so that they may market their products most economically and to best advantage to themselves. And one very important thing is, so that they may arrange to ship their live stock in a way that it will not flood the market one day and have nothing there the next day, thereby having prices hammered down.

I would say this, in order that you may see the position, particularly of the farmers I represent, because I am also managing director of the Farmers' National Council: We have introduced a bill, known as the Steele bill, which I think has a vital bearing on this situation, a bill that provides that all concerns above a minimum capitalization doing interstate business may take out an elective license from the Federal Trade Commission. If they do not elect to take out such a license and conform to the rules and regulations of that commission, it is open season with antitrust laws. If they do elect to take out the license and while their license is in force they are not subject to prosecution by the Federal authorities under the antitrust laws.

Gentlemen, I am not approaching this subject primarily from the standpoint of a legal question, and as you know I am not a lawyer, for the reason that economical distribution of farm products, which we are concerned with more immediately, is not so much a question of law as a question of economics. You have to go through legal procedure, of course, to get free play for economic methods. That is the tragedy of it.

There has been some very severe criticism of the gentlemen who suggested this modification, including Mr. Vernon Campbell. I wrote Mr. Campbell very promptly after he wrote me—

"I am not accusing you of being in the packers' employ, but rather in the packers' clutches."

That is our position. We realize that there are sincere men who think better distributing facilities for farmers' cooperative canneries, etc., will be provided if this consent decree is modified. That is an easy way, perhaps, but we do not believe it is an effective way. We have got to work out some other method.

For instance, a statement was made to me that certain concerns, commission companies, and others, would not take the whole pack and would not buy any cooperative organizations' output unless they would agree to sell the whole output to that concern. In other words, they must control the output. I am informed if any such threat is made that complaint can be made to the Federal Trade Commission and it will investigate the case and say whether the action is improper. I do not say it is, but the commission will protect such cooperative organizations to the best of its ability, and I think that ability has been proven to be quite large.

Concluding, I do not believe that we will make any progress in getting a rational marketing system by modifying this consent decree. On the other hand, I believe that such action will retard the progress we now have made to some extent in securing efficient and economical methods of marketing farm products. We ask you not to modify this consent decree until we can get the needed legislation.

I will put it up to the meat packers, as I have put it up to Mr. Campbell, that the People's Reconstruction League is perfectly willing to abide by the recommendations of the Federal Trade Commission with reference to this matter.

I want to see if I am right in this action, and then I will answer any questions. Mr. Galloway will recall that when he kindly saw a committee representing some farm and labor organizations, and women's consuming organizations here, I asked him whether the Federal Trade Commission was to be represented at this hearing, and at that time he told me that there had not been any such arrangement made. I wrote a letter to the President, of date October 15, asking that the Federal Trade Commission be asked to appear here, because they have such a wealth of information.

I want to state here that the American people have the utmost confidence in the Federal Trade Commission's integrity and ability, and they having made an exhaustive investigation of the meat-packing industry we were grateful that Mr. Galloway, and I am sure that statement applies as well to the other members of the committee, felt that it would be important and wise to have the commission appear before the committee.

Did you have a question you wanted to ask, Judge Hainer?

Judge HAINER. Well, you have answered the question I had in mind. You suggested that in your letter, and I wanted to say that the Federal Trade Commission has been invited to come and give any information they have in their possession.

The CHAIRMAN. That meeting with you occurred before this hearing had taken any definite plan?

Mr. MARSH. Yes; while the hearing was under advisement, and I thought while it was under advisement that it would be well to have the Federal Trade Commission invited. Our conference with you was before this hearing was arranged.

The CHAIRMAN. Yes.

Mr. MARSH. My letter to the President followed receipt of a letter from you notifying me of this hearing, so I referred to it for that reason. Gentlemen, I thank you very much.

The CHAIRMAN. Any questions, Judge Hainer?

Judge HAINER. I have one question in my mind, and this is asked for information and not as indicating my views: Assuming that what is known as the packers' control act confers jurisdiction on the Secretary of Agriculture to control manipulations of markets or manipulations of prices or monopolies of any sort in any commodity or article handled by the meat packers; if that act would confer such power and jurisdiction upon the Secretary of Agriculture would you say it would be uneconomic to permit the packers to distribute those products?

Mr. BREED. Unrelated products?

Judge HAINER. Yes; unrelated products. Assuming monopolization of their control, and also source of supply, absolute control, would it be beneficial to the producers of the country, providing you would have absolute control over them, in preventing them from monopolizing these unrelated commodities? As I understand the theory is not that they are a monopoly at this time with respect to unrelated commodities but that there are grave fears and apprehensions that the meat packers will monopolize these unrelated commodities if permitted to handle them.

Mr. MARSH. Well, the meat packers always exceed the speed limit in establishing monopoly. Most monopolies grow in arithmetical progression, while the meat packers grow in geometrical progression, or at a higher rate, and that is the highest I know, as I am not much in mathematics. It is strange how rapidly they grow from a little acorn to a great oak. I do not know of any other business that developed so rapidly.

But answering your question, Judge Hainer, more directly, I will say we feel it would be safer to wait for such change as you suggest until an addition is given by the Congress to this power to prevent the meat packers from entering the unrelated industries. We provide for economic and natural facility for competitive growth in what we propose, for taking away from the meat packers their refrigerator and special equipment cars. I do not mean by confiscation, but by requiring the railroads, which are common carriers, to purchase them. We would prefer to let any change await such legislation by the Congress. We would be glad to see the meat packers come in and agree to that. If the meat packers would come in and indorse the bill to take the refrigerator and special-equipment cars under the Cummins-Esch bill, we would be glad to see that done.

Judge HAINER. Were you here yesterday afternoon?

Mr. MARSH. I am sorry I was not.

Judge HAINER. There were three witnesses here from Virginia yesterday afternoon, men engaged in the canning industry, and they favored modification of the consent decree, stating that they represented about 500 cannerymen in Virginia, and they made their statement on the ground that these cannerymen have been unable to sell their products this year, which means ruin and bankruptcy to the producers in that section of the country. They desire additional facilities in moving their products.

Mr. BREED. That particularly related, did it not, to canned tomatoes?

Judge HAINER. Yes; their statements related to canned tomatoes, which seems to be a very large industry in Virginia.

Mr. MARSH. Such cases as you have cited call attention, it seems to me, to the necessity for a different method of handling these products. Our point is that we do not feel that situation is going to be made permanently or even temporarily better by modifying this consent decree.

Probably some of you asked those gentlemen, as I have asked some gentlemen under similar conditions, why they could not use existing facilities. For instance, it was not so many years ago that the meat packers went into this line of distribution. What did these producers do before the meat packers went in? And I mean by meat packers the big packers. I am not speaking of the canning packers but the meat packers, and I will confine my statement to the Big Five. What did these producers do then?

The farmers have been as hard up, and probably more so, for the last two of three years, taken as a whole, than any other time in their history. We need some other agency, or we perhaps need some changes in the existing agencies of distribution, but why suggest that we go back to conditions the objection to which we know?

Judge HAINER. Do you believe in absolute prohibition of any agency of distribution? That is, do you believe in denying the right to any agency to distribute the products of the farmer and producer? Do you think that is in the public interest?

Mr. MARSH. I did not quite catch your question.

Judge HAINER. Do you believe in complete destruction or prohibition of any agency to distribute the products of the farmers and producers of this country?

Mr. MARSH. Well, I would not put it that way by any means, no. Some of the existing agencies for distributing farm products must be retained. I think that the prohibition on the packers from entering into these unrelated lines or commodities as to the matter of distribution is valid because other agencies remain. We did not take away every agency engaged in distribution. We terminated an agency the growth and methods of which were clearly shown to be contrary to public policy.

Judge HAINER. What other agencies are there outside of the wholesale grocers?

Mr. MARSH. Brokers, commission men and direct trading of all sorts.

Mr. BREED. And chain stores.

Mr. MARSH. Yes; and chain stores, and all kinds of methods of direct buying and selling. I imagine this hearing will suggest to existing methods of distribution plans by which they can increase their service to cooperative canneries and other organizations that need goods distributed. My point is that it is not a question of destroying any agency, we are not urging that, but the meat packers were in a class by themselves because of their growth and control; these other agencies I think must need to change some of their methods, but I think I might illustrate the attitude of the meat packers by a little incident: The American National Livestock Association at their meeting in Salt Lake City, I think it was, in August of this year, adopted a resolution asking the meat packers to go into the business of retailing meats. I think that would require modification of the consent decree, if I understand it correctly, would it not, Mr. Chairman?

The CHAIRMAN. It would.

Mr. MARSH. I thought it was under the terms of the consent decree. But they wanted to see whether the meat packers would favor it. A committee representing the American National Livestock Association conferred with representatives of several of the large meat packers in Chicago, and they may have met others in the Middle West, and these representatives of the meat packers absolutely refused to go into it.

The meat packers have always said the reason for the high cost of meat was the retailers profits. But they were unwilling to go into that job themselves and retail meat to consumers. And if you want me to make a deduction from their refusal, although my deduction may not be correct, I will say that the meat packers did not want to be deprived of an opportunity of passing the buck, which they have done so successfully and continuously as a reason for the high cost of meats to the consumers, while at the same time the farmer, of course, is receiving a price way, way below cost of production of live stock.

Judge HAINER. The live stock people, are they opposed to this proposed modification of the consent decree, the cooperative associations? What is the attitude of the cooperative associations? You represent them, do you not?

Mr. MARSH. Not officially in this matter. I have talked with a great many of them however.

Judge HAINER. Do you know their attitude on this question?

Mr. MARSH. Those I have talked with, and they are only a few, and I do not know enough of them personally and their opinions so that my statement on this point would be of much value—but those with whom I have talked were not anxious to have this consent decree modified. I can not give you their names and addresses, but I met them on my last trip to the Pacific coast. They took the same view I have tried to present, that the way out was through direct trading, commodity marketing and cooperation rather than by letting the meat packers go back into the game again.

The CHAIRMAN. Would you meet opposition in the matter of direct marketing, on the part of the meat packers?

Mr. MARSH. I think so. They have never liked competition.

The CHAIRMAN. Would you meet it on the part of the wholesale grocers?

Mr. MARSH. I think they would be inclined to object. But it ought to be a question of survival of the fittest. In other words, survival of the agency which most efficiently and economically renders service to the advantage of all concerned. But I do not think elimination of the wholesale grocer or of the retail grocer is under consideration here now, because I do not know a cooperator who would like to scrap them to-day or to-morrow, as we have to work out a new method.

The CHAIRMAN. Your theory or belief is that without additional legislation modification should not be made?

Mr. MARSH. Without additional legislation which will specifically empower the Government to do the things which are alleged to have been done by this decree. I know that the meat packers were opposed to that legislation. It was obvious they preferred the method of getting a consent decree. It is clear they went at that method, and now that they have it, and we may not get legislation to meet the situation, they are anxious for this modification.

Mr. BREED. It would leave the field entirely open?

Mr. MARSH. It in effect would be at least a 50 per cent defeat of the fight we have made for 13 years for packer-control legislation. I say 50 per cent defeat; that is stated roughly, of course. There are certain functions vested in the Department of Agriculture, under Judge Hainer, in the Haugen bill. But I understand they have no jurisdiction over matters covered by the consent decree. Is that right, Judge Hainer?

Judge HAINER. Without expressing an opinion on that, it is a very debatable question, I will say.

Mr. MARSH. You see, I am not a lawyer, and perhaps I should not have asked you a question like that.

Judge HAINER. There are some eminent counsel in the Federal Trade Commission who believe we have complete jurisdiction over all unrelated matters. I will say, but I have reached no conclusion on that question.

Mr. MARSH. Well, I would say this—

Judge HAINER (continuing). They put it under section 202, subdivision (e), if you have a copy of the act there with you.

Mr. MARSH. I have not a copy of the act with me.

Judge HAINER. Section 202 of the "Packers and Stockyards Act, 1921," reads as follows:

"Sec. 202. It shall be unlawful for any packer to:

"(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in commerce; or

"(b) Make or give, in commerce, any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever, or subject, in commerce, any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; or

"(c) Sell or otherwise transfer to or for any other packer, or buy or otherwise receive from or for any other packer any article for the purpose or with the effect of apportioning the supply in commerce between any such packers, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly in commerce; or

"(d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with

the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce; or

"(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices in commerce, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article in commerce, or of restraining commerce; or

"(f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business in commerce, or (2) to apportion purchases or sales of any article in commerce, or (3) to manipulate or control prices in commerce; or

"(g) Conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivision (a), (b), (c), (d), or (e)."

Now it would appear, as I said, without expressing a fixed opinion, that this is broad enough to cover any article in commerce, or any combination or device or practice of any packer.

Mr. MARSH. Well, then, not being a lawyer, of course my statement would not be logical, but it would seem to me—

Judge HAINER (interposing). Now, then, assuming as I say for that purpose that this is all-embracing and all-inclusive, it covers not only unlawful practices—you understand the Federal Trade Commission was just limited to unfair practices, but here is covered devices or deceptive or unfair practices, and it seemed to cover the whole range much broader than any act that has heretofore been passed by Congress, including the Sherman Antitrust Act or the Clayton Antitrust Act, in respect to these unlawful practices and monopolies, and so forth, of the packers. Now, assuming that this packers' control act is all-inclusive and all-embracing and covers the whole range of manipulation and monopolization of any article in commerce, then what would you say as to modification of this decree as to the public interest and the public welfare?

Mr. MARSH. Well, I would say, knowing the record of the packers, that it would be safe to give the public the benefit of the doubt, and if you have full control, then there is no earthly harm in letting the consent decree stand, and if you have not full control, then the consent decree surely ought to stand, so I would not change it in either case. If I get your point?

Judge HAINER. No; if the consent decree stands with respect to unrelated monopolies of course the department would have no jurisdiction.

Mr. MARSH. Would lose jurisdiction?

Judge HAINER. Then the department would have no jurisdiction, I assume, if that is true. On the other hand, if it is modified, then this act would go into full force and effect and operation.

Mr. MARSH. Well, now, I understand that courts sometimes in reaching a decision try to find out what was the intent of the legislators in passing legislation, and the hearings on this packer control bill will show very clearly that it was not their intent—I am not criticising their position—but it was not their intent to vest that authority in the Department of Agriculture under this bill, because we asked to have that authority specifically vested, and they refused to do it; I mean specifically written into the bill, and they refused to do it. They refused to include in that this provision that the railroads should acquire the stockyards and refrigerator cars.

I stated when the bill passed the House committee that I preferred, on behalf of the Peoples' Reconstruction League, that legislation to no legislation, but it was amended and strengthened in some respects after I made that statement, but the committee, and I think Congress as a whole, did not want the power put in the supervising agency, which, from your statement, might be understood to be in that, and I think it is pretty clear that the packers did not want it, and that they would test that interpretation of it, and therefore it would seem safe until we get some specific legislation—not only safe but essential to permit this consent decree to stand. But, of course, we can get legislation. We can get such legislation, can't we, at this session of Congress?

The CHAIRMAN. Well, do you think there would be any legislation while this decree does stand?

Mr. MARSH. I think that there is no reason why there should not be, and in point of fact legislation which merely puts on the statute books the things which this consent decree attempts to do, would not conflict with the consent decree, but strengthen it.

The CHAIRMAN. But wouldn't they say that there is no use of legislation?

Mr. MARSH. Well, in the good old language, that would be a bluff, and we know it as well as they know it. It was a bluff which caused this consent decree to be entered. Now I don't belong to any particular party, so I am not likely to be accused of partisanship about that.

Judge HAINER. You heard Attorney General Palmer's testimony?

Mr. MARSH. To my regret, yes.

Judge HAINER. He stated that there was no law to base this decree on with respect to the unrelated commodities, did he not?

Mr. MARSH. That is my recollection; yes.

Judge HAINER. But because the decree was obtained, that by consent it remained in force forever, and it was not subject to legislation or change?

Mr. MARSH. Without the agreement of both parties, was it?

Judge HAINER. Well, he made no limitation on this subject.

Mr. MARSH. Well, that discussion came up; whether both parties to the—

Judge HAINER (interposing). Then according to his theory of the law it is beyond legislation of Congress; it is final for ever and ever, as he stated.

Mr. MARSH. Well, for ever and ever is a long time.

Judge HAINER. Yes; it is.

Mr. MARSH. And we have national elections every four years which usually change the for ever and ever end of things, and I think it might have some bearing on this proposition. But it is not a political issue, and it is hardly conceivable that any appointive official of the President of the United States could bind Congress when no Congress can bind the succeeding Congress. Now I am not a lawyer, but that looks to me like common sense, and I would be willing to go to bat on it, and I would not be at all afraid as to the legal standing of this decree. All that I would be afraid of would be how much money the packers would spend to defeat the legislation—which has nothing, of course, to do with the consent decree.

Judge HAINER. But assuming that this packers and stockyards act, as read to you, would vest the Secretary with complete power to regulate and control them, if they are permitted to engage in transporting these unrelated commodities, providing the decree in that respect is modified by the court? You understand, it is for the court to either modify it or not. It is not for this committee or the Attorney General of the United States. This is merely advisory. and it is for the court.

Mr. MARSH. Well, may I raise a question there? Do you concede the right of a court to legislate in that way?

Judge HAINER. No, I do not. It is as to the modification of the decree. But suppose this act would be in full force and effect, do you believe that that would be sufficient to regulate, prevent the monopolization of these unrelated products?

Mr. MARSH. No, I do not, Judge Hainer, because I am sure you would agree that there is no authority in that bill for the Secretary of Agriculture to require the railroads to acquire either the stockyards or the refrigerator cars and special equipment cars, and we feel that one, if not the fundamental economic basis for the monopoly of the packers, is their control of those two agencies really, of marketing and distribution.

Judge HAINER. Then you feel that Congress has not gone far enough to reach that evil?

Mr. MARSH. Certainly, and we intend to propose legislation very shortly to meet that situation.

Judge HAINER. Don't you think the Interstate Commerce Commission would have that power?

Mr. MARSH. Well, that was argued by some members of the House Committee on Agriculture, that the Interstate Commerce Commission has that power, and that under one section—I have forgotten which—of the Cummins-Esch law they could do this, but I found out from the Interstate Commerce Commission that there is practically nothing in the way of providing new refrigerator cars; that they do not interpret that Cummins-Esch law as giving them any power to require the packers to sell their refrigerator cars, already owned, to the railroads, and therefore we were back in practically the same situation, and I think there has got to be specific legislation on that matter.

Of course it is the opinion of the People's Construction League that we have got to have Government ownership and democratic operation of the railroads in order to permit free distribution of products and to prevent discrimination. That is not before you, but we do feel that it would be very unwise

to modify this consent decree until what is now clearly possible to be done, immediately possible, be done, and that is that we have the railroads take over the refrigerator cars.

And it would seem to me here that you have got two sides of this question presented; that if you could get these grocers and some of these cooperative organizations together that maybe they could work out a scheme by which both of them can cooperate to serve the public better in this matter, and if you can do that, this hearing will have been very markedly beneficial.

But I want to make this clear, that the farmers are in desperate situation, and a lot of the cooperative canners are in bad condition to-day.

Judge HAINER. You think you represent the farmers' sentiment here, and the consumers'?

Mr. MARSH. I am not unanimous. You know farmers are never unanimous. Few groups or few occupations are.

Judge HAINER. No; I do not say unanimous, but I mean preponderating sentiment?

Mr. MARSH. I think I do. Making this clear, that until the legislation we want is enacted, we are opposed to a modification, before we feel it is safe for the thing to be changed in any way.

Judge HAINER. How could Congress act on that subject if there be no modification? It is the decree of the court that is unchangeable until that court modifies the decree. Congressional power could not reach it, could it?

Mr. MARSH. That question was debated up there in the House Committee on Agriculture, and in the Senate committee. The opinion of several lawyers was that any legislation by Congress has more weight than any consent decree, and would supersede any consent decree.

Judge HAINER. Do you think Congress could pass an act entirely wiping out that decree, and its effect? Do you?

Mr. MARSH. Well, if Congress can not pass an act entirely wiping out that consent decree, then we have abrogated all the authority of popular government to the courts, and I am not willing to concede that. And it would be a very unfortunate decision, it seems to me, for any court to make.

Judge HAINER. Well, what would you say then if that was the law?

The CHAIRMAN. Well, that is a legal question.

Judge HAINER. Yes, that is a legal question, and I will withdraw it.

Mr. MARSH. I would say that if that were the law, that we would have to get the law changed in a hurry.

Mr. SMITH. Suppose Congress should pass a bill that provided that in spite of any consent decree heretofore passed the packers could engage in handling any unrelated products, would there be any doubt about the constitutionality of any such a law?

The CHAIRMAN. That is a legal question, Senator. I think it is not fair to put that question to this witness who is not a lawyer.

Mr. MARSH. Thank you.

Mr. BREED. May I ask one or two questions, Mr. Chairman, or maybe you are not through, Judge Hainer?

Judge HAINER. Yes, I am through.

The CHAIRMAN. Anything, Mr. Hall?

Mr. HALL. Why, I just wanted to ask you one question Mr. Marsh. Do you think that the meat packer can distribute the unrelated lines to the retail trade cheaper than the wholesaler can? At less cost?

Mr. MARSH. That is, that the meat packer can distribute meat products?

Mr. HALL. No; the unrelated lines.

Mr. MARSH. The unrelated lines—well, that is a question that frankly I can not answer. I have not found anything in the packers' record, however, to show that if he could distribute those products cheaper that he would.

Mr. HALL. Or that he has?

Mr. MARSH. Or that he has. And that is the real point, it seems to me, because as I say, we are not interested in the controversy between the wholesale grocers and the retail grocers on the one side and the packers on the other side. We are interested in getting these goods shipped directly to the consumer with all useless expense in that process eliminated, so that the producer can get the maximum for his product, and at the least cost of production, which he has not got for some time, and that the consumer can get it at a moderate price. Now, whatever agency will render that service—not, "can render" but "will render" that service cheaper will do it. If I thought the packers could render this service

and would render cheaper service than the Farmers' Co-operative Organization direct trading, I would be for it, but they won't, because we are still in the acquisitive stage of society and will continue to be for some time to come.

Judge HAINER. Well, if they would do it and could do it you would favor them distributing these unrelated products?

Mr. MARSH. I would say I would not object, but I don't know of any government authority that is strong enough to make them do it. Unfortunately, but their record thoroughly justifies that statement.

Mr. BREED. It is an existing fact, is it not, that they are a monopoly in the lines which they now operate in?

The CHAIRMAN. Oh, that is a conclusion, Mr. Breed.

Mr. BREED. Well, I do not think that is a conclusion; I think that is a fact.

The CHAIRMAN. I would like to know why? That involves a conclusion of law of what is a monopoly, and evidence to sustain it.

Mr. BREED. Well, what per cent of the meat business of the United States do they handle and control?

The CHAIRMAN. That is all right.

Mr. MARSH. I don't know, but I know that it is enough to smash the producer and smash the consumer, and that is enough to establish in my mind what a monopoly is. I think Mr. Barrett gave a certain percentage, suggested a certain percentage as establishing monopoly. It does not seem to me—

Judge HAINER (interposing). Then you would favor absolutely enjoining them from transacting any business in the meat packing business, wouldn't you?

Mr. MARSH. The packers?

Judge HAINER. Yes.

Mr. MARSH. No.

Judge HAINER. If it was an absolute monopoly, as you suggested, and against public interest, why shouldn't the decree have been entered forbidding them from engaging in the packing business and meat business and distributing their products?

Mr. MARSH. Well, for one thing, because such a proposal would not have been adopted in the consent decree. No court would have suggested it, and of course that situation has got to be met by regulation, and not by prohibition.

Judge HAINER. Yes, but this is in my mind, Mr. Marsh: The testimony of former Attorney General Palmer that they establish, or could establish, that the Big Five were engaged in a monopoly of the meat industry of the United States; that there was no law or no evidence sufficient to show a monopoly of the unrelated commodities. Now, the decree permits them to carry on the monopoly of meats, and cuts them off from distributing the unrelated products, which had not been proved to be a monopoly at the time the decree was entered.

Mr. MARSH. Well, I think our position is logical. May I refer to what I stated in the beginning?

Judge HAINER. What is the consistency of the opinion? If they are engaged in a monopoly in violation of the laws of the land, why shouldn't they absolutely be prohibited and enjoined from carrying on the monopolization of meat and meat products?

Mr. MARSH. Because, if I understand the purpose it is not to prevent the packers—no one wants the packers to scrap their machine, which is susceptible of being very efficiently used. The whole purpose of our antitrust laws, which I think are the most gigantic fizzle in the record of economic legislation—their whole purpose has been to secure fair methods of business. They failed of it because they ignored economic conditions and economic factors, but it would be no advantage to the American people to throw away an agency which can be efficiently used. It has got to be regulated instead.

Now, may I say we did not favor the consent decree. We opposed the consent decree. We thought it was a matter that should be covered by legislation vesting supervisory power—almost executive power—in a body created by Congress, or under a department created by Congress, and that that was the way to meet it. It is perfectly foolish to throw away an agency which can be useful, because it has done some harm.

Judge HAINER. That is the point exactly. You do not believe in destroying any agency of distribution of the meat products of the country, but you believe in regulating it and supervising it and preventing its monopolization?

Mr. MARSH. Absolutely.

Judge HAINER. Well, then, if that be true as to the meat industry, why wouldn't that same rule apply as to the unrelated products, provided that this

fear and apprehension of monopoly can be prevented by supervisory and regulatory power in the proper tribunal?

Mr. MARSH. That might be conceded, if you had a proper tribunal with continuing functions to supervise the activities.

Mr. BREED. Of what?

Mr. MARSH. The activities of the packers in this case; whatever agency is under control. I was taking the general principle, instead of the specific application.

Now, your interpretation as to the scope of the Haugen Packer Control Act may be correct. I would be glad if it were. I wonder if the courts will admit it, though? I wonder if the courts will admit it. Now, here comes the consent decree, and on the theory that the packers should not be allowed to engage in certain lines of business—

Mr. BREED (interposing). Consented to by them.

Mr. MARSH. Requested by them and consented to by them. And I am glad to state again, in our judgment, for the specific purpose of preventing legislation which would create a supervising agency over those, this consent decree shuts them out of those lines of distribution. We believe that should stand until there is written in such clear, plain language into the packer control bill, that the Secretary of Agriculture may keep these packers out of unrelated lines of industry, that the layman can understand it. We believe that should stand until it is written so clearly in there that the layman can understand it.

The CHAIRMAN. Well, would you want the legislation to say they can keep them out of those unrelated lines, or regulate them?

Mr. MARSH. Regulate them and compel them to go out of them for the time being if the public welfare requires that. I said, "Keep them out." I am glad you corrected me on that. Can require them to go out of certain unrelated lines, when their entry therein or remaining therein is unwise or contrary to public policy. That may mean keeping them out. I had that in mind.

Judge HAINER. Mr. Marsh, then you favor the packers distributing these unrelated lines, if you would be absolutely certain that there would be some supervisory control that is efficient and effective to prevent them from monopolizing these commodities?

Mr. MARSH. My own personal opinion is this—and you asked me my opinion, which I have got to give as a personal opinion now—I would rather see them make good on selling meat cheap right straight to the consumer, utilizing the machinery which they claim is so efficient, to the maximum, before they take up anything else.

The CHAIRMAN. That is retail meat marketing?

Mr. MARSH. Retail meat marketing, before they take up anything else. I would like to see them try that. If they can make good, all right. If not, there is something wrong, because they ought to be able to do it infinitely cheaper than any other agency can do it. I doubt—well, I may not express an opinion—but they might try it out. Now, they won't do it. They won't want to, as these men that conferred with them in Chicago told me.

Judge HAINER. Do you favor the decree being modified so they can sell meat at retail?

Mr. MARSH. No. I didn't put it in that way, Judge. I say if there were any thought of modifying the decree I would like to see it modified—I would suggest it be modified in that manner first. But I am not suggesting that at all. I know the Secretary of Agriculture asked me what I thought about that, and I told him, as I stated to you earlier, that at least experiment would prevent them from placing the responsibility for the high retail cost of meat upon the retailer.

The CHAIRMAN. Anything else. Judge Hainer?

Judge HAINER. No.

The CHAIRMAN. Mr. Marsh, how many members has your organization?

Mr. MARSH. We are not an individual membership organization. There are a number of labor and farm organizations. I can submit a list of them. I will submit the whole list of them to you. I thought I had one with me, but find that I have not.

The CHAIRMAN. All right.

Mr. MARSH. I would be glad to put it into the record if you care to have me do so.

The CHAIRMAN. Yes, put it into the record.

Mr. MARSH. I will do so.

The CHAIRMAN. And those organizations as such are members of your organization?

Mr. MARSH. Yes. They are not formally members, but their officers are on this committee. And most of them—it is not true of them all, not by any manner of means—have indorsed this program for the Peoples Reconstruction League and are working for it. But that is not true of all of them. That is true of the farm organizations and some of the labor organizations—in fact, most of the labor organizations.

The CHAIRMAN. Has this specific question been referred to those constituent organizations?

Mr. MARSH. I have talked it over with the officers of practically every one of them, because I make it a point to do that, and with many individual members.

The CHAIRMAN. And the officers have expressed these sentiments as the views of their organizations?

Mr. MARSH. Substantially the views of their organizations; yes, sir, Mr. Chairman.

The CHAIRMAN. Anything more, Mr. Breed?

Mr. BREED. Yes, I have some questions to ask.

Mr. MARSH. May I just make this statement before the question is put. Of course, no one can foresee what number of questions are going to be asked a witness. Now you have asked me a lot of questions, on which a man has to express his personal opinion more or less, and I do not want to hold any affiliated organizations responsible for the details of my testimony, but for the principles that I have spoken; on the principles they entirely agree.

Mr. BREED. Have you a list of the organizations making up the People's Reconstruction League?

Mr. MARSH. As I said to the chairman, I do not have it here. I usually have it in my pocket; I am sorry I haven't it with me.

Mr. BREED. Will you submit it for the record?

Mr. MARSH. I will be glad to.

(Following is a list of the organizations making up the People's Reconstruction League:)

OFFICERS.

President, Hon. Herbert F. Baker, president of the Farmers' National Council.

Vice presidents, William H. Johnston, president of the International Association of Machinists; Mrs. Florence Kelley; C. C. Connolly, president United Farmers of America.

Treasurer, Jackson H. Ralston.

Executive secretary, Benjamin C. Marsh, managing director of the Farmers' National Council.

EXECUTIVE COMMITTEE.

The officers, and—

Warren S. Stone, grand chief, Brotherhood of Locomotive Engineers.

William Bouck, master, Washington State Grange.

T. C. Cashen, international president, Switchmen's Union of America.

D. C. Dorman, national manager, Non-Partisan League.

E. H. Fitzgerald, grand president, Brotherhood Railway and Steamship Clerks.

J. A. Franklin, international president, Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America.

E. F. Grable, grand president, United Brotherhood Maintenance of Way Employees.

Timothy Healy, president, International Brotherhood Stationary Firemen and Oilers.

Roscoe H. Johnson, international president, Commercial Telegraphers Union of America.

J. W. Kline, president International Brotherhood Blacksmiths, Drop Forgers and Helpers of America.

E. C. Lasater.

Arthur Le Suer.

J. H. McGill.

John McParland, president, International Typographical Union.

James P. Noonan, international president, Brotherhood Electrical Workers.

R. W. H. Stone, president, North Carolina Farmers' Union.

L. E. Sheppard, president, Order Railway Conductors.

Charles B. Stillman, president, American Federation of Teachers.

John A. Voll, president, Glass Bottle Blowers' Association.

Frank P. Walsh.

Office: Rooms 35-39 Bliss Building. No. 35 B Street NW., Washington, D. C.

Mr. MARSH. Of course that does not mean that every individual member of that organization agrees to this proposition, but the very large proportion of them do—their officers.

Mr. BREED. When you say "this proposition" you mean opposition to the modification of the consent decree?

Mr. MARSH. Until we get legislation.

Mr. BREED. Yes.

Mr. MARSH. Until we get legislation, or of course until we get a court decision, for instance, that the interpretation which Judge Hainer puts on this act is valid, but until that time we would like to see legislation.

Judge HAINER. All your testimony and these protests against a modification are based upon the opinion that they would be set loose, and there would be no control over them if this decree should be modified?

Mr. MARSH. That is our understanding. If we are in error, why of course the position is changed entirely.

Judge HAINER. But, on the other hand, if this packers' control act should give full power, that is, if the courts should hold that the Secretary of Agriculture has full and complete power to absolutely regulate them and control them, and even prevent them from carrying on the business if they should attempt to monopolize any of the unrelated products, or any of the meat products, then what would your opinion be under those circumstances?

Mr. MARSH. That then just as soon as the railroads get all of their refrigerator cars and the special equipment cars and the principal necessary stockyards, then the American people might breath freely again.

Mr. BREED. Would you also include the question of taking from the packers the control of the cold storage warehouses of the United States, which is also covered by the decree?

Mr. MARSH. Well, I understood that that was pretty nearly under the supervision of the Department of Agriculture under this act. I may be in error.

Mr. BREED. Well, then, in expressing your opinion in opposition to this modification you do add the further provisions that there must be some legislation with respect to the control of the stockyards?

Mr. MARSH. Oh, absolutely.

Mr. BREED. And also some legislation with respect to whether the packers may continue their special privilege in connection with the use of these refrigerator and peddler cars?

Mr. MARSH. Yes; I would think that that ought to be clearly stated.

Judge HAINER. What additional power could be given controlling the stockyards over what this act gives?

Mr. MARSH. Well, we think that the railroads ought to acquire them, and they ought to be handled as a part of the transportation facilities; that the railroads ought to provide facilities for handling live freight just as they handle dead freight to-day—just as they provide facilities for handling dead freight.

The CHAIRMAN. Do you know of any way that anybody could make the railroads buy these cars unless they wanted to?

Mr. MARSH. Why, I would say that if we are not in the position in Government in which under private ownership of the railroads we can compel the railroads to meet the public needs, that the argument for Government ownership is so unanswerable that it would be the biggest issue in the next national election.

Judge HAINER. Mr. Marsh, you believe in Government ownership, do you not, of the railroads and all public facilities, agencies?

Mr. MARSH. All things which in order to be efficiently conducted there has got to be a monopoly.

Judge HAINER. A monopoly?

Mr. MARSH. You are asking my personal opinion now.

Judge HAINER. Yes; your opinion, yes.

Mr. MARSH. Anything which in order to be efficiently conducted has got to be a monopoly—that is unified for the Nation, speaking for the Nation—should be owned by the Government and operated democratically.

Judge HAINER. Then you believe all these large packing plants should be owned and operated by the Government?

Mr. MARSH. No; not at all.

Judge HAINER. Don't you?

Mr. MARSH. No; because I think we ought to have a lot of independent packing plants and a great many cooperatively owned packing plants. Frankly, I look ahead for a few years when the farmers will own most of these canneries, and other things.

The CHAIRMAN. Well, hasn't the cooperative movement in the packing of meats been very recently set back considerably?

Mr. MARSH. Yes, there have been some failures in it, partly due to the fact that some of the managers were poor, and partly due to the fact that the packers were clever enough to put in some of their old employees, as up in Fargo, N. Dak., and committing sabotage on the inside before the boards could arrest it, and that has resulted in tragedy, partly due to the fact that even though everything did run smoothly, they had not access to transportation facilities and credit which the packers had.

The CHAIRMAN. But the experience of those cooperative packing companies which have been formed, and which have had a sad experience, has been rather to retard the growth of that movement, hasn't it?

Mr. MARSH. I think not so much to retard it as to occasion those who advocate it to be a little more careful. I think the movement is going ahead much more rapidly than in the past, but that the people are going to learn by the mistakes of those who have made failures, or semifailures. I feel that it is very important in order that cooperating movements may be most successful, that any possible interference with their success should be removed. That is one reason that I advocate Government ownership of the railroads, and the immediate proposition that the railroads should acquire the refrigerator cars and special-equipment cars.

The CHAIRMAN. Anything else, Mr. Breed?

Mr. BREED. Yes. Mr. Marsh, by joint resolution in Congress, has there not been established in the past year a commission known as the Joint Commission of Agricultural Inquiry?

Mr. MARSH. Yes, Mr. Breed.

Mr. BREED. And is that commission engaged upon a careful and scientific consideration of all of these methods of distribution, to some of which you have referred?

Mr. MARSH. They probably admit that. But I am not sure they are doing it very thoroughly. I want to answer that. Now the question came up: What could they do? There was investigation. I gave them bills to help Congress, but what we need is not so much investigation of agriculture; what we need is a little action, and we didn't get it.

Judge HAINER. Constructive legislation.

Mr. MARSH. Constructive legislation. There were lots of bills there, and Congress has done more in the last two years to smash agriculture than I thought any bunch of men possibly could, and they realize it. If they will get out among the farmers they will realize it. And no fooling.

Mr. BREED. Well, what I mean is, that while legislation is undoubtedly desirable, Congress has already taken action to thoroughly investigate the methods of distribution of food products, has it not?

Mr. MARSH. Well, they have taken that up. How thoroughly they will go into it I don't know. There have been all sorts of investigations of the subject, and the American people survive Congress wonderfully. They go right ahead and do things and change Congress, and are going to survive it. But we don't need more investigation, Mr. Breed, in a lot of these things. We needed action, and the farmers' organizations told Congress that. We needed a bill to give the cooperatives recognition, a bill to protect them from prosecution, and we could not get it.

Mr. BREED. Well, I do not disagree with you. I merely ask you: One of the elements bearing on this long period of fighting which you have described is the decree of the court which the packers themselves consented to, is it not? And that pending some determination of how this proposition is going to work out I understand you advise against the Government applying to the court to modify this decree?

Mr. MARSH. Yes. But that puts me in the position of interference with action, of attempting to interfere with action. I would say that this application for modification of the consent decree shows the imperative necessity of Congress

promptly enacting legislation. That, I think, is one of the very important things which should be a result of this hearing. We are not in a satisfactory condition with that decree unmodified. We are in a thoroughly unsatisfactory, uneconomic condition.

Judge HAINER. Then on economic grounds you believe that the court should either modify it, or legislation should be passed superseding it that will grant the relief desired for the benefit of the farmers and producers?

Mr. MARSH. I must say, Judge, that I did not understand the first part of your question.

Judge HAINER. Read the question.

(The question was read by the reporter as above recorded.)

Mr. MARSH. I would put it the other way around, if I may. I would say that Congress should immediately enact this legislation, and let the decree remain as it is without modification until that time. You know it is a terrible thing to let the packers get by with the game they have been pulling on the American people.

Judge HAINER. Well, you don't want any interim between the going into effect of these acts, but if Congress has already passed sufficient legislation in that respect, that is after the courts would so decree it, then you believe that they should engage in these unrelated commodities for the benefit of the public generally, do you?

Mr. MARSH. No. I can not conceive of the packers being for the benefit of the public generally as long as they have 97 per cent, or anything like that, of the refrigerator cars and special-equipment cars and the other facilities. I don't think they are going to be capable of conducting themselves for the benefit of the public under those conditions, despite the best powers of control which you may exercise and can exercise under the laws which you have. Therefore, I say we should first get these fundamental changes before we make any changes.

Now, let us go ahead. We have got legislation. We have got a decree which was enacted to prevent further legislation which was needed. Now, let us rest here for awhile and try for some more legislation so we will know, in black and white on the laws, where we stand. Sometimes the best way to secure the repeal of a bad piece of legislation is to enforce it. And I imagine that after this experiment with the consent decree that it will be some time before any such project will ever be initiated again.

Mr. BREED. Did the possession by the packers of this control over refrigerator and pedlar cars have any effect upon the working out of some of these cooperative meat-packing establishments?

Mr. MARSH. Some of them have told me—I don't remember what the Federal Trade Commission said, but I have talked with men and they have told me that it did have some effect—not only at the existing cooperative packing plants, but a lot of folks wanted to start their own packing plants, like the Nebraska Farmers' Union, which does a hundred million dollars a year cooperative work and general business, and I was talking with the people out there just last week, and they are afraid to start one because they don't think they can get the facilities, and they will be choked off, and they are wise. We were just discussing the mistakes which have been made, and it is foolish to start a co-operative enterprise unless there is reasonable assurance of such service as competitors get, so that they have at least a fighting chance for success.

Mr. BREED. Equal service.

Mr. MARSH. Equal service; yes; with no discrimination.

Mr. BREED. In your opinion, if this decree were modified and the packers were allowed to withdraw their consent and go into these unrelated lines and utilize their refrigerating and peddler cars for a distribution of such unrelated lines, would it give the packers any advantage over other competitors in the same unrelated food lines?

Mr. MARSH. It would be my judgment that it would. That is a rather complicated question, but, as I gather it, that would be the effect.

Mr. BREED. I will ask the reporter to read the question again.

(The last question was read by the reporter as above recorded.)

Mr. MARSH. I think it would give them some such advantages, and I think it extremely doubtful whether either the producers or the consumers would get—each or either of them—their fair share of the advantage which would inure to the packers from such modification.

Mr. BREED. In your opinion would it tend to give the packers a growing increase of business in those unrelated lines over their competitors?

Mr. MARSH. Well, this is of course a theoretical question. I think it would. I am giving you a qualitative and not a quantitative answer. I can not give you a statistical idea, or what it would be statistically, but I think that would be the tendency.

Mr. BREED. Well, if the railroads do not furnish the same refrigerator and peddler car service to, we will say, the wholesale grocers, would or would not, in your opinion, the packers have an advantage over the wholesale grocers in distribution?

Mr. MARSH. Oh, they would have an advantage, unquestionably. I say I don't know how much. That they would have an advantage I think is perfectly obvious. And they would have an advantage over the cooperative canneries, and the cheese factories up in Wisconsin and everywhere else. The advantage which the packers would have over the wholesale grocers would be nothing like as much as the advantage which they would have over the little cooperative. And I am more concerned with those little cooperatives than I am with any big combination of business.

Mr. BREED. And that is the reason why you feel there should be some legislation with respect to this special refrigerator and peddler-car service?

Mr. MARSH. Yes. Our position is unequivocal that the railroads should acquire these principal and necessary stockyards, and that the railroads should immediately go back to unified Government operation. That we should reduce the freight rates to those in force when the roads were returned to the Wall Street gamblers under the Cummins-Esch law, and if there is a deficit, make it up out of the Public Treasury.

Now, I don't know whether the gentlemen who are opposing the modification of this consent decree will accept such an enlightened viewpoint, but I trust they do.

The CHAIRMAN. Anything else, Mr. Breed?

Mr. BREED. No.

The CHAIRMAN. Senator, have you any other questions?

Mr. SMITH. Yes. You oppose then, do you, Mr. Marsh, and your associates, any modification of this decree until, first, the railroads take entire control of the refrigerator cars? That is your first proposition, isn't it? You think that the refrigerator cars should all go back into the hands of the railroads and be operated by them for the use of all distributors before any modification of this decree giving the packers the right to go into unrelated food products should take place?

Mr. MARSH. I think it would be illogical to suggest a change of that sort not covered by the consent decree. I would say that first we should have this power vested beyond question and clearly in the Department of Agriculture to prevent packers from going into unrelated lines of business if it seems contrary to public policy. And simultaneously, if you please, have this other provision as to refrigerator cars and special equipment cars.

And may I add this, too, Senator Smith? I don't want a thing I have said here to give the impression that I think the condition of the farmers' cooperative organizations is what it ought to be. They need relief, and they have got to have better service. And I just hope that you folks will all get together down here, and I will get with you, and see if you can not work out some way in which the wholesale and retail grocers can be of greater service to the farmers of America in distributing, and until the farmers organize enough to tend to that job themselves.

Mr. SMITH. The two leading objections to the present conditions that you present are, first, that the railroads should have control of all of the refrigerator cars?

Mr. MARSH. Should own them.

Mr. SMITH. Should own them, that is what I mean. Should own them all, so that all distributors should have an equal chance at them. That is your first proposition, isn't it, really?

Mr. MARSH. That is essential.

Mr. SMITH. Then you also insist that the legislation should allow the Department of Agriculture to stop, if necessary, the packers from handling unrelated products, if they find it desirable to do so?

Mr. MARSH. Well, I would phrase it this way: If they find that such action is in the public welfare. I would put it that way.

Mr. SMITH. Well, I mean from the standpoint of public welfare, of course, and not arbitrarily desirable.

Mr. MARSH. Yes, I accept, surely, that understanding.

Mr. SMITH. That is all.

The CHAIRMAN. Mr. Stevens?

Mr. STEVENS. Mr. Marsh, in what way do you think the wholesale grocers are now a hindrance to the proper distribution of the farm products—food products? You have intimated that if we get together and agree on some better plan it would be a good thing. Now, what do you find fault with?

Mr. MARSH. Well, I suppose all the fault that could have been found had been found by those that preceded me, and will be found by some that are coming after me. I do not say that the wholesale grocers are at fault, or the retailers, exclusively, by any manner of means, but I do know that the cooperatives are having trouble in marketing some of their products. Now, I have tried to make my position clear. I am not taking sides by any means against the wholesale grocers or any other distributing agency, excepting as to the packers, and I have expressed my opinion on that, but I do feel that it would be a good thing to have the representatives of the cooperative organizations who have asked for the modification of the consent decree to have some Congressmen, whose names perhaps I ought not to give, as they told me in confidence—but I can get them, and I will be glad to meet with you and ask the representatives of the other farm organizations here, and see what the situation is. Of course, I am not a lawyer and I do not enjoy litigation. I am a peaceful, home-loving man. But at the same time there is something wrong here, or there would not have been any request for a modification of the consent decree, except as instigated by the packers. If instigated by the packers there is no reason why it should be considered.

Mr. BREED. Because they came in voluntarily and asked for it and agreed to it, did they not?

Mr. MARSH. Yes. But there are some of these Congressmen whom I know who have no brief for the packers. They have been leaders fighting for packing control legislation, and they are disturbed over the situation. And I would like to have these two groups talk it over, and I would be glad to meet with you. I think that is an answer to your question, is it not?

Mr. STEVENS. I do not know, Mr. Marsh. It does not quite answer my question that I really had in mind. The point I have in mind is this. You have not been here before to-day, have you?

Mr. MARSH. No; I have not. I have read a good deal of the testimony though, but not all of it. I just got back Sunday night from the western trip. I have read some of the testimony.

Mr. STEVENS. You feel, apparently, that the wholesale and the retail grocers are in some way a hindrance to the proper marketing of foods. Isn't that true?

Mr. MARSH. No. I don't want to put it that way. I don't think I should put it that way at all. I say that here is evidently some interference with the work of the farmers' cooperative organizations. I don't know who is to blame for it. That question is not at issue, as I understand it, before this committee, but it is necessarily involved. And some of these farmers' cooperative organizations feel very strongly that a modification of the consent decree, to let the packers go back into distributing their products—that is, the cooperative canneries or otherwise—is going to help them. I do not agree with that. But I hate to be merely negative. I think that they are in error in asking for a modification of the consent decree, and prior to the enactment of legislation I suggest that these men meet with the wholesale grocers, and I will be glad to meet with you, and find out if you can help those farmers' cooperatives in distributing their products.

Now, I think that is a reasonable proposition. I have no authority to make that proposition, but what is the use of fighting over a thing if we can get together and work it out to the mutual advantage of all who are concerned?

Mr. STEVENS. Well, don't the wholesale grocers buy from the cooperative associations?

Mr. MARSH. I think they do very largely.

Mr. SMITH. You would not deem it advisable for the wholesalers to meet with cooperative associations that were controlled by the meat packers, would you? You do not think that would do any good?

Mr. MARSH. Why, you might find out something. I trust you to find out anything if there is anything to be found out there, Senator Smith, and I am sure that it would not injure your professional standing if I am there as chaperone.

Mr. SMITH. Do you think any progress would be made by a conference with those cooperatives that the five meat packers controlled?

Mr. MARSH. No; I will say that, Mr. Smith, no; I do not believe so.

Mr. SMITH. That was my question.

Mr. MARSH. I do not; I do not believe there would be with the cooperatives that the five meat packers control.

Mr. SMITH. That is what I said.

Mr. MARSH. But there are Congressmen that I have talked with who feel very bitter about the situation. They are just as sincere men as I am. They are just as sincerely in favor of the modification of this consent decree, to permit the packers to go into distributing products raised in Wisconsin, farm products, and canneries—they are just as sincerely in favor of it as I am opposed to it. Now, I make it a point to talk with a man who is opposed to me, when he is just as sincere a man as I am, although we do not agree; I make it a point to talk to him.

Mr. SMITH. I was not objecting to that. I was asking you if you thought it would do any good for the wholesalers to confer with the cooperatives controlled by the five packers?

Mr. MARSH. No; I don't know that it would do any good, but I don't know as it would do any harm. And I would want to have complete evidence that the farmers' cooperative was controlled by some one of the five packers. There are perhaps some which are so controlled.

Mr. SMITH. Oh, I did not means to intimate that there were not a great many that were not controlled at all in that way. I did not meant that.

Mr. MARSH. As I stated, in two of three cases the Big Five packers have gotten their agents into independent cooperative packers and practically wrecked them, but that is the exception.

I don't know as this discussion is germane, as it is now drifting.

The CHAIRMAN. I think he has answered the question, Senator.

Mr. SMITH. I have no further questions.

The CHAIRMAN. Have you anything further, Mr. Breed?

Mr. BREED. No.

Mr. STEVENS. May I ask you one question? How do the cooperative associations distribute their products?

Mr. MARSH. Through the wholesale grocers, through brokers, through commission men. I think that has probably gone into the record very thoroughly. I have not been able to follow it very thoroughly; you probably have. But undoubtedly that has gone into the record. As I stated, we are trying to develop a method under which they can ship their goods directly to groups of consumers in the cities.

Mr. STEVENS. Yes.

Mr. MARSH. But, being practical men, we recognize that the consumers in the cities are not organized to buy directly today, and there is no use of blinking our eyes at existing situations. Now, existing agencies have got to be used for distributing these products, and I don't care whether it is the wholesale grocers, or the chain stores, or brokers, or consignors. We would like to have just as few people intervene and the most efficient method of distribution done of the output of cooperative canneries and other cooperatives to the consumers.

Judge HAINER. Well, until such time as the ultimate plan which you hope to bring about is brought about, are the cooperative associations content to distribute their products through the present agencies?

Mr. MARSH. I have no power or authority to answer for them.

The CHAIRMAN. Is that all, Mr. Stevens?

Mr. STEVENS. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Daily, have you any questions?

Mr. DAILY. No, sir.

The CHAIRMAN. Then that is all, Mr. Marsh, and we thank you very much for your statement.

We would like to hear Mrs. Kelley before we go, as she is very anxious to get away.

STATEMENT OF MRS. FLORENCE KELLEY, GENERAL SECRETARY OF THE NATIONAL CONSUMERS' LEAGUE, NEW YORK CITY.

The CHAIRMAN. You may state your full name, Mrs. Kelley.

Mrs. KELLEY. Mrs. Florence Kelley.

The CHAIRMAN. Where do you reside, Mrs. Kelley?

Mrs. KELLEY. New York City.

The CHAIRMAN. Whom do you represent here?

Mrs. KELLEY. I am general secretary of the National Consumers' League.

The CHAIRMAN. And represent that league at this hearing, do you?

Mrs. KELLEY. Yes, sir.

The CHAIRMAN. How many members has your league?

Mrs. KELLEY. I can not say exactly how many members we have. We formed organizations in 20 States, and then we have member organizations in all of the States, and a couple in Alaska. We are really a national organization.

Mr. BREED. Can you make any estimate?

The CHAIRMAN. Can you approximate it?

Mrs. KELLEY. Yes; I should say that we have about 40,000 members.

The CHAIRMAN. And does that membership consist of both men and women?

Mrs. KELLEY. Yes, sir. The president of the organization is former Secretary Newton D. Baker; he was president from November, 1915, down to date; and the chairman of the executive committee is Mrs. Borden Harriman; and we have a full set of officers, with headquarters in New York City.

The CHAIRMAN. Just proceed now in your own way, Mrs. Kelley.

Mrs. KELLEY. Well, we have been very much interested in the packer legislation, especially during the last three years, and I have appeared several times before the Agricultural Committee of the House and before the Interstate Commerce Committee, and once before the Agricultural Committee of the Senate, in regard to the different packer bills when they were pending there. And our position has always been that, just as the banks had the Federal Reserve Commission and the railroads have the Interstate Commerce Commission, so an industry so vast and so vital to the American people should be under congressional legislation and under the administration either of one of the departments or of a special commission.

Mr. BREED. May I ask what industry you refer to, Mrs. Kelley?

Mrs. KELLEY. The packer industry. Our original preference was for having legislation administered by the Federal Trade Commission, but we are entirely opposed to the administration of any great industry by the Department of Justice. We consider that that is quite intolerable. We were never for a moment content with the consent decree, but neither are we content with having the consent decree so modified as to exempt the packers from the only provisions of that decree that could have been beneficial to the consuming public. And our position is substantially that which Mr. Marsh stated so elaborately, that we think until there is congressional legislation, which we consider indispensably necessary at the earliest possible time giving full control and administration to the Department of Agriculture, there should be no relaxation whatever of the provisions as they stand.

I was asked incidentally—this is a minor matter—but I was asked by our California membership to lay before you gentlemen their statement that they did not wish to be regarded as represented here by Mr. Campbell in the statements which he has made here. They are, as our California members believe, not exactly in harmony with what I have just said.

Mr. BREED. Who is not in harmony?

Mrs. KELLEY. Mr. Campbell—is not that the name of the gentleman who has been speaking here in the name of the California consuming public?

The CHAIRMAN. Yes; Mr. Campbell.

Judge HAINER. He represents the California canneries.

Mrs. KELLEY. Yes, but my understanding, from the evidence I have read in the New York Commercial, is that Mr. Campbell has represented himself as not only speaking for the California canneries, which are not wholly content to have him as their spokesman, but he is also speaking for the consumers' league, which I represent, which league does not want him to be regarded as its representative. I want to be quite clear on that.

The CHAIRMAN. I think the record will show that he did not claim to represent any organization in California, except his own.

Mrs. KELLEY. Well, it was rather reported that he was speaking for the consumers. That is the way the New York Commercial, which I read, reported it.

The CHAIRMAN. Is that all; are you ready for us to ask questions?

Mrs. KELLEY. Yes, sir.

The CHAIRMAN. Mr. Breed, have you any questions?

Mr. BREED. No, Mr. Chairman, not at this time.

The CHAIRMAN. Senator Smith, have you any questions?

Mr. SMITH. Then your opinion is, Mrs. Kelley, that your organization in California does not approve a modification of the decree so as to allow the big packers to go into the unrelated food products?

Mrs. KELLEY. Oh, no; we do not agree with that. There is no division of opinion within the organization. Our organization has been perfectly a unit in the last three years, since we heard the evidence brought out three years ago, when there was an elaborate investigation of the packing industry.

Mr. SMITH. And you are opposed to the meat packers going into the unrelated products?

Mrs. KELLEY. Yes. If I could speak quite personally, I would like to say that what I am saying now is not as officially representing the Consumers' League, but represents the situation a little as to the general consuming public.

I made the acquaintance of the stockyards about 50 years ago next June, when I was younger than I am now, and I was enormously impressed as a young Philadelphian who visited the new industry, as to what I saw there, an immense manufacturer of foods. But I was enormously impressed with this thing which seemed to us a perfectly stupendous kind of a new industry in the world. My father at that time had been many years in Congress. He was here from 1860 to 1890, and his children heard more about industry and legislation than they otherwise would. I remember his expression—he was a believer in protecting our infant industries—and I remember his saying about this particular industry, which was then younger, as I was, and which was clamoring for protection at that time—I remember about my father saying about this: "Now, many of our infant industries seem rather like gourds." He said, "This one seems as though it might very well be an acorn, a thing of enormous, permanent growth; I do not see why it should not be." He was, frankly, very much disturbed about an infant industry which could have the power which that was just beginning to show then over the farmers, and over the consumers. It seemed to him that any great industry which showed such great growth as it was showing, and showed such hunger as it was showing at Washington, was kind of a pivotal or key industry. And he was afterwards chairman of the Committee on Ways and Means and came again in contact with this great industry.

And I came in contact with it in an entirely different way. I was factory inspector for four years, from 1893 to 1897—very much later. And I was impressed then with its enormous power over its employees. It was my duty to try to enforce a State law for the protection of children working in the stockyards, and I got my impression of its enormous power in the courts of Illinois. So I have had a long-range and long-time acquaintance—somewhat superficial acquaintance—with this industry, except during those four years, when my acquaintance was very intimate with it.

So when the Consumers' League directed me to attend the hearings three years ago I did so with extraordinary interest and with a reviving memory of the things which my father 50 years before had felt. And I confess that the consent decree seemed to be a perfectly staggering thing. The transfer of any part of the control of the greatest food industry of 100,000,000 people from Congress to the courts, that seemed to me a perfectly staggering thing to face in a republic. And, although I should be very glad when the time comes that that decree is supplanted by legislation, which appears to me to be the orderly constitutional procedure with regard to the industry, I very ardently hope that the court will not further implicate itself by relaxing the meager measures for the protection of the public which the decree seemed to promise as compensation for failure to enforce upon the packing industry, as concentrated there in Chicago, the penalties which we were all entitled to expect to follow the revelations that had preceded that decree.

The CHAIRMAN. Mrs. Kelley, do you think that if the packers are permitted to handle these unrelated lines again it will result in any disadvantage to the consumer?

Mrs. KELLEY. Well, I can not imagine how it could fail to do that.

The CHAIRMAN. What would be its effect, in your opinion?

Mrs. KELLEY. Oh, its effect, in my opinion, would be a further growth of the acorn. The acorn always grows. It has grown during the 50 years I have been acquainted with it, and I can not see anything in our experience of the retailing of products or foods to lead me to believe that the packers would, if they could, permanently and generally lower to the consumer the price of goods which they were free to handle. I think they have got all they can reasonably be expected to do in the area which they are now allowed to cover.

The CHAIRMAN. Then you feel that if they should be permitted to continue the handling of these goods, or resume the handling of these goods, that it would ultimately cost the consumer more money?

Mrs. KELLEY. Oh, undoubtedly, and the "ultimately" would not, I think, be very far off.

The CHAIRMAN. And why do you feel that way?

Mrs. KELLEY. Because of past observation.

The CHAIRMAN. Of what; of the packers and their business, or what?

Mrs. KELLEY. Both the packers and other business. As the secretary of the Consumers' League it has been my duty, of course, for the last few years to study industry, and I have never seen anywhere the growing concentration of an industry that in the end has permanently reduced prices to the consumer.

The CHAIRMAN. You feel that if they go back into the handling of these goods, that they will obtain a monopoly of those lines?

Mrs. KELLEY. Oh, it is very hard to get a complete monopoly of anything in the United States. The word "monopoly" taken literally, it is pretty hard to do.

The CHAIRMAN. Well, a control then.

Mrs. KELLEY. I think the tendency would be for them to get a control; yes, sir.

The CHAIRMAN. Do you think they would eliminate the present distribution?

Mrs. KELLEY. I don't know how far they could eliminate it. But the thing they would do would be to cripple still further our very slowly developing cooperative industries. Of course, of all the great nations, and among a good many of the smaller ones, we are away behind in the development of cooperative production and distribution. I think this would still further slow down the processes of development, and I have reason to believe it would.

Judge HAINER. Do you believe there should be any congressional legislation prohibiting the packers from distributing these products under a proper control by the Government?

Mrs. KELLEY. Well, I find it very difficult to conceive of a proper control. I have not seen anything that has looked to me like efficient control of this enormous industry by the Government hitherto, and I think if I could see what seemed 100 per cent efficient control of the packing industry for 15 years, I would be more competent to express an opinion in reply to the question.

Judge HAINER. Then you believe that the meat packers—that is, the five big packers—should be forever prohibited from distributing any of these unrelated products in the United States or foreign countries?

Mrs. KELLEY. Well, forever is a long time, and my wisdom is pretty limited. I think they should for the present.

Judge HAINER. You understand that was the testimony of former Attorney General Palmer, that this decree forever prohibits them from distributing any of these unrelated commodities in this country or foreign countries?

Mrs. KELLEY. Well, forever is just as long a time for prophecy of Mr. Palmer as it is for prophecy to me. But I should think if that were true, then our Constitution has suffered a change.

Judge HAINER. Well, do you believe that they should be prohibited from distributing, under proper supervision and otherwise regulatory laws, from distributing these unrelated commodities?

Mrs. KELLEY. Certainly; until Congress resumes its function and the courts resign their function, and the incursion of the courts into the functions of Congress; that is, for the future. This particularly decree is ancient history.

The CHAIRMAN. Mr. Breed, do you care to ask any questions?

Mr. BREED. Just one question. You understand, do you not, Mrs. Kelley, that this decree that we are talking about, and its modification, with respect to the packers withdrawing from the retail meat business, from stockyards, from ownership or control of the warehouses of the United States, and from the sale and transportation of unrelated food products was consented to by them when it was entered by the court?

Mrs. KELLEY. Oh, yes; I understand that. I should have liked it better if it had not been.

Mr. BREED. I quite agree with you. You understand, do you, that none of the packers have appeared at this hearing asking that they be permitted to withdraw their consent to any of these provisions of that decree?

Mrs. KELLEY. I have not attended the hearings, I am sorry to say, and I did not know that. That is very interesting.

Mr. BREED. I thought it would be interesting to you to know that it was announced that none of the packers had applied to the Attorney General or the Government that this decree be modified.

The CHAIRMAN. That is correct.

Mr. BREED. That being correct, do I understand that your recommendation is that the Attorney General, or the Government, do not apply to the court for leave to force the packers to withdraw their consent to the decree that was entered against them?

Mrs. KELLEY. Yes; I think I have stated quite clearly that we did not desire or request or welcome the consent decree, primarily because it seems to us a most dangerous precedent to have any industry, great or small, administered by any court under any circumstances.

Mr. BREED. I was only trying to bring out—

Mrs. KELLEY (interposing). But as to the second point, we should regret having the court go further and take affirmative legislative action still further. We would prefer to have everything left as it is, and hasten the day of congressional action to attain this end.

Mr. BREED. But you would not recommend that the Government apply to the court to compel the packers to withdraw the consent to this decree and ask to have it modified?

Mrs. KELLEY. No.

The CHAIRMAN. I do not know that there is any idea of compulsion in this thing, Mr. Breed.

Mr. BREED. The only reason I used that word "compulsion" is, that being a lawyer I have a sort of a feeling that where there are two parties to an action in equity, and the defendant consent to the entry of a decree embodying the restrictions against himself, that even the Government can not modify that decree without consulting him.

The CHAIRMAN. That is a legal question which we will thresh out with the court in the event anything is done about it. And in that event we will be ready to meet it.

Judge HAINER. And you are assuming, Mr. Breed, that this is a contest between the packers on the one hand and the wholesale grocers on the other?

Mr. BREED. No; I deny that it is.

Judge HAINER. That seems to be your idea.

Mr. BREED. No, sir.

Judge HAINER. The committee wants to know what is to the best interests of the public.

Mrs. KELLEY. Of course, the public embraces us all.

Judge HAINER. Yes; everybody.

Mrs. KELLEY. The packers and the group of consumers in whose name I appear.

Mr. SMITH. Representing the consumers, as you do, you think it unwise to modify this decree and turn the packers loose in unrelated foods?

Mrs. KELLEY. With the group of consumers for whom I speak I am instructed to say that.

Mr. STEVENS. Mrs. Kelley, you speak of your acquaintance with the packers while you were factory inspector, and the power the packers had over their employees.

Mrs. KELLEY. Yes.

Mr. STEVENS. Now, do you fear any other result, except an economic result, if the packers get control of the food products again; any political result?

Mrs. KELLEY. Well, an answer to that question would be an expression of my private opinion, and I did not give sufficient attention to that to express an opinion.

Mr. STEVENS. Just what do you mean by power over their employees?

Mrs. KELLEY. As factory inspector in Illinois, we looked into the industrial and legislative action for the protection of women and children of that State, and the particular thing that impressed me was the utter freedom with which machinery could be left unguarded and people would be injured in life or limb without any compensation. And the packers seemed to be above and beyond all restriction, as late as the year 1896, when I ceased to be inspector there. I have always had that impression of their absolute power. But that is irrelevant, I think.

The CHAIRMAN. I don't think it is necessary to go into that further. Do you care to ask anything, Mr. Daily.

Mr. DAILY. My question was asked by Senator Smith.

Senator SMITH. What district did your father represent in Congress?

Mrs. KELLEY. Philadelphia; he represented the fourth district in Pennsylvania.

Senator SMITH. He was Judge Kelley?

Mrs. KELLEY. Yes, sir.

Judge HAINER. Commonly known as "Pig Iron" Kelley?

Mrs. KELLEY. Yes, sir.

Senator SMITH. I asked because I knew him.

The CHAIRMAN. If that is all, we thank you very much for your statement, Mrs. Kelley.

Gentlemen, we will now adjourn until 2 o'clock this afternoon. The Secretary of Commerce expects to address a meeting in this room this afternoon, so our meeting will be held in room 709, which is just up the hall from here.

(Whereupon, at 12.45 o'clock p. m., the committee adjourned until 2 o'clock p. m. of the same day, Wednesday, December 7, 1921.)

AFTER RECESS.

The committee resumed its session at 2 o'clock p. m., pursuant to the taking of recess, in room 709, Commerce Building.

The CHAIRMAN. Gentlemen, we are ready to proceed. Mr. Craig, you may proceed if you are ready.

STATEMENT OF MR. JAMES CRAIG, FRUIT GROWER AND CANNER, WAYNESBORO, VA.

The CHAIRMAN. Mr. Craig, you may state your full name.

Mr. CRAIG. James Craig.

The CHAIRMAN. Where do you live, Mr. Craig?

Mr. CRAIG. Waynesboro, Va.

The CHAIRMAN. What business are you engaged in?

Mr. CRAIG. Fruit growing and canning, and also growing vegetables for canning purposes.

The CHAIRMAN. How many acres, approximately, do you operate?

Mr. CRAIG. We have under our control and supervision about 400 acres.

The CHAIRMAN. How large a cannery do you operate?

Mr. CRAIG. Our canning capacity is about 40,000 cases.

The CHAIRMAN. How many farmers, or producers, contribute to that cannery?

Mr. CRAIG. The neighborhood tributary to us has about 250,000 apple trees, and, of course, we work up part of these by-products. It is one of the biggest fruit-growing sections in Virginia, and one of the largest in the East.

The CHAIRMAN. Do you represent in any way any organization?

Mr. CRAIG. No organization at all except our own.

The CHAIRMAN. Just proceed, Mr. Craig, in your own way.

Mr. CRAIG. Well, we have, in the past few years, had great difficulty in marketing our canned goods, is the principal reason why we are here at the present time, and I am here in reference to that. We have had trouble in distribution since the packers have been out of that end of the game. Since the packers have been out of the game we have found that our wholesale grocers are not functioning properly; for what reason, I do not know. We have cut out our beans and tomatoes entirely and junked our machines and thrown them on the waste pile, finding that it does not pay any longer to can tomatoes or beans. We could not make any money off of them. The distribution was so poor, and at the grocers' desired prices we could not make money and can successfully.

In our apple end of the canning we have continued to can, because we have a large production of cull apples that we have to put into some commercial form. And we have continued to can up to the last year; we did not can any this year.

The CHAIRMAN. What do you feel is the trouble with distribution, Mr. Craig, if anything?

Mr. CRAIG. Well, I think the greater number of distributors we have—I do not care who they are, just so they have the money to pay for it—the better we are all off. And it seems like since the packers have gone out of the canned-goods business we have had only one source to sell to, and that is the jobber or groceryman. The grocerymen seem to have entered into a combination or agreement or something of the kind—I don't know what it is—and they no longer want to purchase our goods in any quantities. It is very seldom that

you can sell as much as a solid car of goods to them. They are more like agents than they are like grocerymen or jobbers.

Now, just an illustration of an experience I had the other day: We received an order for 10 dozen No. 10 beans from a man in Chattanooga, a man that would naturally take a car or two cars. Why he did not give a larger order I can not see.

But the facts are that to-day we can not afford to put up things. We have got to have a larger distribution some way or somehow or we will have to quit.

When the packers were in the business we had the packers to go to, and if we could not sell to the packers we could go to the jobbers. Naturally, one or the other would buy, and we always had competitive purchasers. And I suppose the retailers had the same proposition; that was the advantage of buying either from the jobber or from the packer.

The CHAIRMAN. Do you have that now?

Mr. CRAIG. We do not. The packer is out of business, and we no longer have him as a source to approach in the line of a purchaser. We only have the grocer as a purchasing agency.

The CHAIRMAN. Would you favor or oppose a modification of this decree so as to permit the packers to return into the business of buying and selling canned goods and unrelated lines?

Mr. CRAIG. I would favor it.

The CHAIRMAN. Because of what; the reason that you have stated here?

Mr. CRAIG. Yes, sir; we have two sources to which we can sell our goods.

The CHAIRMAN. Have you talked with any other canners in your part of the country in regard to this?

Mr. CRAIG. Yes; the most of the canners in our country have quit. I don't think there was a single canner in our whole territory run last year.

The CHAIRMAN. Why?

Mr. CRAIG. Because they found it unprofitable to continue any longer in the business under the circumstances, and also on account of the futures. They refused to buy futures. A great many canners have to finance themselves on future orders, and this future-order business was given up entirely or curtailed by the jobbers.

The CHAIRMAN. Mr. Craig, have you talked with any growers or producers in your section of the country about this?

Mr. CRAIG. Well, so far as the growers of our products are concerned, they know very little about that end of the business. I think the sentiment is, though, among the people that handle the can line, that they want the packers back in the game.

The CHAIRMAN. Have you any questions, Judge Hainer?

Judge HAINER. No, sir.

The CHAIRMAN. Have you, Mr. Hall?

Mr. HALL. No.

The CHAIRMAN. Mr. Breed, have you?

Mr. BREED. Mr. Craig, how did you happen to come to these hearings?

Mr. CRAIG. Well, I have been approached through a letter from Mr. Campbell, and also was approached by a number of letters from the jobbers. The jobbers are very solicitous that we all be put out of business, which we are now, practically, and won't lose anything, even if we are boycotted by them; we would be in just the same position as we are now.

Mr. BREED. Do you know the other gentlemen from Virginia who were here yesterday?

Mr. CRAIG. I don't know them personally; I know them by reputation.

Mr. BREED. You say that during the past few years you have found difficulty in distribution?

Mr. CRAIG. Yes, sir.

Mr. BREED. How long?

Mr. CRAIG. Well, in the last three years.

Mr. BREED. What years?

Mr. CRAIG. 1918, 1919, and 1920.

Mr. BREED. 1918, 1919, and 1920?

Mr. CRAIG. 1918, 1919, and 1920. In 1921, this present year, we did not produce anything, but we are still carrying over from last year enough to last us. We did not have to can anything now—only once in two years.

Mr. BREED. When did the great depression in business generally begin?

Mr. CRAIG. It wasn't in 1918.

Mr. BREED. Well, when was it?

- Mr. CRAIG. I would say it was last year.
- Mr. BREED. Wasn't it in 1919 that the prices began to drop off in tomatoes?
- Mr. CRAIG. Well, in tomatoes they did; yes.
- Mr. BREED. When did the big drop in the price of tomatoes take place?
- Mr. CRAIG. Well, after the armistice was signed, in the following year, it commenced to drop in the spring.
- Mr. BREED. It was quite a serious drop, was it?
- Mr. CRAIG. It was quite a heavy drop; yes.
- Mr. BREED. What was it—what had tomatoes been selling for prior to that?
- Mr. CRAIG. Well, tomatoes had been, previous to the war—I mean at the beginning of the war, for a few months, as high as \$2,
- Mr. BREED. What do you say of 1917 and early 1918?
- Mr. CRAIG. Around \$2.
- Mr. BREED. What did they drop to in 1919?
- Mr. CRAIG. In 1919 they dropped as low as \$1.05, I think.
- Mr. BREED. And you say that you now have a stock on hand?
- Mr. CRAIG. We still have; yes, sir.
- Mr. BREED. What do you have?
- Mr. CRAIG. Not tomatoes; we have apples.
- Mr. BREED. No tomatoes?
- Mr. CRAIG. No tomatoes.
- Mr. BREED. You have disposed of all your tomatoes?
- Mr. CRAIG. We have sold them all.
- Mr. BREED. Did you have any stock on hand in 1919?
- Mr. CRAIG. Yes, sir.
- Mr. BREED. How large a stock?
- Mr. CRAIG. I don't know how many; perhaps around 40,000 cases.
- Mr. BREED. To whom did you sell them?
- Mr. CRAIG. We sold them to anybody that would buy them.
- Mr. BREED. Did you sell any to the wholesalers?
- Mr. CRAIG. Very few.
- Mr. BREED. Did you sell any?
- Mr. CRAIG. I would say probably two cars.
- Mr. BREED. You said that you stopped packing this year because you could not make any money?
- Mr. CRAIG. Yes, sir.
- Mr. BREED. What was that due to?
- Mr. CRAIG. Well, one reason was, of course—the general depression, of course, influenced the prices; we realize that; we know that. Of course the cost of material did not depreciate very much, and the cost of the raw products did depreciate, but the prices that the grocers wanted to pay us and offered us would not justify us putting them up.
- Mr. BREED. In other words, do I understand that the market price of tomatoes was lower than you could produce them for?
- Mr. CRAIG. Than we could produce them for.
- Mr. BREED. How was the price of tins?
- Mr. CRAIG. Tins was about the same.
- Mr. BREED. That is, they did not drop?
- Mr. CRAIG. No; they haven't dropped much yet.
- Mr. BREED. What was the price of labor?
- Mr. CRAIG. Labor was practically the same. Coal was a little cheaper.
- Mr. BREED. So that your cost kept up?
- Mr. CRAIG. Yes, sir.
- Mr. BREED. But the price of the product had dropped?
- Mr. CRAIG. Yes; had gone off.
- Mr. BREED. Do you know whether or not there was any surplus tomatoes in the hands of the jobbers and retailers in 1919 and 1920?
- Mr. CRAIG. Oh, yes; there must have been a surplus some place, either in the Government's hands or the jobbers' hands.
- Mr. BREED. Do you know how much there was of it?
- Mr. CRAIG. No; I don't know the figures.
- Mr. BREED. In the Government's hands?
- Mr. CRAIG. No; I don't know the figures.
- Mr. BREED. You knew the Government offered for sale a large quantity of tomatoes, did you not?

Mr. CRAIG. Yes; they offered them at different times. I don't know the exact quantity, but large quantities. In fact, they have some yet, I expect.

Mr. BREED. Did that, in your opinion, have any effect on the price of tomatoes?

Mr. CRAIG. Some, yes. Still, our production of tomatoes this year is away below normal; in fact, 30 per cent of normal.

Mr. BREED. Now, you made the verbal statement that you had only one source to sell to after the decree; what did you mean by one source?

Mr. CRAIG. By the source I mean the jobbing concerns; the men we could sell to in the car lot. The jobbers are supposed to buy in the car lot, and the packers are supposed to buy in the car lot.

Mr. BREED. How many jobbers do you have on your books?

Mr. CRAIG. I suppose 25.

Mr. BREED. And you sold to them prior to 1919?

Mr. CRAIG. We sold to them and the packers both.

Mr. BREED. Then these 25 jobbers—are they still in business?

Mr. CRAIG. Most of them are. I don't know how many failures there have been in the South.

Mr. BREED. Did you ever ask any of those jobbers whether they would take any of your tomatoes?

Mr. CRAIG. Oh, yes; I go to see them.

Mr. BREED. What did they say?

Mr. CRAIG. They always claim they could get them cheaper somewhere else, and they wanted to split cars—to put other products in—and we couldn't always furnish it.

Mr. BREED. What prices did they generally offer you?

Mr. CRAIG. Oh, they never did offer us anything to justify putting them up.

Mr. BREED. That is, the price—

Mr. CRAIG (interposing). The future price they offered was not enough to justify us running at all.

Mr. BREED. I see. Now, you said that the canners in your section of Virginia had quit packing this year?

Mr. CRAIG. I don't think there was a single canner in our whole county that—

Mr. BREED (interposing). How many canners are in your county?

Mr. CRAIG. In apples, peaches and vegetables, I think about 15.

Mr. BREED. What is the size of their average pack?

Mr. CRAIG. I guess they would average about 5,000 cases.

Mr. BREED. Each?

Mr. CRAIG. Outside of my own; we have the largest cannery.

Mr. BREED. Did they go out of business for this year's pack for the same reason that you have given that you went out?

Mr. CRAIG. Practically the same; yes, sir.

Mr. BREED. The price of the goods—

Mr. CRAIG (interposing). The price of the goods would not justify putting them on the market, and they would not contract for labor or fruit or anything.

Mr. BREED. Have you any farmers in your section?

Mr. CRAIG. They are all farmers and fruit growers.

Mr. BREED. What particular class of farming is carried on?

Mr. CRAIG. We have general farming.

Mr. BREED. Do you know whether the farmer has received satisfactory prices for his grain during the same years, 1919 and 1920?

Mr. CRAIG. In 1919 he got a satisfactory price, but in 1920 he has not, or 1921.

Mr. BREED. Is there any live stock in your section?

Mr. CRAIG. Yes; we raise a great many cattle, and sheep and horses. We are in the Shenandoah Valley of Virginia, if you know what that is.

Mr. BREED. Yes; I do.

Mr. CRAIG. That answers the whole question.

Mr. BREED. Do you know whether their live-stock business is satisfactory in your section?

Mr. CRAIG. No; it is not.

Mr. BREED. Have they quit raising live stock?

Mr. CRAIG. They have not quit entirely; a fellow that has calves has to feed them, but they have stopped buying them.

Mr. BREED. That is, that business is affected to the same extent?

Mr. CRAIG. I don't know the extent of it. I am not familiar with it, but I do know it is affected.

Mr. BREED. That is all.

The CHAIRMAN. Mr. Daily, have you any questions?

Mr. DAILY. Mr. Craig, you are a canner?

Mr. CRAIG. Yes, sir.

Mr. DAILY. What products do you can?

Mr. CRAIG. At the present time we only can apples. As a matter of fact, we are not canning apples, but making apple sauce; we are devoting our whole plant to one line.

Mr. DAILY. You did sometimes can tomatoes?

Mr. CRAIG. We have in the past, tomatoes and beans.

Mr. DAILY. And your idea is, that by reason of the non-purchasing of the wholesale grocer, that your condition would be better if the meat packers would get in to buy?

Mr. CRAIG. We need somebody to buy the goods.

Mr. DAILY. In other words, your opinion is not based entirely, or at all, on whether it will be a permanent or temporary benefit to your industry, is it?

Mr. CRAIG. In the past it was good, from our observation, and we take the history of the past to view the future, and we think it would be better.

Mr. DAILY. You are still packing apples?

Mr. CRAIG. Yes, sir.

Mr. DAILY. Will you tell the committee the price of apples in No. 10 tins, for instance; you pack No. 10's, don't you?

Mr. CRAIG. Yes, sir.

Mr. DAILY. No. 10 tins in 1914 and 1918?

Mr. CRAIG. I couldn't do it, without going to the records.

Mr. DAILY. Would you refer to the—

Mr. CRAIG (interposing). I think 1914 apples were about \$2.40, No. 10 tins.

Mr. DAILY. Can you tell the committee the price of No. 10 apples to-day in Maryland, Virginia, New York and Maine?

Mr. CRAIG. It depends on the quality.

Mr. DAILY. Well, we will take standard apples.

Mr. CRAIG. Standard apples are worth, in Maryland, about \$4.75; Maine apples about \$5.25.

Mr. DAILY. Standard Maines?

Mr. CRAIG. Yes; \$5 to \$5.25; and New York \$5.50 to \$5.25.

Mr. DAILY. Standard?

Mr. CRAIG. Yes, sir.

Mr. DAILY. This condition has been brought about by what; in other words, how do these prices compare with the prices of a year ago?

Mr. CRAIG. Just about the same.

Mr. DAILY. And two years ago?

Mr. CRAIG. Two years ago, not as high.

Mr. DAILY. They were not as high as they are now?

Mr. CRAIG. They were a little bit higher.

Mr. DAILY. Two years ago?

Mr. CRAIG. Three years ago they were up to \$6.

Mr. DAILY. Well, the wholesale grocers are buying apples, are they not?

Mr. CRAIG. Oh, yes; I suppose they are buying apples, I don't know.

Mr. DAILY. I will help you out—no; I won't testify.

Mr. CRAIG. We have a short pack. We haven't any apples in the East, except in Maine, and Nova Scotia and up in New Brunswick, but they are not loading up so very heavy.

Mr. DAILY. Have you any idea of number of cases of No. 3 tomatoes sold by the Government to the people of the United States under the direct selling plan after the war? In other words, have you any idea of the amount of Government released stocks?

Mr. CRAIG. No; I do not. I didn't keep up with it.

Mr. DAILY. Well, you do know, don't you, that they did sell a large quantity?

Mr. CRAIG. Yes; they had a lot left.

Mr. DAILY. And you do know, don't you, that after carrying those tomatoes for a year or more, that the Government sold them at a price very much below their original cost?

Mr. CRAIG. They did say it was below.

Mr. DAILY. Don't you know, as a matter of fact, that the slump in the tomato market dates from the time of the release of this enormous stock of tomatoes?

Mr. CRAIG. That is true, but when we have an abnormally small pack, why don't tomatoes go up in price.

Mr. DAILY. I don't want to argue. Didn't you say awhile ago that the Government had some remaining at the present time?

Mr. CRAIG. Yes; I think they have, because they can not sell them.

Mr. DAILY. And isn't it a fear of the trade, or was it not a fear of the trade that they did not know when the Government would finish releasing these canned foods?

Mr. CRAIG. I don't think so, during 1918 up to 1919 and now.

Mr. DAILY. Well, the canned apples which have been sold to the wholesale grocery trade have been sold at a profit?

Mr. CRAIG. I haven't made a dime in the last five years.

Mr. DAILY. On canned apples?

Mr. CRAIG. Not on canned apples.

Mr. DAILY. And yet you do know that the apple market is so scarce that they are even bringing them from the State of Oregon to the Atlantic seaboard?

Mr. CRAIG. That is so. And there is quite a difference between what they pay there and what the consumer pays. I had a little experience in that in Richmond the other day. I had a little jag of stuff that I sold for \$5.50, and I followed that up, and it was sold for \$9.50 by the jobber. I don't know what the consumer paid for it, but I guess about \$16. We got nothing out of that in the way of profit. The jobber got \$4. What the retailer got I don't know.

Mr. DAILY. That is all.

The CHAIRMAN. Mr. Stevens, have you anything?

Mr. STEVENS. Mr. Craig, what is the highest price you got from the packers for your tomatoes?

Mr. CRAIG. Well, the highest price, I think, I ever sold to the packers was about \$2.

Mr. STEVENS. What was the lowest?

Mr. CRAIG. Oh, we have sold back there in former years as low as about 82 cents.

Mr. STEVENS. I mean, say 1919, what was the lowest?

Mr. CRAIG. 1919?

Mr. STEVENS. Yes; the lowest from the packers; I think you said the price had gone down to \$1.05.

Mr. CRAIG. The lowest we sold that year to anybody, I think, was \$1.40.

Mr. DAILY. \$1.40?

Mr. CRAIG. That is the last year we canned tomatoes. It costs us \$1.90 to put them up.

Mr. STEVENS. How long have you been in tomato packing?

Mr. CRAIG. Only in tomato packing about 6 years.

Mr. STEVENS. That is a relatively new industry?

Mr. CRAIG. Well, in Virginia it has grown within the last 25 or 30 years, I guess, to be a very large industry.

Mr. STEVENS. The war stimulated that, I suppose, a great deal?

Mr. CRAIG. Well, the war did not stimulate many new canners, but it did stimulate production. We had about the same number of canners during the war as we had previously.

Mr. STEVENS. Have you any idea, with the packers now in the business, that you could sell more tomatoes than you do now?

Mr. CRAIG. I think the more you get to distributing goods, the more you can sell.

Mr. STEVENS. You wouldn't increase the consumption?

Mr. CRAIG. But a good salesman may sell you sometimes things you don't want to buy. The packers have the distributing equipment. I think the packers have such distributing equipment that they are the best distributing agents we have. They are away ahead of the wholesale grocers, or anybody.

Mr. STEVENS. Can they get better prices?

Mr. CRAIG. I think they sell for less than anybody. I think they are less than the grocers.

Mr. STEVENS. Have you any figures to base that on?

Mr. CRAIG. Well, I have seen some of their figures less than the wholesale prices. I don't know what object they had; I don't know about that.

Mr. STEVENS. You spoke of the grocers being in combination.

Mr. CRAIG. Yes, sir.

Mr. STEVENS. Just what do you mean?

Mr. CRAIG. They seem to have a gentleman's agreement that they will not do such and such things.

Mr. STEVENS. That is, would not buy from you, you mean?

Mr. CRAIG. Not from me; I am not suffering any more than the rest of them. They certainly have depressed the market.

Mr. BREED. You claim the wholesale grocers have depressed the market?

Mr. CRAIG. They have.

Mr. BREED. Did they depress the market for live stock?

Mr. CRAIG. I don't know who did. I am not in the live-stock business.

Mr. BREED. Or the farmers' stock?

Mr. CRAIG. I am not talking about that; I am talking about my business.

Mr. BREED. But you are charging before this committee that the wholesale grocers have depressed the price of canned goods?

Mr. CRAIG. Yes, sir.

Mr. BREED. Is that correct?

Mr. CRAIG. Yes, sir.

Mr. BREED. You believe that?

Mr. CRAIG. I believe that.

Mr. BREED. And I am asking you now if you believe the wholesale grocers depressed the price of live stock?

The CHAIRMAN. He answered that he did not know.

Judge HAINER. That is not material.

Mr. BREED. It has an interesting bearing.

Mr. CRAIG. I don't know what answer the live-stock men will have to give you. I am not in the live-stock business.

Mr. DAILY. I would like to know if that allegation includes canned apples.

Judge HAINER. Ask him that.

Mr. DAILY. Does that allegation include canned apples?

Mr. CRAIG. They have been loath to buy canned apples, and especially to give us future orders, and that—

Mr. DAILY (interposing). Don't you know that the sale of canned apples has been very heavy this fall and this summer?

Mr. CRAIG. It may have been very heavy in a way, but the canned apples are not nearly up to normal.

Mr. DAILY. As a matter of fact, the market has not suffered much?

Mr. CRAIG. It has been dull. My salesmen report dull sales all the time. It is dull, and the apples are not here, either; they are not in this country. We ought to have an enormous trade, and we don't have it.

Mr. HERSCHER. You have a lot of tins?

Mr. CRAIG. Yes.

Mr. HERSCHER. I bought some from you.

Mr. CRAIG. Yes.

Mr. HERSCHER. And that size is unsalable.

Mr. CRAIG. Well, the only way we can sell them is to circularize the trade. The consumers want them.

Judge HAINER. And the jobbers won't buy them?

Mr. CRAIG. The jobbers won't buy them. We have a mailing list right now that we sell to every week. And we are going to continue to sell to anybody that will pay us the money.

Mr. STEVENS. Do the retail grocers in your community sell canned tomatoes?

Mr. CRAIG. Oh, yes.

Mr. STEVENS. Do they have any on hand, do you know?

Mr. CRAIG. I suppose they have.

Mr. STEVENS. What is the reason; is it because they can not dispose of them to the consuming public?

Mr. CRAIG. Well, I suppose they are selling them too. But I don't know whether they will have any along in next March or not, when they ought to have them, and in May and June. The tomato pack is very short. Everybody wants them and the price ought to be high, and the fellows are selling tomatoes to-day at a loss and he certainly ought to be paid for his trouble. Somebody ought to pay him.

Mr. STEVENS. It doesn't look to me that the wholesale grocers would refuse to buy canned tomatoes if they could sell them at a profit.

Mr. CRAIG. I don't know what is the matter with them. They are a problem to me.

Mr. STEVENS. Do you believe that?

Mr. CRAIG. I don't know whether they are all broke or what is the matter with them.

Mr. BREED. They have not gone out of business?

Mr. CRAIG. No, but their shelves are pretty empty. You go into their warehouses, and look around and their shelves are rather empty. And they will say I will give you an order for 25 dozen; you can ship me just so many. And they used to buy more.

Mr. BREED. Their orders are smaller than they used to be?

Mr. CRAIG. It is not only small; they want you to carry the stock, and take all the trouble and worry and then the loss of a profit. It used to be they would stock up their warerooms full, and your warerooms and advance you money on them, but nothing doing to-day. Armour will do it, though, I expect.

Mr. DAILY. May I ask one more question, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. DAILY. Are you familiar with the Canning Trades' Almanac?

Mr. CRAIG. Not with the Almanac so much, but I do know the canning trade.

Mr. DAILY. It is recognized as a canning trade paper, is it not?

Mr. CRAIG. I have seen it, but I don't know as I ever read it.

Mr. DAILY. I have here a table, monthly range of prices, and it is headed "Monthly range of prices, 1919," and under apples. Maryland, No. 10. is the only kind which refers to the goods you mentioned, and the range in November, 1919, and in December, was \$5.25, and I think your testimony indicated that the price to-day was \$5.25, and later on you said it was lower than it was two years ago.

Mr. CRAIG. Apples are being sold to-day at \$4.50.

Mr. DAILY. I thought you said the price of standard apples—

Mr. CRAIG (Interposing). If that neighborhood. But those men that are hard up are selling apples at \$4.50.

The CHAIRMAN. If that is all, we thank you very much, Mr. Craig.

Now, Senator, have you finished with your people yet?

Mr. SMITH. I would like to have Doctor Duncan called. Doctor Duncan is the statistical expert of the Southern Wholesale Grocery Association, and he desires to present some matters.

The CHAIRMAN. We will hear Doctor Duncan.

Your name in full, please.

STATEMENT OF C. S. DUNCAN, DIRECTOR OF THE BUREAU OF BUSINESS RESEARCH, SOUTHERN WHOLESALE GROCERY ASSOCIATION.

Mr. DUNCAN. My name is C. S. Duncan. I am director of the bureau of business research for the Southern Wholesale Grocery Association.

Mr. SMITH. What number of members are there in that association?

Mr. DUNCAN. There are between 2,000 and 2,100 to-day.

The CHAIRMAN. Just proceed in your own way.

Mr. DUNCAN. Mr. Chairman, I have been asked to come on to make a few statements, not particularly in a statistical line, because the jobbers themselves have presented the details of their business, perhaps, over and over again in certain lines, and it seems to me that largely the hearing has centered down to the canning trade.

You will understand that there are other phases of the wholesale grocery business besides the canning trade. But it seemed to me worth while to come before you and state very briefly some facts for more general consideration, probably, as bearing directly upon the issue that lies before this committee.

As I understand your letter, and your statement on the first day, what you want to know is the effect upon public welfare of this consent decree and any modification that might be made of it.

I want to say just a few words about the wholesale grocery as an instrument of distribution.

The CHAIRMAN. If I might interrupt, before you begin that, I would like to ask you some questions.

Mr. DUNCAN. Yes.

The CHAIRMAN. How long have you been with the Southern Wholesale Grocery Association?

Mr. DUNCAN. I came with the Southern Wholesale Grocery Association on February 1 of this year, 1921.

The CHAIRMAN. Prior to that time, what was your work?

Mr. DUNCAN. Prior to that time, for two years, since the war was over—I was abroad during those years—I was director of research for the National Industrial Conference Board. I don't know whether you know of that, or not. It is an association of manufacturers, and my work was, of course, business statistics. Prior to that, before entering the war service, I was professor of marketing at the University of Chicago for four years, and prior to that at the Ohio State University at Columbus, Ohio. So for a number of years, 10 years, at least, I have been making a special study of marketing problems. And I do not pretend to have mastered them all, but I do think I have some pretty clear ideas along that line.

The CHAIRMAN. I just wanted the record to show your experience. Now, proceed.

Mr. DUNCAN. The distributive system in the United States is an inherited system. I will take exception to some of the general statements—I presume they did not expect them to be historically correct—of the jobbers saying that from time immemorial there were wholesale grocers. That, of course, is not correct as a fact. But in this country we have a peculiar situation as a development of our distributive organization. As I say, we have inherited it, and we have inherited it from England, and the people who came to this country—and it has a direct bearing, I think, on the distributive organization—were not like people who grew up with the country. They came with a background and a knowledge of manufacturing problems, and distributive problems, as they developed it under the English system.

Now, the jobber, as he exists to-day, functioning as he does to-day, really developed as a distinct class in England between the years 1660 and 1760. This was the period, also, of what is known as the development of machine industries. It simply meant that markets increased in scope so that an individual producer could not reach all of his consumers, and there arose a specialized class for the purpose of distribution, and out of that growing market came all the specialists in distribution, such as the commission man, the broker, the jobber and the retailer.

We inherited that intact from England, and we have simply modified it in this country to meet our changing conditions. I say that because in a way our distributive system is artificial, and in another way it is a very natural and logical and inevitable growth. There isn't anything artificial about it in this country. And I think that every economist in the country will agree to this general proposition, that all of our institutions, like the jobbing trade, have developed to meet an economic need.

And while I am talking about some of the economic phases, I want to show you very clearly—and this has a bearing upon your issue—that while business is essentially selfish in itself, and while economic problems, as economic problems, are selfish, in all our search for so-called efficiency, we built in this country, and our legislation has also demonstrated, we built that efficiency, as an efficiency tempered with humanity. And that is what I want to show you before I get through, in a few moments.

If I might be permitted another statement of historical value only, it is this: That the merchant, the retailer, the jobber, have always followed close after the pioneer in this country. And as a class they have the reputation of being the men who have organized the whole distributive system of the country that, I think, you will find is the most effective for distributing goods in the quantity and of the quality and at the time they are needed in every district, large and small, throughout the country. And I will tell you, gentlemen, that a long study of the distributive system will show you that it has developed a most remarkable efficiency to do this thing. I have studied it, and I have said to the jobbers over and over again, "Gentlemen, you are the guardians of the Nation's food reserve, and you must realize that there is something approaching sanctity about the food supply of the people."

I am not going to hold up to you that these men are all idealists or unselfish, but it is a fact that the more you study this the more remarkable it becomes, and the more astonishing it is that out of this chaotic condition there has developed this system that is effective, that is efficient for distributing foodstuffs.

And I think I need add just one thing more of a historical character, namely, of the rapid settlement of this country. We had first the Army posts, then the developing villages; we had the old general store, where all political questions were settled, as you know—and I am not sure but what you could readily find

the sawdust box in many a general store throughout the country still. The general store handled everything necessary for the welfare of that community. As business grew, stores specialized, and you had rising out of that, from the food department of that general store, the retail grocery store of to-day. Of course, many jobbers of the same kind specialized. When the volume of business was large enough, a man dealt in other lines. And as he developed, he was called a wholesaler or a jobber.

I want to present before you one thing more that I think of considerable importance. In the minds of a great many people—probably they have not studied the terminology of economics, but generally in their minds they think the producer is the man who grows stuff from the land, or the manufacturer who changes the form of the material. But what I want to say to you is this: There are three kinds of value, and no man to-day can tell you which is more important.

There is a so-called form value of commodities, making them capable of consumption; there is a time value, to have them at the right time when they are needed; and there is a place value of commodities, to have them at the right place when they are needed.

Now, as a matter of fact, distributors are producers, in that they add value to commodities. They give those commodities time value and place value, and that is significant, I think, when you come to talk about the spread between the producer and the consumer. And I would like to speak of that very soon.

Of these middlemen then who do create time value and place value of commodities, the jobber is one.

And if I could be permitted just a moment, I would like to give an academic distinction between these different classes of jobbers. It has a direct bearing, I think, upon one question frequently asked by your committee. The wholesaler, the commission man, the jobber, the broker. There is a great confusion on the issue of those terms. As we look at it from an academic point of view, the wholesaler is the most general term. He is the man who deals in wholesale lots. But he is over the man who handles commodities for the retailer, not selling to the consumer. It is a most inclusive term. Naturally come these other terms, the commission man, if he is true to form, is a man who never has title to goods. He receives them; he sells them; he controls them, but he does not have title to them, and he does not run the risk of their loss. The broker has been presented to you, I think, very clearly, as an intermediary between buyer and seller. He does not have to have a warehouse; he does not have to stock goods; if he is a broker, he never has title to them, but he buys and sells contracts. The jobber is the man who is the bona fide merchant; he buys goods and he sells goods and he runs the risk of the goods deteriorating in value because of that title to goods, and his control is coincident only with his risk.

Now, I had thought I might give you also just a brief summary of the jobber's work, but it seems to me that the jobbers have explained that very clearly.

Mr. SMITH. State the distinction, as you give it, between the wholesaler and the jobber. Is it not practically the same thing, or how does it differ?

Mr. DUNCAN. You mean the wholesale grocer, I suppose?

Mr. SMITH. Yes.

Mr. DUNCAN. The wholesale grocer is a jobber. As I was saying, that is an academic distinction only. The grocery jobber, and the wholesaler are, of course, practically the same. The wholesaler, as jobber is generally used, and the commission man is also in general terms a wholesaler. That is the only point I was going to make.

There is just one phase of the jobber's work that I care to emphasize over and above what has been said, namely, that in the assembling of goods, he brings them in large quantities, thus saving freight, to the most convenient place for distribution in smaller quantities to the retailer, the freight on smaller quantities, of course, accumulating much more than if carried in car-load lots. That he is a risk carrier on all seasonable goods has been clearly demonstrated, and probably the distinction between him and the commission man in dealing in these seasonable goods has a direct bearing upon whether the meat packers should serve as commission men for the handling of these foodstuffs.

I want to come, however, to a point that has impressed me very much. That is the more or less social phase of this whole economic problem. These

jobbers have said to you, "We are more than mere merchants; we are merchant citizens." And it was upon that phase that I wanted to speak for just a moment.

Generally speaking, the wholesale grocer has developed from a retailer. He has been close to the people, and he has, in general, been one of the people, and he still very largely does business on a personal basis.

Now, let us see what that means, as I think it has a very fundamental social significance. Credit men are constantly complaining that the retailer—and by the retailer I am speaking of the retail grocer—is lax in making his collections. He is too ready to grant credit. Many credit men also think that the jobber is too lax in granting credit to the retailer. They say it is not good business, and I agree with them thoroughly, I think. The retailer should have better business methods, and the jobber doubtless in the general run, could have better business methods, and he is getting them. But here is what I want to call your attention to. Many of these retailers who are lax in granting credit have been men who have bought from retailers, and at times have had to ask credit of them. They know what it means not to have ready cash, and they do not forget what it means not to have ready cash.

As touching upon the social aspects of that particular problem, I want to call your attention to one or two statements here from a study of the retail grocery by the Harvard Bureau of Business Research, page 24 [reading]:

"Only 10.5 per cent of all stores reporting to the bureau, exclusive of chain stores, do a strictly cash business. The average annual volume of sales in these cash stores in 1918 was \$50,000. Of the stores that granted credit, 12 per cent reported that about one-third of their sales were credit sales; 76 per cent stated that about one-half of their sales were credit sales; and in 62 per cent of those stores the credit sales were two-thirds, or more, of their total business."

Mr. BREED. Are those retail stores?

Mr. DUNCAN. Yes; these are retail groceries. That is for the year 1918. [Reading:]

"The practice of granting credit to customers varied according to the character of the business. Very few of the fancy or high-priced grocery stores did a strictly cash business. In three-fourths of such stores the average length of credit allowed to their customers was one month."

Now, the point that I am trying to bring before you, and I think it is of very considerable importance in considering the question that you must answer, is this: That the retail grocery store carrying the staples, the necessities of life, is the common man's store, and the income of this common man is an uncertain quantity. He is your working man, your clerk, your tenant, your hired man, and his income is uncertain. Credit, of course, in the retail stores may be and is abused. I know that very well. But when you think of communities in this country, like mining districts, and the one-crop regions, and when you think of the three and a half million unemployed in the country to-day, and men must eat, and men must buy of the retail grocer, you will understand, I think, why it was almost inevitable that the retail grocer should extend credit to these people.

Now, how is this possible? The retailer, remember, giving credit as he does give credit, is carried by the wholesale grocer of the country, because the wholesale grocer extends credit to the retail grocer. So that the wholesale grocer—the grocery jobber, as I prefer to call him—extends credit not only to these cannery men as they have said over and over again, furnishing the only basis by means of which they can pack their goods, finance their pack, but he extends credit, on the other hand, to this retailer who must meet or give credit to the common man of uncertain income throughout the country.

Now, it is that system, developed to meet that situation, that we have to-day. It seems a curious thing, gentlemen, that in all our mastery of the forces of nature, conquering the air and the sea, that we still have in this country a system of production that will put three and a half million to four and a half million men out of employment. But while it is not correct, and while man is not insured a steady income from which he can pay cash for his necessities, you will necessarily have a system of distribution to meet a situation of that kind.

Now, if you know the methods of collection of the meat packers, you will know that their organization has never been developed to meet this particular situation. We think that through the grocery jobber, working in this way through the regular retailer, that the situation is met more fully. The social

obligation is met more fully than the cash and carry plan. I do not want to be misunderstood in saying that I advocate loose business methods in any way, but I do want to say that as conditions are, we must have some such system as this to meet the needs of the people.

Mr. BREED. May I ask you now, Doctor Duncan, whether you are going on—

Mr. DUNCAN (interposing). Yes; with another point.

Mr. BREED. Are you going on further with the meat packers' method of collecting?

Mr. DUNCAN. I was not going to do anything further, or say any more about it.

Mr. BREED. May I ask a question now on that subject?

Mr. DUNCAN. Yes.

Mr. BREED. Do you know how the meat packers collect from the retail butchers, or the retail butcher and grocer?

Mr. DUNCAN. Well, I would have to say I know only as I am told, that you must pay your bills, or you won't get any other assignment. They have regular stated days for collections, and you must have your money.

Mr. BREED. Usually every Monday morning, or Monday week?

Mr. DUNCAN. It is one day a week, as I understand, usually on Monday morning.

Mr. BREED. Now, may I ask you what effect has that system of requiring payment from the retailer one day a week upon a retailer who has part meat and part groceries, assuming that the meat packer himself sells to that combination retailer his groceries?

Mr. DUNCAN. Well, of course, the goods which the retailer carries from other stores than the packer would have to carry the burden of that.

Mr. BREED. In other words, would it not mean that if the meat packer collects for his meat and groceries once a week, the real credit is being extended by the jobber to the retailer to enable the retailer to pay the meat packer?

Mr. DUNCAN. That, of course, would be exactly true.

Mr. SMITH. And to enable him to carry the social responsibility of the community?

Mr. DUNCAN. Yes; as that social responsibility is to-day. Of course, the same thing holds, I feel, pretty strongly with these stores that have been developed on the cash and carry plan. The regular retailer then shoulders the responsibility, so far as this responsibility goes.

Mr. HALL. Don't they extend, in some cases, a longer time?

Mr. DUNCAN. You mean the packers?

Mr. HALL. Yes.

Mr. DUNCAN. Not that I know of. It may be that they do. It always happens, Mr. Hall, maybe not exactly in that way. I presume you are perfectly familiar with the fact that the absentee landlord of the farmer is never as much in sympathy with the tenant as the man who lives on the farm and knows these conditions. It is always true. That is why I said a while ago that our idea of efficiency is that efficiency must always be tempered with humanity. Now, you can not dodge the question; you sympathize with the man when you see his trouble. But the man in Chicago does not see and does not understand and has very little sympathy with the difficulties of the man away down in Podunk. That is the point I was making.

Mr. HALL. But to your knowledge, you say, they do not grant a longer term than one week?

Mr. DUNCAN. No; I do not. I wish that might be determined absolutely by the men who know. I do not know that they do. But the general rule is, as I have heard it, that they make weekly collections, usually on Monday morning. By the way, that was considered one of their elements of efficiency.

Mr. BREED. Does the Federal Trade Commission disclose any answer to that question?

Mr. N. M. BARRETT. We looked into that in 1917, and I think the only modification I would suggest was that it was Wednesday morning they were supposed to settle rather than Monday morning.

Judge HAINER. They probably delivered on Monday.

Mr. DUNCAN. I will accept that modification.

Mr. BREED. Doctor Duncan, one more question: Can you state whether there was throughout the territory which the Southern Wholesale Grocers' Association operated many combination meat and grocery stores?

Mr. DUNCAN. I really can not give any definite information on that question.

Mr. SMITH. I will ask you this question: You spoke of there being something over 2,000 members of the Southern Wholesale Grocers' Association. Is that limited to the South, or is it in the States of the entire Union?

Mr. DUNCAN. I think in 40 States in the Union, or 42 States. They are not confined to the South.

There is another point that I wanted to bring up and emphasize. There are no great financial or technical requirements prohibiting entrance into the wholesale grocery business; relatively small units are characteristic of this business. It is generally considered that between \$500,000 and \$1,000,000 is the average. My own judgment is that it is probably nearer \$1,000,000 than \$500,000.

Mr. BREED. Do you mean in volume of business?

Mr. DUNCAN. In annual volume of sales. And it runs on a narrow margin, as has also been testified to.

But I bring that up for a specific purpose. The question of spread between producer and consumer has been mentioned several times, and it is a very difficult subject to deal with because we do not have to-day sufficient data to make comparison very justifiable of very sound. I will, however, point to two or three things.

First, I should like to put in the record a statement by L. D. H. Weld, in his book, "The Marketing of Farm Products," page 223. Mr. Weld is an economist with Swift & Co.; he is a friend of mine, and I have nothing against him but his association. He says [reading:]

"The wholesalers in the large cities are responsible for a smaller increment of the spread than is commonly believed. It is, perhaps, safe to say that the wholesale trades take between 5 per cent and 10 per cent of the final retail prices of commodities that go through to consumers without change by manufacturing process. In fact, wholesalers take such small margins on the whole, and such a small increment of those margins is represented by clear profit, that it is only with enormous volume of business that this class of middlemen can make profits commensurate with those expected in other lines of business involving similar risks, capital outlay, ability, and length of working hours.

"The high degree of efficiency attained by the wholesale trades in our large cities under adverse conditions deserves high praise."

And I indorse what Mr. Weld has said; and the more you study it, gentlemen, the more you will feel surprised, I think as we do, that men working in that line could have reached the stage of effectiveness in distribution that we have to-day with all its faults.

I can not bring you very much in the way of telling you the spread between the producer's price and the consumer's price, but I think I can give you here an illustration that will warn you against any general statements and also point one or two morals.

I have here figures taken from the Western Fruit Jobber, of April, 1915, by Mr. G. Harold Powell, of the California Fruit Growers' Exchange. He has worked out from figures evidently received by his exchange the spread between the producer of citrus fruits and the consumer. And I want to call attention to the relative importance of these factors which must be paid for.

On the basis of oranges selling to the consumer for 40 cents a dozen he has these figures—

Judge HAINER (Interposing). That is not here in Washington, is it?

Mr. DUNCAN. This is 1915. I have no later figures. But it was merely the relative importance of these items I wanted you gentlemen to note.

Now, as to oranges selling to the consumer for 40 cents a dozen there was received by the grower, 10.7 cents; hauling to packing houses, 1 cent; packing, 2.9 cents; refrigeration and freight, 8.2 cents; selling cost, 6 cents; for jobber's service, 3.3 cents; making a total of 26.7 cents; that is, from producer to the retailer. The retailer of those oranges charged 13.3 cents, or a mark-up of 47 per cent.

Now, when you are asking what causes the high cost of foodstuffs, who gets this, I think you ought to consider just such figures as these. Of this 40 cents the grower got 11.7 cents, the one cent being the charge for hauling to the packing house; refrigeration and freight alone cost 8.2 cents, and out of that the jobbing trade took 33 cents.

There was another table I wanted to bring also to your attention in discussing the spread between producer and consumer. I have taken these figures from the Federal Trade Commission's report, entitled "General Report on Canned Vegetables and Fruit," page 4.

Mr. BREED. What part is it.

Mr. DUNCAN. It is a general report and on canned vegetables and fruit, page 4.

Mr. BREED. All right. I thought it was one of several parts.

Mr. DUNCAN. No. In the first column is cost. Then there are prices given on corn per case No. 2, tomatoes per case No. 2, peas per case No. 2.

At the time in question the amount paid to the producer, presumably, for the raw material is: For corn, 52 cents; for tomatoes, 67 cents; for peas, 55 cents.

For packages, cases, and tin cans: For corn, 68 cents; for tomatoes, 73 cents; for peas, 69 cents.

There, gentlemen of the committee, lies the moral I wanted to bring to your attention. But I will read the other items. For conversion, corn, 26 cents; tomatoes, 24 cents; peas, 32 cents.

The CHAIRMAN. Pardon me, but conversion means preparing, does it?

Mr. DUNCAN. Yes, sir. That is the actual cost of labor. I suppose, and of coal and what not, because the next item is overhead of the factory.

Now, for overhead: Corn, 22 cents; tomatoes, 17 cents; peas, 22 cents.

And the totals are: Corn, \$1.68; tomatoes, \$1.81; and peas, \$1.84.

The point I wanted to make, and a very simple one, is this: That a great deal has been said in various publications about how small a share the producer got in the final consumer's price for many farm products. Here is one instance where the packages alone cost more than the producer got for his product.

Judge HAINER. What is the moral of that?

Mr. DUNCAN. My moral is that there is nobody standing as distributor between producer and consumer taking a large part of the consumer's price and giving no service for it. That is the point I was going to make.

But I was going to enlarge upon it just a little if I may, if you are at all interested in it.

The CHAIRMAN. You may proceed.

Mr. DUNCAN. It is this: First, this is a tremendously big country, and we ship our products often a long ways. We have a tremendous variety of products. And we prepare a great many products in different ways.

Apples, say, will go into a storage house. There is the cost of storing them. Their tin cans, the packages, and the cases here are really the storage houses for these commodities. The only way they can be served on the table of the consumers in this country is for them to be prepared in this manner. If they are to be prepared in this manner it costs money to do it. That is the point I was making.

If these commodities are to be furnished to consumers then whatever is necessary to furnish them as edible stuff for the consumer must be paid for, and here is a case where just one part, namely, the package itself, the tin cans and cases, cost more than the original product did.

Therefore, gentlemen of the committee, after all the talk about how much the producer gets and the consumer pays it seemed to me that this was frequently lost sight of. That is the point I was going to make.

Mr. BREED. Have you anything to say with respect to demand on the part of consumers during the past 10 years for articles of food in this form, and also for articles of pure food, well packed and preserved?

Mr. DUNCAN. I had not intended to say much about it, but I have a strong feeling on the subject. We live well in this country compared to people in other countries. We are demanding, of course, foodstuffs of high standard. We have built up a tremendous system of preserving and storing foodstuffs, and that is an expensive business for the great varieties of foodstuffs to be furnished the consumer and the standard in quality that the consumer demands, that is a progressing standard of living, and of course it is going to cost money for the consumer to get it.

It is perfectly marvelous when you come to study it to think of what the storing, preserving, and so forth, of foodstuffs have meant to the consumer. I said a while ago that I often said the wholesaler was guarding the Nation's food reserves. We know nothing of a fear of famine in this country. We have developed methods of putting that fear so far away from the ultimate consumer that it never enters his mind. That is a part of the service that this great distributing organization really performs.

Mr. BREED. May I ask you also whether in your opinion the passage of factory inspection laws relating to and covering canning factories, and also the passing of National as well as State food laws prohibiting the use in food products of preservatives regarded as not of the best health value, increased

the cost of the package and the method of manufacture and thus adds some cost to the consumer?

Mr. DUNCAN. Oh, yes; they have very materially.

Mr. BREED. Are these factory inspection laws generally in force in all the States?

Mr. DUNCAN. Yes; they are.

Mr. BREED. As well as pure food laws?

Mr. DUNCAN. Yes; such as the national pure food and drug act of 1906 and its modifications and extensions.

Mr. BREED. Does the limitation of the use of these preservatives under the pure food laws cause and require greater care, both in the quality of the product packed and in the packing itself than was the case before when preservatives were used?

Mr. DUNCAN. Undoubtedly so. They have another effect, too, it seems to me, and that is that these requirements have the effect, after all, of eliminating waste among producers, because knowing that goods of that quality only can be handled and preserved these products are more carefully looked after by the producer himself and wastes are saved of the Nation's food.

Mr. STEVENS. How material is that? Has that been figured out, on a percentage basis?

Mr. DUNCAN. How much is saved?

Mr. STEVENS. Yes.

Mr. DUNCAN. No, sir. I know of no such figures, but I feel there is a very material saving in certain lines—a very material saving.

Gentlemen of the committee, I did not come here to preach to you that the grocer or jobber was a great philanthropist in any way. He is a business man, of course. But it does seem that he gets a modest return for the service he performs. So far as I know, wholesale grocers are not a race of millionaires. But I did want to show you that the system by which they work has a natural and logical development, and while not perfect to-day, it is a progressively improving system. They have better knowledge of costs to-day than they had before, thank heaven. They have a better care of stock, less waste, better buyers and better sellers than they used to have.

Mr. DAILY. How about brokers?

Mr. DUNCAN. The brokers have been so thoroughly defended, if not advertised, I was not going to include them. [Laughter.]

And, gentlemen, better standards of goods of course have come through also.

I wanted to put into the record this general query which seems to me to lie at the base of this whole question. Are we not seeking after all just this: What is that system of distribution that will deliver goods to the consumer year in and year out, through good seasons and bad, accumulating stocks during periods of surplus for distribution during periods of scarcity, guaranteeing the consumer against famine as well as monopoly or control, placing goods at the proper time and in proper quantity in every locality, performing every service demanded by the consumer and, after all, at the least possible expense to him?

It has seemed to me that that is what we are all seeking. In my study of this subject I have no suggestion for a substitution for our present flexible system, permitting experiments, permitting progress, permitting development, such as we have to-day.

You will remember that there are always two questions to be considered, in all business ventures anyway. One is, What does it cost? The other is, What is the service that must be performed? In my judgment, gentlemen, the method of distributing foodstuffs in this country as it exists to-day, and I mean without bringing back the meat packers of Chicago, has proved its adequacy. It is a system logically developed by expanding commercial needs. It has adjusted itself to meet the needs of all communities, large and small. The small producer is given an outlet for his goods. The multitudinous kinds of goods produced for a wide market are carried by the jobbers. As far as it is possible the existing methods of distributing foodstuffs affords equal opportunity for all in American business.

If I could touch on just one more point?

The CHAIRMAN. You may proceed.

Mr. DUNCAN. In regard to the question of efficiency, the meat packers of Chicago have boasted and advertised their efficiency. Is this true, is the question we would like to know? I think the Federal Trade Commission would like to know it. No comparable figures have been secured that I know of,

yet I want to bring to your attention a rather interesting comparison, and I am not sure what conclusions definitely can be drawn from it, but it seems to me to have some significance. On page 94 of the report of the Federal Trade Commission on the meat packing industry, part 5, entitled "Profits of the Packers," will be found what I have reference to. It became a curious fact apparently to the Federal Trade Commission, as the result of their investigations, that with all the vaunted efficiency of the Big Five packers the small independent meat packers during the years 1914, 1915, 1916 and 1918 averaged a higher return on their net worth than the big meat packers. That is what the records show. But I wanted you to hear this brief analysis of that situation [reading]:

"The fact that the earnings of the great packers have averaged less than that of independent packers in the years under review raises an interesting question as to the big packers' earnings in his meat business as compared with the earnings in the nonlive-stock business. And as it has been found impossible under the present accounting procedure of the great companies to bring about dependable segregation, the question can not be answered conclusively. It may be argued that the packers earn as much on their meat investment as the larger independent pork packers or beef packers. If they do earn less it is indicative of lack of efficiency on their part if profitability can be taken as a measure of efficiency.

"Granting for the moment that they do earn returns as high as those enjoyed by the large independents, why is it that their rate on total business is less? Obviously, of course, they earn a rate so low on the nonlive-stock section as to reduce the rate for the whole business to a point which is considerably less than that earned by the independent meat packers.

"This assumption corresponds with the question already raised in chapter 1 as to the losses and the low profits obtained by the great companies in entering new and unrelated fields. As they are continually investing their surplus earnings in these new fields, and have to carry losses for a time pending establishment of these new businesses on a profitable basis, it follows that in any case the rate of profit in those lines will be retarded and also the rate on the whole business.

"This may be an indication of the sort of competition waged in the invasion of unrelated distributing and manufacturing lines."

And that last statement was the moral it seemed to me this analysis by the Federal Trade Commission carried—that the meat packers are in a position to make their meat business carry their grocery business. As far as competition is concerned, the effect of that, of course, is obvious.

In the report of the Federal Trade Commission entitled "Canned vegetables and fruits," at page 70, you will find a similar statement.

I have just one word more, and that is to call your attention to the potential power to force sales. The retailer handling meats must have meat. In general he must get his meat from the big packers. Therein lies the tremendous potential power for forcing sales of other commodities.

Mr. BREED. Potential power in whom?

Mr. DUNCAN. In the big meat packers. After all I think I would say and I have no doubt plenty of data could be collected if you could get at the facts, but here is what I want to say, not having any specific instances to present to you: Without overt acts where there is in the hands of the five big meat packers this potential power for forcing sales, they have their tremendous influence, and overt acts are not necessary in order to prove influence.

Mr. BREED. May I ask if you regard this method of forcing sales or forcing purchases of goods as unfair competition?

Mr. DUNCAN. I regard that, of course, as unfair competition, just as the Federal Trade Commission has said. Forcing sales is announced as an unfair trade practice.

Mr. BREED. That is, refusing to sell one commodity that the party is obliged to obtain unless another commodity will be taken?

Mr. DUNCAN. Yes sir; that is forcing sales.

Judge HAINER. Do you know of any such practices, Doctor Duncan?

Mr. DUNCAN. No; I have no specific instances to bring to you. That is what I said, and that in lieu of specific instances I only make that general statement. I only wish that it might be thoroughly investigated to find out. But from my point of view this potential power to force sales is in itself a tremendous influence.

Just one more point, and probably it has been emphasized sufficiently: Why the grocery jobbers fear the entrance of the meat packers into these unrelated lines. I just summarized here in a compact way the things that have been brought out, more or less disjointedly, in the testimony, and I think I will give it to you, with your leave.

The CHAIRMAN. Go ahead.

Mr. DUNCAN. First, the grocery jobbers are afraid of the meat packers because they believe that through the control of the meat industry meat packers can make you carry groceries, if necessary, to meet any competition.

Do the big packers control the meat industry? These are the facts in the minds of grocery jobbers. I quote to you from part 1 of the Federal Trade Commission's report, page 31.

The CHAIRMAN. Is that with reference to control of meat?

Mr. DUNCAN. Yes.

The CHAIRMAN. The committee decided we would not go into the matter of control of meat. You can refer to it as a control if you want to, but we are not passing upon that question at this time, so you might just as well pass that by. Do not you think so, Judge Hainer?

Mr. DUNCAN. All right. I really do not care. It does not make any difference, only it had been brought out several times, and I thought the record would be clearer, because somebody had said one figure and somebody else said another figure.

Judge HAINER. I believe I would let it be put in the record.

The CHAIRMAN. We might get into a whole discussion as to whether these packers control meats or anything else.

Judge HAINER. Is there any other point you wanted to bring out, Mr. Duncan?

Mr. DUNCAN. There was just one other point. If you do not care to have these figures I am not anxious to put them in at all. I think they are pretty well known, but several different statements had been made and I thought I would give them to you more succinctly.

Judge HAINER. Suppose you cite the references.

Mr. DUNCAN. For control of the meat business, see part 1, page 31, report of the Federal Trade Commission.

For control of refrigerator cars, see report of the Federal Trade Commission on private car lines, page 83.

Judge HAINER. What part?

Mr. DUNCAN. There is only one part to the report of the Federal Trade Commission on private car lines.

Judge HAINER. Very well.

Mr. DUNCAN. For evidence of the power of the packers, see report of the Federal Trade Commission, part 5, page 13, entitled "Profits of the Meat Packers."

On the matter of the control of cold storage by the meat packers, see part 5, page 88.

The CHAIRMAN. My position was, Doctor, that we are not undertaking to decide whether the packers had or had not control of meats, and we do not think it is incumbent upon you to prove that in order to support your proposition, nor upon them or anyone else to disprove it in order to support theirs.

Mr. DUNCAN. The only reason why I go these figures up was that here comes the Federal Trade Commission indicating that the accounts of these meat packers seemed to show that they made meat carry other lines, and that seemed to me to be so. I have just one more thing.

The CHAIRMAN. Go ahead.

Mr. DUNCAN. It is more or less abstract, probably. Our American accepted theory of business is individualistic. We call it competitive equality in so far as that can be attained. I wanted to just cite these instances in order to show that modern legislation based upon our theory of economics in this country had been wholly toward maintaining this individualistic competitive business from the Interstate Commerce Act in 1887, under which the railroads became public utilities; on through the Sherman Antitrust Act of 1890, the creation of the Federal Trade Commission in 1914, and the Clayton Act in 1914, the whole underlying economic basis of such legislation is to maintain the competitive opportunity in American business.

More or less clearly the business men of the country realize that there are certain strategic points in marketing where control means control of the industry; and that, too, lies behind legislation based upon this economic theory.

Just to cite one illustration. Some years ago the farmers of Illinois believed that control of the grain elevators gave into the hands of those who owned the grain elevators control of their entire crops. So Illinois then passed its act of making grain elevators, and including all other warehouses I might say offering any space for public use, into public utilities. That has been the trend of our whole business.

Judge HAINER. That is based on the case of *Munn v. Illinois*, is it?

Mr. DUNCAN. Yes. And as to pipe lines, and special legislation as to banks and insurance companies, and all those things, I think have the same economic theory underlying them, namely, that foodstuffs must be protected from contamination and private control for private gain. That, it seems to me, is the economic basis of it.

If I could bring just one more fact to your attention, gentlemen of the committee, I would say that we hear so much about big business, and after all these facts ought to be interesting to you. I take them from the Statistical Abstract of the United States. The figures I have here are for 1914. I might have gotten the 1919 figures, no doubt, but these are for 1914. Of all manufacturing establishments in the United States, 51.1 per cent of them employ from one to five employees. Ninety-nine and one-tenth per cent of all manufacturing establishments in the United States employ less than 500 people on the average. Then 0.5 of 1 per cent of the manufacturing establishments in the United States have from 500 to 1,000 employees, and only 0.2 of 1 per cent have 1,000 employees or over.

So it would seem that, after all, generally speaking, the fundamental basis of the business of this country is the small establishment—and I might say that the big one have caused us all our trouble.

I might add to that that in the canned-food and food-supply business, as that is the issue before your committee, in 1914 there were 4,220 such establishments employing 74,071 wage earners, or averaging 17 per establishment. That is from the Federal Trade Commission's report on vegetables and fruits, page 10. After all, this seems to be characteristic of our American ideas of business.

That is what I have to say to you, gentlemen.

The CHAIRMAN. Any questions, Judge Hainer?

Judge HAINER. I believe not.

The CHAIRMAN. Any questions, Mr. Hall?

Mr. HALL. No.

The CHAIRMAN. Doctor Duncan, your idea is that there are certain strategic factors in the industry that an organization might control which would control that industry just as effectively as controlling the whole business connected with it?

Mr. DUNCAN. Practically as effectively; yes, sir.

The CHAIRMAN. What, in your opinion, or have you any opinion on this—in your opinion what proportion or percentage of the industry—or I will make it more concrete than that—in your opinion what proportion or percentage of the canning industry is it necessary for any one to control in order to control the whole industry?

Mr. DUNCAN. Well, you mean, I suppose, what percentage of the actual commodity he should own? You see, my position is that goods on their way to market pass strategic points. Now, they must have some kind of machinery to keep them going. You may not own a single can of canned goods, but if you own the refrigerator cars or something else through which they must be shipped, you control the industry.

The CHAIRMAN. My theory is this, and perhaps I did not make myself clear, that it is not necessary for a man or organization to control 100 per cent of the production of any industry at any point during its process in order to control; that a much less percentage would be effective for the purposes of control.

Mr. DUNCAN. Oh, yes.

The CHAIRMAN. What percentage, in your opinion, would be effective in the canning industry?

Mr. DUNCAN. I certainly would not have much idea. I think it would depend probably altogether upon the conditions at the moment. I think I can conceive a situation where a man by owning 10 per cent or 15 per cent or 20 per cent might control.

Mr. BREED. One commodity, do you mean?

Mr. DUNCAN. Yes; of canned goods we are speaking now.

The CHAIRMAN. For instance, if after the production has been contracted a person should purchase the entire remaining crop which was not contracted for, even though that should amount to only 5 per cent or 10 per cent, would that be control?

Mr. DUNCAN. You see it would depend altogether on market conditions. It might be a strong controlling factor under certain conditions. If, for instance, the jobbers had sold not only what they had contracted for in the future, but had sold more than that, then you would see a scramble for the spot, and that would be the controlling thing.

Oh, Mr. Chairman, we saw that over and over again during the war. In attempting to control business I think the Food Administration in certain instances found that a variation of a 10 per cent margin was a strategic thing. It determined whether it increased production or whether it decreased production.

Mr. BREED. When you use the word "control," do you mean control of prices, Mr. Chairman?

The CHAIRMAN. Yes; I think that is meant, control of prices. In other words, it depends largely upon the condition of the market as to what percentage of a commodity is necessary for control.

Mr. DUNCAN. I think so, absolutely.

The CHAIRMAN. There is hardly any hard-and-fast rule that could be laid down with respect to that.

Mr. DUNCAN. I do not know of any.

The CHAIRMAN. Anything further, Judge Hainer?

Judge HAINER. I believe not.

The CHAIRMAN. Do you wish to ask any questions, Mr. Hall?

Mr. HALL. No.

The CHAIRMAN. Mr. Breed, do you wish to ask any questions?

Mr. BREED. I believe not.

The CHAIRMAN. Senator Smith, do you wish to ask the witness any questions?

Mr. SMITH. I think not.

The CHAIRMAN. Mr. Stevens, any questions?

Mr. STEVENS. One or two. Doctor Duncan, I think you have been speaking almost entirely of the economic standing of the wholesale grocer, or grocery jobber, as you speak of him?

Mr. DUNCAN. I also wanted him to be known as a social factor, a merchant citizen is what I was speaking about.

Mr. STEVENS. Can you give an idea as to the social position of the average wholesale grocer as a stabilizing influence by reason of his business ability in the community or his methods used?

Mr. DUNCAN. Of course, I thought I tried to make pretty clear that the distributing system is a difficult system. Now, it is obvious that a man who is a citizen in a community is a far different factor from the man who is just running a business in a community and nothing else, if that is what you mean.

Mr. STEVENS. You did touch upon that, but what I wanted to know was—

Mr. DUNCAN (continuing). That is what I spoke of a while ago in regard to this credit business, that a man who is far away cares for nothing but volume of business; and if you know as I know the pressure put upon managers of branch houses to get business you will understand that that is all they want, to get returns. The social factor is not there.

Judge HAINER. You think the nearer you can get a distributing system to the people you serve the better it is?

Mr. DUNCAN. Oh, yes.

Mr. STEVENS. There is a personal element that enters into it?

Mr. DUNCAN. Oh, yes.

Mr. BREED. Mr. Stevens's question prompts me to ask one: Do you consider that the distributing system which you have described, through which the wholesale grocery jobber buys usually in the future and then sells to his retail customers their needs, etc., tends toward stabilization of prices all the way through and to reducing to a minimum the speculative element in the purchase and sale of food products?

Mr. DUNCAN. Why, of course it does, absolutely. You find that exemplified more thoroughly, I think, where you have a so-called organized exchange in a business. I would say in this connection that I have no condemnation whatsoever of the wheat pit in Chicago, though some farmers do have. To my way of thinking it has been one of the most beneficent influences in this country in

stabilizing the prices, through the buying and selling of future contracts. The influence of any economic factor is discounted so far in advance that when it actually comes the trade is not demoralized. That is true of your canned-goods business.

I only wish, if I might go one step further, Mr. Breed, that there was a canned-fruit exchange as there is a wheat exchange and a cotton exchange, so that the wholesale grocer, if he wanted to hedge as the miller does in wheat, might hedge and not have to bear all this responsibility which he does bear to-day. He is the risk taker.

Mr. BREED. Who is?

Mr. DUNCAN. The wholesale grocer. He is the risk taker to-day.

Mr. BREED. What I want to bring out is the fact that from the buying point of view the wholesaler is tied up by a future contract to the producer, and in the ordinary trade he is also usually tied up by contracts of sale of the same commodities to his retailer even in advance of the receipt of the actual goods, is he not?

Mr. DUNCAN. He is.

Mr. BREED. Does that not tend to stabilize prices, because prices are fixed in these contracts?

Mr. DUNCAN. Oh, absolutely; there is no doubt about that.

Mr. BREED. Does it not tend to reduce to a minimum speculation in foodstuffs?

Mr. DUNCAN. Undoubtedly.

Mr. BREED. As to the methods as you have observed them of the meat packers, are they based upon that principle of reducing to a minimum the speculative element in the purchase and sale of food products?

Mr. DUNCAN. No; they are always known as speculators.

Mr. STEVENS. It has appeared from statements made at this hearing that there is no real competition among the Big Five, so-called, packers. If there were really sharp competition, that would be the economic result?

Mr. DUNCAN. I do not know whether the chairman wants me to answer that or not. He stopped me a little while ago on it.

The CHAIRMAN. I do not know that there has ever been any charge of lack of packer competition in unrelated lines.

Mr. DUNCAN. I would like to charge that they are not in competition in any line.

The CHAIRMAN. If we get into that it would have to be proved.

Mr. STEVENS. It seems to me that would throw some light on the effect if this decree were modified.

The CHAIRMAN. Suppose you ask him to answer a hypothetical question along that line, in case there were no competition.

Mr. DUNCAN. As a hypothetical question, then, if they are not in competition of course you have a combination. But if you put it the other way, as a hypothetical question, that they are in competition—

Mr. STEVENS. All right, answer it that way.

Mr. DUNCAN. Then, I will say this, if there is one economic principle demonstrated in this country it is this, that where you have paralleling lines of endeavor, such as in railroads, in public utilities, in the case of the meat packers, if there is competition they will drive themselves into combinations. They can not exist otherwise.

Mr. SMITH. They drive themselves into what?

Mr. DUNCAN. Into combinations.

Mr. BREED. That is when there are a few?

Mr. DUNCAN. Yes, sir.

The CHAIRMAN. Why would not that apply to the wholesale grocers?

Mr. DUNCAN. The wholesale grocers are small men. These people cover the entire country; in my judgment, there is no doubt about it. If there were thoroughgoing competition between the five big packers they would put themselves out of business or else drive themselves into a combination—that is, under the hypothetical statement that there is competition.

The CHAIRMAN. And the mere size of the wholesale grocers would prevent that happening in their case, do you say?

Mr. DUNCAN. They do not parallel themselves throughout the country.

The CHAIRMAN. Many of them do, don't they?

Mr. DUNCAN. Not at all.

The CHAIRMAN. Is there a division of territory among them?

Mr. DUNCAN. Not at all, but generally speaking in every jobbing center you have an independent wholesale grocer.

The CHAIRMAN. You have several of them?

Mr. DUNCAN. Yes, sir.

The CHAIRMAN. Why would it not drive them into a combination?

Mr. DUNCAN. You have the markets just outside ready to step in. If you would hear the woes of the wholesale grocers about expanding the delivery of goods here and there and elsewhere in order to increase their volume, you would say that there is no opportunity anywhere for them to get together on that basis. The avenue to buy elsewhere is always open. That is why I say, when you come to such an organization as the big five meat packers, covering all markets with similar facilities, then they are matching one against the other, and it is just exactly like the railroads—they have got to have business for that overhead, and they just cut one another's throats as sure as anything. There is no way of getting away from it.

Judge HAINER. Is it not a fact that wholesale grocers, where there are two or more in any particular distributing point, sell at the same price exactly?

Mr. DUNCAN. I do not know. I imagine the prices approach one another, because they are reduced to rock-bottom cost. But, Judge, the great complaint among the jobbers has been the cutting of prices.

Judge HAINER. I would like to ask you a question in reference to the co-operative marketing associations: What effect would that have as to the spread between the price paid to the producer and the price paid by the consumer?

Mr. DUNCAN. Well, Judge, I think it is illustrated in what I gave you. You see, here is a co-operative concern handling oranges. Now, what did they get? They got a price outright, we will say, of ten and a fraction cents, but they were to do more than that; they were paid 11.7 cents, but 1.7 cents they had to pay out for getting their goods hauled. They thereby got a larger part than they would have gotten, but they had to haul the stuff to the packing house. What they actually got on their own goods was 10 cents. That is always true. These things must be done, and they cost money.

If the co-operative associations produce their goods and haul them into the market, send them to a central market, it will get a larger part of the consumer's price undoubtedly, but it is also at a higher cost in doing it. Do you see?

Judge HAINER. You referred, Doctor Duncan, to Mr. Powell. What company does he represent?

Mr. DUNCAN. He is the general manager of the California Fruit Growers' Exchange.

Judge HAINER. What has been the practical result of their operations? Isn't it a fact that producers have received larger prices?

Mr. DUNCAN. Yes, sir.

Judge HAINER. And, on the other hand, the consumers have purchased products at lower prices.

Mr. DUNCAN. Well, of course, we do not know about that.

Judge HAINER. That is his claim?

Mr. DUNCAN. Yes, sir; that is his claim. Undoubtedly they have standardized the fruit as it never had been standardized before. It is of better quality, and they have done a great deal for the producer—but they sell to jobbers.

Mr. SMITH. Doctor Duncan, will you look at this map, which has been placed in evidence [indicating a map identified by being marked "Exhibit National Wholesale Grocers' Association No. 1"]? What number of wholesalers are there; or do you know about the number?

Mr. DUNCAN. My own figure is about 4,000 wholesale grocers.

Mr. SMITH. Are they scattered throughout the United States, as that map indicates?

Mr. DUNCAN. Yes, sir.

Mr. SMITH. And if one located in Iowa, on the eastern part, would undertake to put up his price, would he not come into competition with one on the west?

Mr. DUNCAN. He would, of course. Jobbers are located in so many marketing centers that, of course, there is no chance under heaven for a combination.

Mr. SMITH. Competition must be maintained, then?

Mr. DUNCAN. It must be and it is maintained; the keenest sort of competition, according to my knowledge.

Mr. SMITH. You referred to one matter that you did not discuss quite as fully as you might. You referred to the saving in freight by the wholesalers who brought the goods to their distributing points in carload lots. Does the average retailer buy by the carload or less than carload lots?

Mr. DUNCAN. Well, of course, they buy less. I did not go into that because I thought Mr. Bode explained that very carefully and in detail the other day. But it is a very important point.

Mr. SMITH. How does that saving by the haul in carload lots compare to the 2 per cent which the wholesalers seem to average in net profits?

Mr. DUNCAN. Of course, I could only guess.

Mr. SMITH. Yes.

Mr. DUNCAN. Of course, hauling in wholesale lots results in a material saving.

Mr. SMITH. Is it not in your opinion more than the 2 per cent which they make?

Mr. DUNCAN. Yes; I should think so.

The CHAIRMAN. Anything else, gentlemen?

Mr. DAILY. One question, Mr. Chairman. Doctor Duncan, is it or is it not a fact that the meat packers look to their branch managers for the development of business in their territories?

Mr. DUNCAN. Yes; they do.

Mr. DAILY. They look to the branch manager to produce a profit for his branch or territory, do they not?

Mr. DUNCAN. They do.

Mr. DAILY. Do they analyze how those profits are made? By that I mean, are they not satisfied if a profit is produced from that particular branch without question as to just which commodity or which lines of that branch produced the profit?

Mr. DUNCAN. Well, I could only answer that they are interested, naturally, in a profit. I do not think they would care particularly.

Mr. DAILY. In other words, I want to know if it is not left largely to the judgment of the branch manager; I mean, judging that everything is perfectly right, but that his business judgment dictates how the profits are developed in his particular locality?

Mr. DUNCAN. His study of the market would control, no doubt.

Mr. DAILY. That is all.

The CHAIRMAN. Is there anyone else. Senator Smith, that you wish to put on?

Mr. SMITH. No; I think not. Mr. McLaurin, the president of the Southern Wholesale Grocers' Association was here, though he is not in the room right now, but I do not think he has anything to contribute except along that line—along the line that other wholesale grocers have discussed and other members of his association. Mr. Hoffmann, of Milwaukee, was the first vice-president of the Southern Wholesale Grocers' Association.

The CHAIRMAN. Mr. Breed, have you anyone you now want to put on?

Mr. BREED. No.

The CHAIRMAN. Mr. Daily, have you anyone you wish to put on?

Mr. DAILY. I believe not.

The CHAIRMAN. Mr. Campbell, have you some other men who are expected here to-morrow?

Mr. VERNON CAMPBELL. Yes, sir; I have three or four; I would say five altogether.

The CHAIRMAN. We would like also for you to be in position to go on; for you and Mr. Gray to go on tomorrow.

Mr. CAMPBELL. I think Mr. Gray will go on to-morrow afternoon, but I do not think I will have a chance to go on to-morrow.

The CHAIRMAN. Will you be prepared to go on if we get to you?

Mr. CAMPBELL. Yes.

The CHAIRMAN. It is now after 4 o'clock anyhow, and we will adjourn for to-day, until 10 o'clock to-morrow morning, to meet in the other room, No. 704, where we have been meeting until this afternoon.

(Thereupon, it being 4 o'clock and 7 minutes p. m., the committee adjourned to meet again to-morrow morning, Thursday, December 8, 1921, at 10 o'clock.)

THURSDAY, DECEMBER 8, 1921.

The committee met at 10 o'clock a. m., in room 704, Department of Commerce, pursuant to adjournment on yesterday. Hon. Herman J. Galloway (chairman) presiding.

The CHAIRMAN. Gentlemen, let us come to order and proceed with our hearing. We will hear Mr. Sterling.

**STATEMENT OF MR. J. H. STERLING, DEALER IN SEA FOODS,
CRISFIELD, MD.**

The CHAIRMAN. You may state your full name, Mr. Sterling.

Mr. STERLING. J. H. Sterling.

The CHAIRMAN. And where do you live, Mr. Sterling?

Mr. STERLING. Crisfield, Md.

The CHAIRMAN. What business are you engaged in?

Mr. STERLING. Principally sea food.

The CHAIRMAN. What are your principal products?

Mr. STERLING. Oysters is our big end.

The CHAIRMAN. Canning of oysters?

Mr. STERLING. A few, at times.

The CHAIRMAN. And shipping them, I presume, the raw oysters, uncanned?

Mr. STERLING. Yes, sir.

The CHAIRMAN. What is your approximate production per year; the average, say?

Mr. STERLING. In gallons, we figure the thing.

The CHAIRMAN. All right.

Mr. STERLING. About 60,000 gallons.

The CHAIRMAN. Sixty thousand gallons per year?

Mr. STERLING. Yes; that is the average.

The CHAIRMAN. Do you represent any association or organization in any way here?

Mr. STERLING. No, sir.

The CHAIRMAN. You may just proceed in your own way then, Mr. Sterling, and state your views on this question.

Mr. STERLING. I would rather be guided somewhat by the committee. I would appreciate it very much. I could answer any questions that are put to me, or endeavor to, to the best of my ability.

The CHAIRMAN. The question here, Mr. Sterling, is whether or not the meat packers should be permitted to handle these unrelated lines, namely, canned goods and such as that, and any lines unrelated to the meat packing industry. How do you feel about that; do you feel they should or should not?

Mr. STERLING. I feel they should, sir.

The CHAIRMAN. Why do you feel that way?

Mr. STERLING. Because I feel any producer should have all the market he can get for his product.

The CHAIRMAN. Has your market been curtailed, or is your market at this time curtailed in any way?

Mr. STERLING. We have that feeling; we think we feel the effect of it; yes, sir.

The CHAIRMAN. What is your experience in that line?

Mr. STERLING. Personally, we have not sold to the big packers tomatoes or raw oysters, but we feel this way, that our neighbors have, and they not being able to sell to the people again, puts us in closer competition with those people, and especially pertaining to raw oysters. And we feel we would be better protected; that it would give us better distribution and reach more trade through the packers than they now have.

The CHAIRMAN. Through whom do you distribute your products, Mr. Sterling?

Mr. STERLING. The wholesale grocers, and the butchers, and the hotels and restaurants direct.

The CHAIRMAN. Do you have as broad a distribution this year as you have had in former years?

Mr. STERLING. Probably in States, we cover as many States.

The CHAIRMAN. What about the volume?

Mr. STERLING. Our volume is somewhat curtailed. We may do a larger business this year than we done before, but the seasons and conditions would change that, as in every market.

The CHAIRMAN. You feel then that if the packers were back in this business that it would widen your means of distribution?

Mr. STERLING. I certainly do, sir.

The CHAIRMAN. Do you fear that they would obtain a monopoly of the distribution of these things?

Mr. STERLING. If I thought so, I would be opposed to it.

The CHAIRMAN. Do they fear that they would obtain a control of the canneries in any way?

Mr. STERLING. I don't think they would attempt to.

The CHAIRMAN. Have you any fear that they would obtain control of the growers or producers of these things?

Mr. STERLING. I don't think so.

The CHAIRMAN. Have you any questions, Judge Hainer?

Judge HAINER. No.

The CHAIRMAN. Mr. Hall, have you?

Mr. HALL. No.

The CHAIRMAN. Mr. Breed?

Mr. BREED. Mr. Sterling, you say that your average production is 60,000 gallons of oysters?

Mr. STERLING. About that, annually. That is about the average. That is, this year we may go over that on account of certain favorable conditions.

Mr. BREED. How many tank cars would that be?

Mr. STERLING. The average car minimum is, I think, 1,300 gallons. I never reduced that into cars.

Mr. BREED. Now, who do you sell those oysters to?

Mr. STERLING. Why, we have no particular one.

Mr. BREED. I mean, what trade?

Mr. STERLING. We sell to grocery men.

Mr. BREED. You mean the retail grocer?

Mr. STERLING. Sometimes the wholesale grocer.

Mr. BREED. Does the wholesale grocer handle this bulk stuff?

Mr. STERLING. Sometimes, in some locations.

Mr. BREED. Very few do?

Mr. STERLING. Very few, I think.

Mr. BREED. You sell mostly to the retail trade?

Mr. STERLING. We sell to the produce, and butter and egg people, and the poultry people, and such as that.

Mr. BREED. Would you say the majority of your trade is with the wholesale trade?

Mr. STERLING. We sell largely to the fish and oyster people.

Mr. BREED. Would you say the majority of your trade is with the wholesale trade?

Mr. STERLING. No; the majority of our trade is mostly with the fish and oyster trade. We have regular wholesale fish and oyster people.

Mr. BREED. When you say wholesale trade, you mean the wholesale fish and oyster trade?

Mr. STERLING. Yes, sir.

The CHAIRMAN. Do you can anything else but oysters?

Mr. STERLING. Yes; we can some tomatoes.

The CHAIRMAN. What is your production?

Mr. STERLING. About 20,000 No. 3s.

The CHAIRMAN. Who do you sell those to?

Mr. STERLING. Anybody we can. We have sold Armour and Swift in the past.

The CHAIRMAN. You use the wholesale grocer, if you can?

Mr. STERLING. We sell to anybody we can. We have in the past, and we would be glad to keep on selling to them. We do not want to cut off any market.

Mr. BREED. How do you happen to come here to testify?

Mr. STERLING. I did not get the question.

The CHAIRMAN. I don't think that is a proper question, Mr. Breed. He has a right to come here, if he wants to. We have not asked any of your people how they happened to come here.

Mr. BREED. Yes; you have asked about the influence of the wholesale grocers.

The CHAIRMAN. You may ask him whether Mr. Campbell has influenced him; you may ask whether Mr. Campbell has influenced this man, but I don't think he should be asked whether he came here at the request of anyone.

Mr. STERLING. I don't think it is a question I should answer, unless the court thinks I should.

Mr. STEVENS. These questions have been asked and answered so generally—

The CHAIRMAN (interposing): We have not asked a witness that.

Mr. STEVENS. But these people have asked it. I think the record will show it.

Mr. BREED. Do you know Mr. Campbell, Mr. Sterling?

Mr. STERLING. I never met Mr. Campbell until this morning.

Mr. BREED. Did you receive a request or notice from the Department of Justice that these hearings would be held in this matter?

Mr. STERLING. I have had several letters from the Wholesale Grocers' Association, and also from the firm Mr. Campbell represents, asking how I stood on this matter.

Mr. BREED. From whom?

Mr. STERLING. From your Wholesale Grocers' Association; and also from Mr. Campbell, asking how I stood on this matter. And I frankly have answered each letter, if my memory serves me right.

The CHAIRMAN. You have not answered?

Mr. STERLING. I have. I answered frankly, and said, I think in every letter, that I was in favor of the packers handling these goods we have.

Mr. BREED. What are those?

Mr. STERLING. Oysters, fish, and tomatoes.

Mr. BREED. Have the packers ever handled your oysters?

Mr. STERLING. They have some. I wish they would handle more. I think it would be practicable for them to handle them.

Mr. STEVENS. Is it profitable for wholesale grocers to handle such produce?

Mr. STERLING. In certain locations, I think.

Mr. STEVENS. At what distances?

Mr. STERLING. We ship oysters from Maryland to the Pacific Coast.

Mr. STEVENS. Direct to the trade?

Mr. STERLING. Direct; yes, sir.

Mr. HALL. These are canned oysters?

Mr. STERLING. No, sir; just oysters put in cans and shipped.

Mr. STEVENS. I think you said you were doing a larger business this year than ever?

Mr. STERLING. No; I said we may have a larger business, if the weather stays open. The weather controls the output of sea food.

Mr. STEVENS. To what extent do the packers handle your business?

Mr. STERLING. That would be hard for me to say. Some goods we have never had the pleasure of doing much business with the packers. But my neighbors, in some of my neighbors—the packers were taking 75 per cent of my neighbor's pack, and if the packers were taking 75 per cent of their pack, whether oysters or fish, it would have a tendency to give me a larger field, and somebody would take my pack. In other words, I believe in an open market for that product.

Mr. STEVENS. You have not given much thought to the general distribution of foodstuffs outside of your own line, I suppose?

Mr. STERLING. I am not in position to do that, except that I have great faith in the larger companies. They have better organization, and the facilities for distributing.

Mr. STEVENS. Is the refrigerator line service of the packers valuable to your service?

Mr. STERLING. We use refrigerator car service exclusively; that is, for distances. We use local express for shorter distances, but that is different.

Mr. BREED. Did you know, Mr. Sterling, that the decree did not prevent the packers from handling oysters in bulk?

Mr. STERLING. No, sir.

Mr. BREED. Who buys your oysters?

Mr. STERLING. Who buys the oysters?

Mr. BREED. I mean finally—who finally buys them and consumes them?

Mr. STERLING. I presume the families, and the hotels and restaurants; they are for human beings to eat, and I suppose human beings eat them.

Mr. BREED. Do you think if the packers were allowed to handle canned oysters, which is one item they are prohibited from handling by their own consent, that the consumers would eat any more oysters?

Mr. STERLING. I believe we would reach a certain trade, sir, that is not now reached.

The CHAIRMAN. Mr. Breed, do you contend that the packers can handle fresh oysters in bulk under this decree?

Mr. BREED. All I know is that in the first section of the decree, "fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following, to wit, canned oysters."

The CHAIRMAN. It says, "fresh, canned, dried, or salted fish," and then includes "canned oysters."

Judge HAINER. It says here also "canned mackerel."

Mr. DAILY. May I give a little light on that from a practical standpoint?

The CHAIRMAN. Yes.

Mr. DAILY. The gentleman refers to the canned oysters as canned or packed in ice. The oysters here are canned oysters, cooked and hermetically sealed.

The CHAIRMAN. Mr. Sterling, do you know whether the meat packers are now handling bulk oysters?

Mr. STERLING. I am quite sure they are not. The last I knew they were not.

Mr. STEVENS. I think you said they were not permitted to?

Mr. STERLING. I think I said I have sold them a few. I have tried awfully hard, but the other fellow was always ahead of me.

Judge HAINER. Oysters are fish, are they not?

Mr. STERLING. We speak of them as sea food.

Mr. BREED. My idea of this provision is that the packers themselves, when they consented to this decree, were only referring to oysters that were put in tin cans, which is the only thing that they can handle and carry. I, personally, do not think that the packers are in the bulk-oyster business, which is a retail proposition.

Mr. STERLING. They have been into it very largely.

Mr. BREED. It might be, where the packers controlled or owned some retail establishment.

The CHAIRMAN. If you want to ask a question, we will go ahead, but if you want to make a statement of your own accord, we will do that later.

Mr. BREED. I am through.

The CHAIRMAN. Is there anything you care to ask further, Mr. Stevens?

Mr. STEVENS. No, sir.

The CHAIRMAN. Mr. Daily?

Mr. DAILY. Your initials, Mr. Sterling?

Mr. STERLING. J. H.

Mr. DAILY. Are you any relation to H. L., or is that another Sterling?

Mr. STERLING. Yes; distantly.

Mr. DAILY. You are both of Crisfield?

Mr. STERLING. Yes, sir.

Mr. DAILY. One is a wholesale grocer and the other a canner, and I did not know whether you are both in the same business or not.

Mr. STERLING. No, sir; that is a Sterling town.

Mr. DAILY. I imagine so, from the evidence we have here this morning. You say you can tomatoes?

Mr. STERLING. Yes; in a very small way.

Mr. DAILY. Do you can oysters in a commercial sense?

Mr. STERLING. In such a small way we hardly speak of it. It is only when we have a surplus we can not sell raw that we can sometimes.

Mr. DAILY. I am speaking now of the—

Mr. STERLING (Interposing). Of the cove oysters.

Mr. DAILY. Yes; that are packed by the Baltimore packers, and sold throughout the country.

Mr. STERLING. We have not packed any for three years.

Mr. DAILY. I just wanted to get your status as a tomato canner. You said "in a small way."

Mr. STERLING. Twenty thousand cases of No. 3 tomatoes.

Mr. DAILY. That is all, Mr. Sterling, thank you.

The CHAIRMAN. Mr. Sterling, have you talked with other producers of oysters in that vicinity?

Mr. STERLING. Not on this subject, excepting one party.

The CHAIRMAN. Only one party?

Mr. STERLING. Yes, sir.

The CHAIRMAN. Have you talked with any other canners of either oysters or tomatoes in your vicinity?

Mr. STERLING. None except my friend Mr. Handy; yesterday morning was the first I spoke to him.

The CHAIRMAN. Is there anything else by anybody? If not, we thank you very much, Mr. Sterling.

We will hear Mr. Handy.

STATEMENT OF MR. JOHN T. HANDY, OF THE JOHN T. HANDY CO. (INC.), OYSTER PACKERS AND CANNERS, CRISFIELD, MD.

The CHAIRMAN. What is your name, Mr. Handy?

Mr. HANDY. John T. Handy.

The CHAIRMAN. Where do you live, Mr. Handy?

Mr. HANDY. Crisfield.

The CHAIRMAN. Maryland?

Mr. HANDY. Maryland.

The CHAIRMAN. What is your business?

Mr. HANDY. We are oyster packers and cannery.

The CHAIRMAN. What is the name of your firm?

Mr. HANDY. John T. Handy Co. (Inc.)

The CHAIRMAN. What is the approximate annual amount of your production?

Mr. HANDY. Well, do you mean in dollars, or gallons?

The CHAIRMAN. In gallons, by the year?

Mr. HANDY. I should think around 150,000 or 175,000 gallons; that is a rough guess.

The CHAIRMAN. Do you produce anything except oysters; do you handle anything else?

Mr. HANDY. We handle canned goods. We can our oysters and fish; and raw oysters. In fact, we can everything; peaches and pears.

The CHAIRMAN. You can fruits, as well?

Mr. HANDY. Some, not many.

The CHAIRMAN. Give us an idea, if you can, of the extent of your business in this line, Mr. Handy.

Mr. HANDY. On tomatoes?

The CHAIRMAN. Yes; if you can.

Mr. HANDY. Our pack runs from 10,000 to 40,000; 40,000 is the highest we ever packed.

The CHAIRMAN. Cases?

Mr. HANDY. Yes, sir.

The CHAIRMAN. On fruit, what is your average pack?

Mr. HANDY. It is hard to estimate. Only a few thousand cases of peaches or pears. I would say two or three thousand cases; around there. Some years not any, just depending on the conditions.

The CHAIRMAN. How many oysters do you can?

Mr. HANDY. We only can a few at a time. We have not canned any for two or three years. Four years ago we canned probably \$10,000 worth, I believe.

The CHAIRMAN. Now, you may proceed in your own way, if you wish.

Mr. HANDY. I would rather you would ask me what you want to find out.

The CHAIRMAN. Do you feel that this decree should be modified so that the packers might resume handling these canned foods, such as canned vegetables, and fruits, and sea food—oysters?

Mr. HANDY. I should like to see them handle them again.

The CHAIRMAN. Any why?

Mr. HANDY. We had a very nice business with them when they were operating, and since they have quit I think we have lost a majority of that business. The last year the packers handled oysters we sold them around \$50,000 worth of oysters. Since then we have not had any of that business. We have tried to get it. We asked them for the names of their customers, but it was such a wide range, such—such wide distribution. I do not think we ever got 10 per cent of it.

The CHAIRMAN. You were not in position to cover that wide distribution?

Mr. HANDY. No; they had such wide distribution, and lots of people that would buy from them would not buy from us. In fact, I think many of them did not buy any more after they quit.

The CHAIRMAN. Who else do you distribute your products through?

Mr. HANDY. We sell a good many through brokers, and some direct to the wholesale houses.

The CHAIRMAN. Is it your experience that that distribution is satisfactory?

Mr. HANDY. Why, yes; it has been fairly so. It seems as though we have not had the distribution since the big packers got out of it. We sold them quite a good many goods and their dealings were always perfectly satisfactory.

The CHAIRMAN. Are you afraid that if the packers get back into this business that they will control the distribution of these things and monopolize them?

Mr. HANDY. I wouldn't think so.

The CHAIRMAN. You haven't any fears along that line, have you?

Mr. HANDY. No, sir.

The CHAIRMAN. Do you have any fears that they will control the canning of these things if they go back into the business?

Mr. HANDY. I haven't any reason to believe so.

The CHAIRMAN. Do you have any fear that they will control the production of these things, such as the growers, and so forth, of fruits and vegetables?

Mr. HANDY. No, sir.

The CHAIRMAN. In other words, you feel that your source or methods of distribution have been limited by taking the packers out of it?

Mr. HANDY. Yes. Well, we lost, I think, between \$40,000 and \$50,000 worth of oyster business at one shot. It dropped off entirely. Of course, on canned goods—we sold a good many canned goods to these people at times, but I am not in position to say whether that affected the market any, or not. But they were buyers and take a lot of stuff off of you, and they were nice people to deal with.

The CHAIRMAN. Have you talked with any of your cannery or producers in your section of the country, Mr. Handy?

Mr. HANDY. Yes, sir; I have talked, I think, with a few of them. I do not recall their names at present.

The CHAIRMAN. Very many of them?

Mr. HANDY. No, sir; probably two or three?

The CHAIRMAN. What was their views on this?

Mr. HANDY. Why, their ideas are the same as mine, that we needed all the market we could get, and all the distribution we could get.

The CHAIRMAN. Judge Hainer, have you any questions?

Judge HAINER. No.

The CHAIRMAN. Mr. Hall, have you?

Mr. HALL. No.

The CHAIRMAN. Mr. Breed?

Mr. BREED. Mr. Handy, did you come here at the request of Mr. Campbell?

Mr. HANDY. Is that a fair question?

The CHAIRMAN. I don't think it is, and I don't think you have to answer it.

Mr. BREED. Do you know Mr. Campbell?

Mr. HANDY. I never saw him before to-day.

Mr. BREED. Did you ever receive letters from Mr. Campbell?

Mr. HANDY. I think I have.

Mr. BREED. When did you begin to sell oysters to the packers?

Mr. HANDY. Well, I am not clear on that, but I think I sold them for four seasons.

Mr. BREED. What four seasons?

Mr. HANDY. Well, that would be 1918—1919 was the last year, wasn't it? I sold them up to the time this decree went into effect, and I think four years previous to that.

Mr. BREED. That was during the war period?

Mr. HANDY. Yes, sir.

Mr. BREED. Did you sell them prior to the war period?

Mr. HANDY. I think I did. I am not positive about that. But I think they were buying from my neighbors before that.

Mr. BREED. I am now asking of your individual knowledge.

Mr. HANDY. We sold them four seasons, I think. It might have been five years.

Mr. BREED. That would be 1916, 1917, 1918, and 1919?

Mr. HANDY. Yes, sir.

Mr. BREED. Did they stop buying in 1919?

Mr. HANDY. They stopped buying when this decree went into effect. They wrote me that the Government would not allow them to handle them any more; that is, Cudahy wrote me—the Cudahy Packing Co.

Mr. BREED. Did you have any further correspondence with the packers on that subject?

Mr. HANDY. They wrote me first that they did not think they would be able to handle oysters; that the Government would bar them; that they would let me know later on. And later on we received a letter from them saying that they would not be able to handle them, that the Government had barred them from using them.

Mr. BREED. Did you make any further inquiry about that?

Mr. HANDY. No, sir; we supposed that was final.

Mr. BREED. Who did you sell to prior to the four seasons you are talking about?

Mr. HANDY. Well, we sold all over the United States, so far as that goes. We had a line of customers, I suppose 400 people.

The CHAIRMAN. Was your output that you handled in those four years that you speak of that you sold to the packers taken exclusively by them?

Mr. HANDY. No, sir.

Mr. BREED. Those 400 customers, what kind of customers were they?

Mr. HANDY. They ranged in all kinds of business.

Mr. BREED. Retail?

Mr. HANDY. Retail, wholesale, meat men, packers, and grocers.

Mr. BREED. Did those people go out of business?

Mr. HANDY. Part of them went out of business; some of them are dead, and some of them have gone out of business. They are dropping out all the time. But the majority of them are still holding on.

Mr. BREED. The majority of the 400?

Mr. HANDY. Yes; that is an estimate.

Mr. BREED. Did you drop your sales to them when you began to sell to the packers in 1916?

Mr. HANDY. Did we drop our sales?

Mr. BREED. These sales, did you drop those sales to the 400 customers, when you began to sell to the packers?

Mr. HANDY. We have been increasing our capacity all the time. Some fell out—you know how business is—some went out of business, and so on.

Mr. BREED. I mean to say when the packers, as you say, took quite a large part of your business, you ceased to sell to these other people, did you not?

Mr. HANDY. No, sir; only as I said, as we were compelled to. Some quit business and some died. But we increased our capacity each year somewhat, or tried to, up until the last few years.

Mr. BREED. Did you ever sell Armour or Swift or Wilson any of these canned oysters?

Mr. HANDY. I sold Armour & Co., I think, \$8,000 worth of canned oysters once, is all.

Mr. BREED. One sale?

Mr. HANDY. Yes; one carload.

Mr. BREED. That was during the war period?

Mr. HANDY. Yes; I think it was. They shipped them out into North Dakota, I think.

Mr. BREED. Were they in tins, or in bulk?

Mr. HANDY. They were in 6-ounce cans, I think. They were cooked oysters. The other oysters I spoke of a few minutes ago were raw stuff, packed in ice—to the Cudahy Packing Co.

Mr. BREED. Raw oysters?

Mr. HANDY. Most of them; in fact, almost all of them.

Mr. BREED. You said you increased your capacity?

Mr. HANDY. We did at times; yes, sir.

Mr. BREED. Was that during the war period that your capacity increased?

Mr. HANDY. Yes; I think we did. I am not sure, but I think we did. That is, on shucked oysters.

Mr. BREED. What was the amount, in dollars, that you sold Cudahy and Armour?

Mr. HANDY. I never sold Armour any raw oysters. I only sold him the one lot of tinned oysters—canned.

Mr. BREED. \$8,000 worth?

Mr. HANDY. Around \$8,000.

Mr. BREED. How many did you sell to Cudahy?

Mr. HANDY. Well, the last year we sold him, I think, was between \$40,000 and \$50,000 worth, our bookkeeper said.

Mr. BREED. Was that in one order?

Mr. HANDY. No, sir; that is what we sold him during that season. The last season that they were allowed to handle them. The previous seasons I don't think amounted to so much. I should guess that around \$30,000 to \$40,000 a year.

Mr. BREED. Do you know where those oysters were shipped?

Mr. HANDY. I think I know a great many of them; yes. Probably 20 or 25 different places.

Mr. BREED. Cities, mostly?

Mr. HANDY. Yes; they shipped a good many to Rockford, Ill., and a good many went to South Chicago.

Mr. BREED. South Chicago?

Mr. HANDY. Yes; a great many went into Chicago, and Elgin, and into South Chicago, and then a great many went down South.

Mr. BREED. Did they send their own refrigerator cars for them?

Mr. HANDY. They did for the Christmas holidays, when they wanted large quantities.

Mr. BREED. So they used their own refrigerator cars in handling these large quantities—these large shipments?

Mr. HANDY. That was just for the Christmas holidays, yes. Other times they shipped by local express.

Mr. BREED. That is all.

The CHAIRMAN. Mr. Handy, how many men do you employ in your business?

Mr. HANDY. Well, in the oyster season we run about 200 people in our plant, men and women.

The CHAIRMAN. And how long does that season last?

Mr. HANDY. Well, it starts about the 1st of September and winds up about the 1st of March; sometimes it runs through to the 1st of April.

The CHAIRMAN. In addition to that, do you employ these men that are getting the oysters out of the water?

Mr. HANDY. No; that does not apply to those.

The CHAIRMAN. You buy the oysters from them?

Mr. HANDY. Yes; that is a different class. We buy these by the bushel.

The CHAIRMAN. How many oyster hunters do you buy from, or fishers?

Mr. HANDY. Well, that is hard to estimate, because we buy from the different classes—mostly a different set of men. There are a thousand men engaged in that business, and we do not have any special class. We have about 20 men operating boats for us regularly, but we buy from 500 different people during the season. We run about 200 people regularly when we are operating, during the canning season, mostly women; maybe about 40 men, and 75 or 100 women.

The CHAIRMAN. Could you give us an idea how many people there are engaged in the oyster industry? Approximately, I mean?

Mr. HANDY. It has been estimated that we have 4,000 boats engaged in the soft-shell crab industry. That question is rather hard to answer yet. You mean from our town, do you, or our section?

The CHAIRMAN. Well, your section is the principal oyster producing section of the country?

Mr. HANDY. It is the largest in that section; yes, sir.

The CHAIRMAN. If you could give us a rough estimate of the number of people engaged in that industry, do so.

Mr. HANDY. I should think in that locality, both in the town and in the adjoining country, around 3,000 men are engaged in it. That is, not all from our town, but from our town and the adjoining neighborhood.

Mr. STEVENS. You mean dealers?

Mr. HANDY. No, sir; that is the men engaged in catching them and marketing them.

The CHAIRMAN. Mr. Sterling, how many men do you employ in your plant?

Mr. STERLING. 70 men and women.

Mr. HERSCHER. I want to suggest, Mr. Chairman, that you ask these men what style packages these raw oysters are shipped in.

Mr. HANDY. You mean the raw oysters?

Mr. HERSCHER. Yes.

Mr. HANDY. Well, the package we use mostly is the 5-gallon can, and the 3-gallon and 1-gallon cans.

Mr. HERSCHER. Don't you use a considerable number of the 5-gallon pails?

Mr. HANDY. Not many. We use some, but not so many. I don't believe over 5 per cent goes in the 5-gallons. The balance in 3's and 1's. They go in boxes and are packed.

The CHAIRMAN. Those cans are placed in a box and the ice is packed around them?

Mr. HANDY. Yes, sir.

The CHAIRMAN. To what extent do you use refrigerator cars in the transportation of those oysters?

Mr. HANDY. Well, we use a great deal in our business. Our business—we run in our business from three to five refrigerator cars in a week, when the business is good; and during the holidays we run one and sometimes two a day. And the balance of it goes by local express.

The CHAIRMAN. That is all.

Mr. BREED. Did you have any trouble getting refrigerator cars from the railroad?

Mr. HANDY. I did during the war; yes.

Mr. BREED. What railroad do you use?

Mr. HANDY. We are on the Y. B. & N., a branch of the Pennsylvania; the New York, Philadelphia and Northern.

Mr. STEVENS. Mr. Handy, do you deal in what is called the "sealship" oysters?

Mr. HANDY. No, sir; I never did. I think that is about out of business. I am not sure about that, but there do not seem to be as many of them as there used to be.

Mr. STEVENS. Are you what is called one of the large oyster dealers?

Mr. HANDY. I am one of about as large as there is there.

Mr. STEVENS. I mean, would you consider your business one of the large oyster businesses of the nation, or the country?

Mr. HANDY. Well, I believe it is considered about as large as there is in the country. Mr. Sterling probably can tell you about that.

Mr. STERLING. I would say he is one of the largest producers.

Mr. STEVENS. Do you still do a pretty good business?

Mr. HANDY. We are trying to.

Mr. STEVENS. Are you succeeding?

Mr. HANDY. Business is not as good as it has been.

Mr. STEVENS. Why is that?

Mr. HANDY. One thing, I think, is the dull conditions existing throughout the country, probably. And the weather, and I don't know what else. The weather, you know, controls the oyster business. I think the high freight rates, and express rates, too.

Mr. STERLING. Your dealings with the packers, you can say, were satisfactory to you?

Mr. HANDY. Perfectly; yes, sir.

Mr. STEVENS. Did they pay you a good price?

Mr. HANDY. Well, they paid about what other people were paying. They bought in large quantities, and we never had any trouble with any of the goods we shipped them. If the price went down they always stuck.

Mr. STEVENS. When you were dealing with the packers, they were an additional customer to your 400 or 500, were they not?

Mr. HANDY. In the oysters?

Mr. STEVENS. Yes.

Mr. HANDY. Yes; we took them on in the year we began dealing with them. I am not clear on that point what year they started. I think we dealt with them four years. They were dealing, though, with other people throughout the country at the time.

Mr. STEVENS. What volume, in dollars, of business did you do, say in 1917 and 1918?

Mr. HANDY. Of oysters?

Mr. STEVENS. Yes.

Mr. HANDY. I stated before I did not know, but probably \$30,000 worth, or a little better.

Mr. STEVENS. With the packers?

Mr. HANDY. Yes; on raw oysters.

Mr. STEVENS. I mean in your oyster business altogether?

Mr. HANDY. What volume?

Mr. STEVENS. Yes.

Mr. HANDY. Our business—that would be hard to tell. Our business increased a little all the while in volume up until the past two seasons, and then we fell back.

Mr. STEVENS. Can you give an estimate of the total amount of your oyster business, in dollars?

Mr. HANDY. Well, that would be a little hard to tell.

Mr. STEVENS. Well, a fair estimate.

Mr. HANDY. Well, our business, I should say, I guess, around—what do you mean—what season?

Mr. STEVENS. 1917, 1918, 1919, and 1920.

The CHAIRMAN. Ask him for one season at a time.

Mr. HANDY. It is a little hard to tell. Prices varied so much at the time, you know, it would be hard for me to give an estimate on it. Oysters were cheaper some years than others.

Mr. STEVENS. In gallons, then, in 1918; in gallons?

Mr. HANDY. As I said before, I think we run from 150,000 to 175,000 gallons.

Mr. STEVENS. In 1918?

Mr. HANDY. In 1919, the last year we shipped the packers.

Mr. STEVENS. 1919?

Mr. HANDY. Our business increased 10,000 or 15,000 gallons a season.

Mr. STEVENS. What was the average price?

Mr. HANDY. That would be hard to tell. Oysters broke off in one week 30 or 40 cents a gallon.

Mr. STEVENS. In 1918, what would it average?

Mr. HANDY. Oysters were a good deal higher in those years.

The CHAIRMAN. Do you know what the average was?

Mr. HANDY. No, sir.

Mr. STEVENS. You could not make an estimate?

Mr. HANDY. No, sir.

Mr. STEVENS. Couldn't you estimate it?

The CHAIRMAN. He says he doesn't know.

Mr. HANDY. It would be a guess.

Mr. STEVENS. Well, make a guess.

Mr. HANDY. That man [indicating] is in position to tell you better. I should say \$3 on selects, and \$2.25, or around there on counts—you see, we have three grades. If I attempted to give you the price, it would be a guess.

Mr. STEVENS. What would you estimate the average price for the year 1921?

Mr. HANDY. That was last year?

Mr. STEVENS. This year.

Mr. STERLING. He works the two seasons, 1919 and 1920.

Mr. STEVENS. For the season, then?

Mr. HANDY. The price around November 15 was around two and two and a quarter, and after January 1 was around about a dollar and a half or a dollar seventy-five.

Mr. BREED. January 21, 1921?

Mr. HANDY. Sir?

Mr. STERLING. Yes; January 1, 1921.

Mr. HANDY. The prices vary so it would be hard for a man to keep tab on the prices, unless he had a book.

The CHAIRMAN. Is not the price high around holiday time; around Thanksgiving and holiday time?

Mr. HANDY. Yes; I say it was high, the highest ever known, and they dropped 30 cents a gallon.

Mr. STEVENS. In 1921, what do you estimate the total number of gallons of your business?

Mr. HANDY. Well, our business dropped off a little in 1921. I could not make a guess.

Mr. STEVENS. 150,000 gallons?

Mr. HANDY. I said around 150,000 or 175,000 gallons in 1920.

Mr. STEVENS. Was it more in 1921?

Mr. HANDY. No; it was less. Our business increased until 1920, and then the business dropped back a little. But the figures I am just guessing at, because I did not take any data along that line. And it decreased the last two years, the business has.

Mr. STEVENS. Was the price higher or lower?

Judge HAINER. Mr. Stevens, I don't see how that is material.

Mr. STEVENS. I beg pardon.

Judge HAINER. I don't see how it sheds any light on the question here.

Mr. STEVENS. I thought I could see how it would.

The CHAIRMAN. If you will state your purpose, maybe we will see it.

Judge HAINER. Yes; we don't want to shut you off, if it sheds any light on it. What is the purpose?

Mr. STEVENS. The purpose is this: That it seems to me if the packers going out of the business, or going into business, so far as it has developed yet, did not make any appreciable difference in the volume of business. That is the

whole crux of the question here. And they actually show the price and production increased after the packers left them.

Mr. HANDY. I stated the business fell off in the last two years.

Mr. STEVENS. That was because of natural causes?

Judge HAINER. That was true of the grocery business.

Mr. BREED. These gentlemen are seeking to draw the conclusion that their business fell off because of the entering of this decree.

Mr. HALL. And so stated.

Mr. BREED. Yes; and in asking the witness whether the prices were higher, it seemed to me that he got better prices, even if the production fell off. I think he could answer the question of Mr. Stevens's, whether the price was higher in 1920 and 1921 than it was in 1918.

The CHAIRMAN. Let him answer that, if he knows.

Mr. STEVENS. Was the price higher or lower in the season of 1920 and 1921 than it was in previous years?

Mr. HANDY. 1920 and 1921?

Mr. STEVENS. Last season.

Mr. HANDY. It would be hard to give that, because, as I say, they were very high in 1921; they were very high in the early part and very low afterwards.

Mr. STEVENS. And higher than they were in the season before?

Mr. HANDY. I couldn't tell that. You would have to give an average on it.

Mr. STEVENS. I think you said around two and a quarter?

Mr. HANDY. Two to two and a quarter.

Mr. STEVENS. Around Thanksgiving time?

Mr. HANDY. At Thanksgiving time. And they dropped down later to a dollar and a half. It would be hard to give an average on that, unless you had your books. In the oyster business the prices are governed a great deal by the weather conditions.

Mr. STEVENS. Are they governed more by the weather conditions than by the distribution?

Mr. HANDY. I think they are.

Mr. STEVENS. That is all.

Mr. HALL. Mr. Handy, I believe you stated you had some communication with Mr. Campbell?

Mr. HANDY. Yes, sir.

Mr. HALL. In answer to Mr. Breed?

Mr. HANDY. Yes, sir.

Mr. HALL. Now, let me ask you, did you also have communication from the wholesale grocers?

Mr. HANDY. I think we had one. I didn't see it myself; it came to the secretary.

The CHAIRMAN. Does the price of oysters also depend upon the price of cost to produce them?

Mr. HANDY. How is that?

The CHAIRMAN. Does the market price of oysters also depend on the cost of production, as well as the weather?

Mr. HANDY. Well, the weather makes it hard to produce them. If the weather is very cold, or rainy, or stormy they can not get the oysters. It makes a scarcity.

The CHAIRMAN. As the market price of the shucked oyster advances does the price which you have to pay to your fishermen for the oysters in the shell also advance?

Mr. HANDY. Yes, sir. We buy on the market price and the conditions.

The CHAIRMAN. And they are governed, of course, by the market price of the finished product?

Mr. HANDY. Yes, sir.

The CHAIRMAN. And the weather controls that largely, you think?

Mr. HANDY. Yes, sir.

The CHAIRMAN. Mr. Daily, did you have something you wanted to ask?

Mr. DAILY. A few questions, Mr. Chairman.

Mr. Handy, when did the meat packers stop buying; that is, these unrelated lines; what year?

Mr. HANDY. Well, I think it was 1919. I think that was the year. They wrote me they would not be able to handle them any more.

Mr. DAILY. Do you recall the price of 5-ounce oysters away back in 1914?

Mr. HANDY. No, sir.

Mr. DAILY. Your recollection, however, indicates that that price ranged around 65 to 67½ and 70 cents a dozen, does it not? You know that you have sold 5-ounce oysters as low as 65 to 70 cents a dozen?

Mr. HANDY. Probably we have. I don't remember. We handle so much.

Mr. DAILY. Prior to the war the prices of cove oysters was never over 90 cents?

Mr. HANDY. We did not pack any cove oysters.

Mr. DAILY. Isn't it true that in the latter part of 1917, after the war commenced, and after the war effects were felt, that the prices jumped from 70 cents to a dollar and a half?

Mr. HANDY. I don't know.

Mr. DAILY. I have before me the almanac issued by the canning trade of Baltimore, and it gives the prices. If your recollection goes that far, you can tell me whether they are right or not. In 1919 the price of 5-ounce oysters—the highest point was in January, at \$1.60. The lowest point was about \$1.40, in November.

Mr. HANDY. I couldn't tell you.

Mr. DAILY. And then in 1920, the highest price was \$2, in September of 1920, and the lowest price was \$1.40 in December. Do you know whether those figures are correct?

Mr. HANDY. No, sir; I couldn't tell you. We do not specialize on the cove oysters. We only can at times.

Mr. DAILY. Well, it is a fair indication, however, of the oyster market, don't you think?

Mr. HANDY. I should think so.

Mr. DAILY. And the Canning Trade Almanac is a reputable trade paper, isn't it?

Mr. HANDY. Yes; so far as I know.

Mr. DAILY. Mr. Handy, you said something about canning tomatoes.

Mr. HANDY. Yes, sir.

Mr. DAILY. Will you tell the honorable committee just the deplorable conditions that obtained on the peninsula during the last tomato pack?

Mr. HANDY. Yes; I could tell them what kind of a time we had, and our neighbors. They still have them, a great many of them.

Mr. DAILY. Some of the canners have tomatoes that were packed last year?

Mr. HANDY. Some of them have them packed in 1917.

Mr. DAILY. That is just what I thought, Mr. Handy.

Mr. HANDY. In 1918, and along there.

Mr. DAILY. What is the reason for that, do you know?

Mr. HANDY. No, sir.

Mr. DAILY. There is no disinclination on the part of anybody to handle tomatoes, do you think?

Mr. HANDY. Well, there hasn't been the market in the last few years that there was before, but what causes those conditions it would be hard for me to tell.

Mr. DAILY. That is all.

The CHAIRMAN. If that is all, we thank you very much, Mr. Handy.

We will now hear Mr. Milbourne.

STATEMENT OF MR. LEWIS M. MILBOURNE, OF MILBOURNE & TULL, VEGETABLE AND FRUIT CANNERS, KINGSTON, MD.

The CHAIRMAN. You may state your name.

Mr. MILBOURNE. Lewis M. Milbourne.

The CHAIRMAN. Where do you live?

Mr. MILBOURNE. My legal home is at Kingston, Somerset County, above where these other gentlemen live.

The CHAIRMAN. Maryland?

Mr. MILBOURNE. Maryland; yes, sir.

The CHAIRMAN. What business are you engaged in?

Mr. MILBOURNE. Principally packing tomatoes and other vegetables and a few fruits. But in our locality we do not have very much fruit, but we do, when we can get the raw material, we do pack some.

The CHAIRMAN. What is the name of your company?

Mr. MILBOURNE. Milbourne & Tull.

The CHAIRMAN. What is the amount of your pack in a year; last year, say?

Mr. MILBOURNE. You mean 1921?

The CHAIRMAN. Yes; 1921.

Mr. MILBOURNE. Do you mean the season of 1921? Of course, the packing seasons run over.

The CHAIRMAN. Yes; the season of 1921.

Mr. MILBOURNE. Nil.

The CHAIRMAN. Nothing?

Mr. MILBOURNE. Practically nothing. I will explain that: We have some real estate; we own some farms there that are cultivated by tenants, and we did have some tomatoes and in order to save them we packed what was grown on our own farms, about 5,000 cases.

The CHAIRMAN. What was your pack the year previous?

Mr. MILBOURNE. 88,000, I think.

The CHAIRMAN. Cases?

Mr. MILBOURNE. Yes, sir.

The CHAIRMAN. What is your capacity there?

Mr. MILBOURNE. Well, that would depend, something, of course, on the nature of the season, and the length of the season. We can pack about 3,000 cases a day. If the season would last 30 days we could pack 90,000 or 100,000.

The CHAIRMAN. What is the largest pack you have ever had there?

Mr. MILBOURNE. I think 78,000 cases is the largest we have actually packed.

The CHAIRMAN. How many farmers or growers contribute to your packing or canning plants? Approximately how many?

Mr. MILBOURNE. Well, as the conditions have changed—right at the present, the conditions are different from what we have had back awhile. I should say last year—take the year 1920, about 200 farmers; about 200 growers.

The CHAIRMAN. And what is the approximate acreage?

Mr. MILBOURNE. Well, as I stated, that is the way the business has been done in recent years—if the business were done as it was before, but in recent years we did not get all the product of any one farm. The stuff has been sold what they call on the market, and we may get what he sells to-day, and to-morrow some other packer may get it. And, therefore, the acreage is hardly a matter which you could approximate. Under the old conditions when we had contracts—when we were contracting in the spring with a grower, why we usually contracted from 200 to 400 acres.

The CHAIRMAN. That condition does not prevail now?

Mr. MILBOURNE. No.

The CHAIRMAN. Why?

Mr. MILBOURNE. Well, of course, the war conditions unsettled business in every way, but I think I may safely say the last two years, certainly the spring of 1920, there were no contracts in our section—practically none, because the canners were not in position to contract, or make any contracts or name any prices for tomatoes. They had their goods they had already packed. They had never been able to dispose of them at cost, and they had paid the grower the previous year a very good price; and those that were willing to set a price, they could not convince the grower that the price that the canner was willing to pay was a fair one, and the consequence was there was no contracting; no contracts were made.

The CHAIRMAN. And you buy now just as you could get them?

Mr. MILBOURNE. As I say, we do not buy at all. They were not packed. There were not four canners in our county that steamed up at all.

The CHAIRMAN. How many canners are there altogether there?

Mr. MILBOURNE. I should say 30.

The CHAIRMAN. The crops were not grown?

Mr. MILBOURNE. No; there were not enough grown in the county to run one factory.

The CHAIRMAN. And that is because they were not contracted for?

Mr. MILBOURNE. That is practically the reason.

The CHAIRMAN. And why were they not contracted for?

Mr. MILBOURNE. Because—

The CHAIRMAN (interposing). Because you could not sell them?

Mr. MILBOURNE. No; the canner could not go on the market and make a contract with the distributor. He had his goods he packed the previous year, or longer.

The CHAIRMAN. What distributor was that?

Mr. MILBOURNE. Well, the only thing left was the wholesale grocer, or the grocer, not all wholesale. The wholesale grocer and the chain stores.

The CHAIRMAN. Are you in favor of this decree being modified so that the meat packers can go back into these unrelated lines?

Mr. MILBOURNE. I am in favor of anything that would make an outlet for these canned goods.

The CHAIRMAN. Well, do you think that would make an outlet?

Mr. MILBOURNE. I do.

The CHAIRMAN. Mr. Milbourne, did you ever distribute through the meat packers?

Mr. MILBOURNE. Yes, sir.

The CHAIRMAN. To what extent?

Mr. MILBOURNE. I couldn't estimate that. I have made no data.

The CHAIRMAN. Well, did they buy anywhere near all your product?

Mr. MILBOURNE. No, sir.

The CHAIRMAN. What do you think is the main advantage of having the meat packers in the market, if it is an advantage having the meat packers in the market?

Mr. MILBOURNE. My own opinion is what you want?

The CHAIRMAN. Surely.

Mr. MILBOURNE. The advantage would be in selling, and having our goods distributed at prices where they are not now distributed. And, furthermore, I will state that my opinion—and I base that on some observation and some investigation—that nobody at present is pushing the sale of canned goods, and certainly of canned vegetables.

Judge HAINER. Do you believe it would be an injury to the wholesale grocers if the meat packers handled the distribution of unrelated commodities?

Mr. MILBOURNE. Only to the same extent that any competition is injurious. None of us want competition, if we can avoid it. But I see no reason why it should interfere with the wholesale grocer, if he is willing to so conduct his business as to be able to compete with other people who are in the same line.

Mr. BREED. You have just stated, Mr. Milbourne, that nobody was pushing the sale of canned vegetables.

Mr. MILBOURNE. Yes, sir.

Mr. BREED. Is that your honest opinion?

Mr. MILBOURNE. Yes, sir.

Mr. BREED. You had previously stated that you did not make any contracts with the growers in your vicinity during the past year.

Mr. MILBOURNE. Yes, sir.

Mr. BREED. Was that during this past year?

Mr. MILBOURNE. 1920, yes, sir.

Mr. BREED. 1920?

Mr. MILBOURNE. Yes, sir.

Mr. BREED. Because the canners were not in a position to name a price, and had goods on hand?

Mr. MILBOURNE. That was the pack—I said 1920. I meant 1921. It was the pack of 1920 we had on hand, in our particular case. I speak now of our own firm.

Mr. BREED. Did you have any of the 1919 pack on hand?

Mr. MILBOURNE. No, sir.

Mr. BREED. Did you make any effort to sell those goods which you had on hand?

Mr. MILBOURNE. Did I make any effort?

Mr. BREED. Did you?

Mr. MILBOURNE. Certainly.

Mr. BREED. Then at least you were trying to push the sale of canned vegetables, were you?

Mr. MILBOURNE. Well, we were not trying to put the sale at a loss, no, sir. At that particular time, in the spring of 1921. That is the season we contract: that is, the time they sow the seed.

Mr. BREED. Who do you sell, ordinarily, your canned vegetables to?

Mr. MILBOURNE. Anybody that will buy them.

Mr. BREED. But to whom; what class of trade?

Mr. MILBOURNE. The grocery trade, usually.

Mr. BREED. Wholesale or retail?

Mr. MILBOURNE. Very few retail; rarely we make a sale to a retailer. Of course, if a man buys in a carload lot, we do sell. We have sold in a town where several retailers have gone together and ordered a car. But we seldom sell less than a carload lot.

Mr. BREED. Who are the other people you sell to?

Mr. MILBOURNE. The wholesale grocers, and the chain stores.

Mr. BREED. About how many customers had you on your books?

Mr. MILBOURNE. When?

Mr. BREED. In 1919 and 1920?

Mr. MILBOURNE. I should say 50.

Mr. BREED. Did you make any endeavor to sell those canned goods you had in stock to those 50 people?

Mr. MILBOURNE. Not particularly, no, sir.

Mr. BREED. You didn't try; did you offer them to those 50 people?

Mr. MILBOURNE. Not directly, no, sir. Our business is done mostly through brokers.

Mr. BREED. Did you offer them to the brokers?

Mr. MILBOURNE. Oh, yes.

Mr. BREED. And what report did you get from the brokers?

Mr. MILBOURNE. No business.

Mr. BREED. How many brokers did you offer them to?

Mr. MILBOURNE. Well, I wouldn't be able to answer that. We frequently have a broker in practically every one of the large cities in the East. That is, I say, we have brokers; we have brokers that have our stuff listed. They know what we have to sell, and what our price is; there are probably 12 or 15.

Mr. BREED. Did you name the price to the broker that you would sell these goods, or did you offer to sell them at the market?

Mr. MILBOURNE. We named our price.

Mr. BREED. And what was the report from the brokers?

Mr. MILBOURNE. No business at that price.

Mr. BREED. Did you know that in the period of 1917 to 1920 that the Government had on hand a large stock of canned goods and were offering them publicly for sale?

Mr. MILBOURNE. Yes, sir.

Mr. BREED. Do you know whether the wholesale grocers had any other stocks—large stocks of the canned goods of the variety that you sold?

Mr. MILBOURNE. I can't say that I know. I assume it was so, as frequently stated.

Mr. BREED. By wholesale grocers?

Mr. MILBOURNE. Yes, sir.

Mr. BREED. Did you, or did you not, know that the retail grocers in your vicinity, or the localities you were connected with had large stocks of canned goods on their shelves unsold?

Mr. MILBOURNE. What period do you speak of?

Mr. BREED. The period when you were naturally selling your goods; the spring of 1921.

Mr. MILBOURNE. The spring of 1921; no, sir.

Mr. BREED. You did not?

Mr. MILBOURNE. No, sir; to the contrary I was informed the retailers were bare of goods. You said 1920.

Mr. BREED. I mean 1920, when the brokers reported to you that they could not sell your goods.

Mr. MILBOURNE. That was 1921. You are talking about one year and I am talking about another. You said 1921, and I thought you meant the years 1919 and 1920.

Mr. BREED. Whenever it was you offered your goods.

Mr. MILBOURNE. In the spring of 1921 is when I had in mind, the period we failed to contract with the growers for the season, at first. That is, we had the goods which we packed in the season of 1920.

Mr. BREED. And when you were first asked by the Chairman why you had not entered into contracts with the growers in the past season, did I understand you correctly to say that it was because you had goods on hand unsold?

Mr. MILBOURNE. I stated that as one of the reasons.

Mr. BREED. The second time in your examination that you were asked why, did you not state that it was your opinion that it was due to the fact that the packers had gone out of business that you could not sell your goods?

Mr. MILBOURNE. No, sir.

Mr. BREED. You did not state that?

Mr. MILBOURNE. No, sir.

Mr. BREED. Do you think that that had any effect on your inability to sell your goods?

Mr. MILBOURNE. Yes, sir.

Mr. BREED. You do?

Mr. MILBOURNE. Yes, sir.

Mr. BREED. And yet the 40 odd customers that you had previously sold goods to, the wholesalers, were they still in business?

Mr. MILBOURNE. Yes; I assume most of them were. Some of them might not have been.

Mr. BREED. Now, you said that while the packers were in business you could distribute to places at which you do not now distribute. What places are those?

Mr. MILBOURNE. I will explain that: You say "places"; it may be places, or something else. And I say what I say, and express my opinion after some investigation. Take the present year. We have goods to sell, and I have been trying very hard to sell them. We have offered to sell them at less than actual cost, and we have not been able to sell them since they were packed and realize anything like the cost. We would not be able to sell them at all. We would have taken a considerable loss. But I find, on some personal visits that I have made to wholesale dealers, myself, that they are luke warm on the subject of tomatoes, particularly, and they tell me this—I had it told to me repeatedly: "We are not interested in tomatoes. If we have a customer that wants to buy them, we will furnish them to him. We are not stocking up. We are not putting in any tomatoes. We are only filling orders when they come in."

And I have been told also, in a city where there are a half dozen wholesale grocers, "we will not go in and buy a car, each of us; but will buy a car and split among us. We do not propose to buy large lots."

Mr. BREED. Did they say anything to you whether there was any demand from their customers for tomatoes?

Mr. MILBOURNE. I don't know that I discussed that.

Mr. BREED. You don't mean to say—

Mr. MILBOURNE (interposing). They say they are not trying to push the sales; if a retailer wants the goods they will fill his orders.

Mr. BREED. You do not mean to carry the impression to the committee that a wholesaler said that he was not going to push the sale of these canned tomatoes and that there was a demand from the retailers which they did not care to fill, do you?

Mr. MILBOURNE. I am not trying to convey to the committee anything except the statements which I received that were made to me about the attitude of the wholesale grocers at this time. They are not interested in tomatoes.

Mr. BREED. Do you think, personally, if a wholesaler could sell a carload of tomatoes that he would not buy them to sell?

Mr. MILBOURNE. I don't think they would go on the market to buy if they had to go out and ship them; and by buying it would increase the price 5 cents a dozen.

Mr. BREED. Don't you know that every wholesale house has a line of salesmen on the road every day visiting the retailers, trying to sell these goods?

Mr. MILBOURNE. I know they have salesmen on the road.

Mr. BREED. Isn't that the business of the salesmen, to sell these goods?

Mr. MILBOURNE. I assume so, but I tell you what their attitude is.

Mr. BREED. Can you tell the committee the reason why they are not pushing the sale of these canned goods?

Mr. MILBOURNE. Why, no; but I do know—my statements along that line are trying to show what was the attitude of the packers when we were selling goods to them—that their salesmen were out on the road and they were pushing business.

Mr. BREED. They were pushing—

Mr. MILBOURNE (interposing). Their salesmen would go into a place—a retail grocer—and say, "Why don't you put in tomatoes?" or, "We are shipping in here a carload of miscellaneous products, and we have got so many cases of this and that and the other. Now, if we can drop in a couple hundred cases of tomatoes in this car, we can get this car dropped into this town." And he pushed the sale of outside lines in places where they are not now being pushed.

Mr. BREED. What places are those?

Mr. MILBOURNE. I don't know what particular places. Take as an instance a comparatively small city where the jobbers do not handle a solid carload of tomatoes.

Mr. BREED. You do not mean to say that the packers carried goods to the places where the wholesale grocer and the retailer grocer does not exist, do you?

Mr. MILBOURNE. Certainly not where the retail grocer does not exist, because he sells them to the retail grocer.

Mr. BREED. Is it your opinion that the wholesale grocer does not cover pretty generally the entire country where there is any trade with retail grocers?

Mr. MILBOURNE. I don't doubt that he does.

Mr. BREED. Well, then, what places did you refer to when you said to the committee that if the packers went back to business, to quote you, that you "could distribute to places not now distributed"?

Mr. MILBOURNE. I meant by that that the packers would push this business and put in canned goods in many places where the wholesale grocers are not doing it.

Mr. BREED. Well, where are those places?

Mr. MILBOURNE. Well, I couldn't name the towns, but that is my judgment from past experience.

Mr. BREED. Well, do you know any towns that the wholesale grocer does not furnish the service to?

Mr. MILBOURNE. I was in Buffalo yesterday and I was told by the wholesale grocers in that town this very thing that I am telling you, that they were not pushing the sale of tomatoes.

Mr. BREED. We are not discussing that now; we are trying to find out for the benefit of the committee what places the packers distributed to that are not now distributed to. That was your statement, as I understood it.

Mr. MILBOURNE. I said so. I believe there would be a greater distribution, because you would have the benefit of the organization controlled by the packers, if they are going to have this same kind of organization that they had when they were selling a variety of commodities, because I do know that that was the attitude of the packers and their salesmen, and I know that they had a lot of live-wire salesmen, that when they went to a man's place of business they sold him everything in his line, apparently so, that they were able to furnish. That does not seem to be the attitude now.

Mr. BREED. Was this period in which the packers did this the period of the war?

Mr. MILBOURNE. No, sir; during the period of the war I didn't have any business with the packers.

Mr. BREED. What is that?

Mr. MILBOURNE. I say, during the period of the war I did not have any business with the packers; I didn't sell the packers anything during the period of the war. Not after we went into the war. We went into the war in '17?

The CHAIRMAN. Yes.

Mr. MILBOURNE. I think we did sell them that year.

Mr. BREED. What years did you sell the packers? When did you begin to sell them?

Mr. MILBOURNE. I couldn't tell you that. I have been selling along for several years.

Mr. BREED. Can't you remember when you began to sell them, and how long you sold them?

Mr. MILBOURNE. No.

The CHAIRMAN. Just about when, if you can give it approximately, Mr. Milbourne.

Mr. MILBOURNE. Well, I would say five years. I think it is safe to say that. I think I am safe on that. It may be longer.

Mr. BREED. When did you finish selling them?

Mr. MILBOURNE. I think the last I sold was in 1917.

Mr. BREED. Then they stopped buying from you in 1917?

Mr. MILBOURNE. Well, they didn't stop buying from us, particularly, that I know of. We didn't sell them. We had other establishments for goods, and as a matter of fact the Government took 45 per cent of our stuff.

Mr. BREED. Well, that is three years before the date of this decree. Is it not?

Mr. MILBOURNE. I don't know when the decree was. When was the decree entered?

Mr. BREED. The decree was entered in February, 1920.

Mr. MILBOURNE. Well, it was about two years before that, then. I think in 1917 was the last goods we shipped, to the best of my recollection.

Mr. BREED. And you sold them for four years prior to that?

Mr. MILBOURNE. I think so.

Mr. BREED. Well, then, would that not be during the entire period of the war, from 1914 to 1917?

The CHAIRMAN. Well, which war do you refer to? When we were at war, or when Europe was at war? There is a distinction.

Mr. BREED. Well, I think we pretty generally know what effect the World War had upon prices in this country from the date of its beginning in 1914; from 1914.

The CHAIRMAN. Well, just answer the question. Which time do you refer to? From the time that Europe was in the war, or the United States was in it?

Mr. BREED. I think he has shown pretty clearly——

The CHAIRMAN. Well, which years do you refer to?

Mr. BREED. If the commission is not able to determine from the date given——

The CHAIRMAN. Well, do you refer to from the time that America was in the war or from the time that Europe was in the war?

Mr. BREED. Certainly, if the commission wants me to inform them that the war began in 1914——

The CHAIRMAN. We want to know which you mean.

Judge HAINER. A definite question.

Mr. HALL. We want it cleared up in the witness' mind, Mr. Breed.

Mr. BREED. I think the evidence shows quite clearly to what period I am referring.

The CHAIRMAN. Well, I asked you which you mean. If you want to state that in the record, do so; and if you do not, we can let the witness guess at it.

Mr. BREED. I think the record shows for itself.

The CHAIRMAN. You need not answer that question.

Judge HAINER. He need not answer that question unless it is put so he can understand it. We do not understand it. We request counsel to make his question more specific.

The CHAIRMAN. Make your question more specific and clear.

Mr. MILBOURNE. I think we have been confused somewhat on this. I think once or twice you were talking about one year and I had in mind another. I am not quite clear that our minds meet on this.

The CHAIRMAN. Anything further, Mr. Breed?

Mr. BREED. I have nothing further to ask.

The CHAIRMAN. Senator?

Mr. SMITH. I would like to ask one or two questions. How much did you mark your goods down for sale in 1921 as compared to the prices of 1919?

Mr. MILBOURNE. Well, now, that is a hard question to answer.

Mr. SMITH. Well, substantially, as nearly as you can.

Mr. MILBOURNE. What do you mean by marking my prices down?

Mr. SMITH. Just what I state. How much did you reduce your prices in your effort to sell in 1921 as compared to the prices at which you sold in 1919?

Mr. MILBOURNE. Now, what are you doing with 1920? You are skipping that. You are going from 1919 to 1921.

Mr. SMITH. I am just asking you one question, which is 1919 and 1921.

Mr. MILBOURNE. Well, that is what I want to know. You are asking me the difference between 1919 and 1921.

Mr. SMITH. And 1921, yes.

Mr. MILBOURNE. Well, now, I won't state just positively. I will have to give it to you approximately.

Mr. SMITH. That is all I expect.

Mr. MILBOURNE. Now, I haven't got the record. In 1919 our prices—well, the goods that were sold in 1919, of course, were packed in 1919. And there is another thing that I want to have clear in your mind.

Mr. SMITH. I understand.

Mr. MILBOURNE. That our packing season begins in August.

Mr. SMITH. I understand.

Mr. MILBOURNE. And the goods are usually sold between then and Christmas.

Mr. SMITH. Yes, I understand.

Mr. MILBOURNE. If they get past Christmas they go into 1920; it is the pack of the preceding year.

Mr. SMITH. Of 1919.

Mr. MILBOURNE. I should say the pack of 1919 which was sold in 1919 and 1920 averaged about \$1.60 a dozen for 3s.

Mr. SMITH. What did you sell in 1921 at, this year?

Mr. MILBOURNE. Well now, that does not figure, because we packed in 1920. We packed no 3s; we packed all 2s.

Mr. SMITH. Then compare the 2s of your pack of 1919 with the price that you offered to sell 2s in 1921 at.

Mr. MILBOURNE. Well, the pack of 1919 on 2s, I imagine that the average price was \$1.25 a dozen. We offered them and have been offering them at 85 cents. We did offer in 1920 at 85 cents a dozen.

Mr. SMITH. Now don't you know that the retailers in Buffalo, to illustrate, were well supplied with canned tomatoes during 1921, and that the public would not buy them at the prices at which they offered them?

Mr. MILBOURNE. No, sir, I don't know that.

Mr. SMITH. Don't you know that that was really the trouble about the wholesalers handling them; that they could not get the prices at which you priced your goods?

Mr. MILBOURNE. I don't know that. I do know that the goods that were being sold at the prices at which they were being held by the retailers were much higher than what seemed to me a fair profit—because I took some trouble, I had my wife do it, look into what retailers were selling canned tomatoes at, and it was much larger than what it seemed to me would be a fair profit on the price at which I was willing to sell.

Mr. SMITH. Were not the retailers stocked up with goods that they bought at the prices at which the pack for 1919 sold?

Mr. MILBOURNE. I don't know. But should they hold them until they could dispose of them, based on the prices of 1919, if they carried them over?

Mr. SMITH. Now don't you know that that was really the trouble in handling these goods?

Mr. MILBOURNE. I assume that that was part of the trouble. Don't misunderstand me, I don't want to be unreasonable. I am not saying that the whole trouble was on the wholesale grocer. I only made the statement, which is true, that the wholesale grocer at present, if I am to judge by what I am told, is not interested in pushing the sale of canned tomatoes.

Mr. SMITH. Don't you know why?

Mr. MILBOURNE. That our business does need somebody with a force capable of distributing it that will push its sale.

Mr. SMITH. Well, don't you know—

Mr. MILBOURNE (interposing). And I believe that the packers will do it.

Mr. SMITH. Well, I didn't ask you that.

Mr. MILBOURNE. Well, you—

Mr. SMITH. I didn't ask you that. It is all right for you to give the answer, but I didn't ask you that. I would just like you to answer what I ask.

Mr. MILBOURNE. But I understand further that you asked me—

Mr. SMITH. Just answer my question.

The CHAIRMAN. Let him put a question. Mr. Milbourne.

Mr. MILBOURNE. Yes.

Mr. SMITH. Don't you know that the retailers were unwilling to buy at the prices at which the goods were offered, and that was why the wholesalers did not press the sale, because they could not sell them?

Mr. MILBOURNE. I don't know that, no, sir.

Mr. SMITH. To whom did you sell the larger part of your pack of 1919? To the five meat packers, or the wholesale merchants?

Mr. MILBOURNE. I didn't sell any to the meat packers, as I remember. I don't think so.

Mr. SMITH. You didn't?

Mr. MILBOURNE. No, sir.

Mr. SMITH. Then they didn't help you distribute your pack of 1919?

Mr. MILBOURNE. I didn't have to have anybody help me in 1919.

Mr. SMITH. Who did you sell them to?

Mr. MILBOURNE. The Government took about 45 per cent of them.

Mr. SMITH. Don't you know that the Government was also selling all over the country at auction in place after place, canned tomatoes?

Mr. MILBOURNE. Now, what are you talking about now—

Mr. SMITH. And during 1921?

Mr. MILBOURNE. That happened during the last two or three years.

Mr. SMITH. During the spring of 1921 during this last year hasn't the Government been holding auctions and selling tomatoes nearly all over the country?

Mr. MILBOURNE. In 1921?

Mr. SMITH. In 1921.

Mr. MILBOURNE. Not that I know of, no, sir. Not to my knowledge.

Mr. SMITH. Isn't the Government doing it now?

Mr. MILBOURNE. Not to my knowledge.

Mr. SMITH. You have not kept up with the auction sales, have you?

Mr. MILBOURNE. No, sir.

Mr. SMITH. If the Government was selling canned tomatoes in the early part of 1921 at whatever they would bring at auction, at their various depots, and you put your prices at prices higher than these goods were selling at auction, wouldn't that be a reason why the wholesalers would be discouraged in an effort to handle your goods?

Mr. MILBOURNE. I think that question answers itself.

Mr. SMITH. Well, will you answer it?

Mr. MILBOURNE. You say what do I think? Certainly I think so. Everybody would think that.

Mr. SMITH. You have not looked over the schedules of sales, as I understand you, at the depots, by the Government?

Mr. MILBOURNE. Not recently, not recently; no, sir.

Mr. SMITH. Not in the early part of this year?

Mr. MILBOURNE. No, sir.

Mr. SMITH. Or the latter part of last year?

Mr. MILBOURNE. Well, I probably did the latter part of last year.

Mr. SMITH. You did?

Mr. MILBOURNE. I wouldn't say about the date. I don't know.

Mr. SMITH. And your 1919 pack you sold through the wholesale merchants?

Mr. MILBOURNE. Well, a great deal of it; yes, sir.

Mr. SMITH. You didn't sell any of its through the packers?

Mr. MILBOURNE. No, sir.

Mr. SMITH. Did you sell any of your 1918 pack through the packers?

Mr. MILBOURNE. No, sir. But we are not expecting to have another war to be able to sell them.

Mr. SMITH. The last sales you sold through the packers were the 1917 pack?

Mr. MILBOURNE. That is my recollection, without having the record. That is my opinion; yes, sir.

Mr. SMITH. And the wholesalers in America took charge of your 1918 and 1919 pack?

Mr. MILBOURNE. No, they didn't take charge of them.

Mr. SMITH. Well, they handled them?

Mr. MILBOURNE. We sold them to the wholesale grocers and to some so-called chain stores, wherever we could get a customer.

Mr. SMITH. Well, the market absorbed them?

Mr. MILBOURNE. Yes, sir.

Mr. SMITH. And the wholesalers did not hesitate to handle them?

Mr. MILBOURNE. Yes, sir.

Mr. SMITH. But in 1921 they were not in a position to push the sales?

Mr. MILBOURNE. They did not push the sales.

Mr. SMITH. Could they push them against retail trade of the kind I referred to by retail auction sales by the Government of the kind I spoke to you about?

Mr. MILBOURNE. If those conditions exist which you say, why they couldn't push them, but maybe somebody else would. If one man would not push them, we would like to get somebody else to get a chance.

Mr. SMITH. Well, if the retailer could not buy, nobody could push, could they? Nobody could push the goods unless you could get buyers and get the price?

Mr. MILBOURNE. Well, there is difference in salesmanship.

Mr. SMITH. If the retailer was getting his stuff as the result of the Government unloading this large supply, nobody could push them, could they?

Mr. BREED. With success?

Mr. SMITH. With success?

Mr. MILBOURNE. When you are speaking about the Government, I happen to know that the Government has been in the market and bought stuff within the last 60 days.

Mr. SMITH. Bought what?

Mr. MILBOURNE. Tomatoes, canned tomatoes.

Mr. DAILY. They have done that continuously, haven't they, even during these auction sales of the last three years?

Mr. MILBOURNE. Yes, sir.

Mr. SMITH. Do canned tomatoes deteriorate with age?

Mr. MILBOURNE. Why I assume they do; yes, sir.

Mr. SMITH. For what period of time do they remain good?

Mr. MILBOURNE. I couldn't answer that question. That would depend a great deal on the kind of storage, and the way they were prepared, and a great many things would be controlled by it.

Mr. SMITH. The only time you are familiar with the activity of the meat packers in selling these canned tomatoes was in the four years, through the pack of 1917, which was sold in 1918?

Mr. MILBOURNE. No, sir; I wouldn't say that. Now, I answered his question—he asked me to establish a period of time in which I dealt with the packers. I am not able to do it. But I said, in order to be safe I would say five years. It was probably longer than that. But I have in my mind—I only know that prior to the war that for several years I did sell quite a block of stuff to Swift and Armour and to Wilson, the three. I don't know whether it was five years, or seven or eight years, but I am certain that it was as much as five years. I was only making that statement in order to be within bounds.

Mr. SMITH. There is no fixed period when tomatoes deteriorate, is there? It depends upon the character of the packing and the character of the way in which they are taken care of?

Mr. MILBOURNE. Well, I suppose we assume that everything begins to deteriorate at once. You talk about a beginning—a beginning to deteriorate. Everything, when it ceases to live, begins to deteriorate.

Mr. SMITH. And a canned tomato begins to deteriorate at once? I was under the impression—aren't they good for a year or two, when properly canned, or two or three years?

Mr. MILBOURNE. Well, a refrigerator egg is supposed to be good for a year, but it begins to deteriorate.

Mr. SMITH. I was not asking about the deteriorating of eggs; I was asking you to give an estimate about tomatoes.

Mr. MILBOURNE. I don't know; I could not tell you when it does begin to deteriorate; I don't know; I couldn't do that.

Mr. SMITH. Doesn't a good canner guarantee his canned tomatoes for a couple of years?

Mr. MILBOURNE. No, sir.

Mr. SMITH. For 12 months?

Mr. MILBOURNE. No, sir.

Mr. SMITH. Six months?

Mr. MILBOURNE. Six months, or until the 1st of July following the date of sale. The guarantee is against springs and swells—against spoilage, in other words.

Mr. SMITH. Now, the Government has been selling the canned tomatoes that it bought in connection with the war, and buying fresh tomatoes, hasn't it?

Mr. MILBOURNE. Yes; hence another reason for putting on the market the stuff at a cheap price that you are trying to compare with our fresh goods.

Mr. SMITH. But your fresh goods had to compete with those accumulated stocks that were sold away down in price, didn't they?

Mr. MILBOURNE. Yes; and the retailer was buying that stuff and selling it to the trade; and unless somebody might have induced him to buy better, fresh goods and furnish it to the trade, which would help to unload some of our goods, we had no chance to compete with the Government.

Mr. SMITH. The older it was the quicker it was unloaded, wasn't it?

Mr. MILBOURNE. We had no chance to compete with the Government. The Government was advertising these goods all over the country. Nobody was advertising ours. The Government was advertising its.

Mr. SMITH. The wholesaler could not compete well with the Government, could he?

Mr. MILBOURNE. He wasn't trying it. If he could buy Government goods two years old at less than ours, he would buy them; he bought the Government goods.

Mr. SMITH. Well, the Government was still insisting upon selling it wasn't it?

Mr. MILBOURNE. Yes; and you see we had nobody to insist on selling ours.

Mr. SMITH. It was the abnormal condition, then, incident to the Government selling its accumulated stock that confronted you?

Mr. MILBOURNE. Well, after all, may I not suggest—not to answer your question—that that is past history. What we are looking to is the future.

Mr. SMITH. It is not past history, yet, is it?

Mr. MILBOURNE. What?

Mr. SMITH. The Government is still selling it.

Mr. MILBOURNE. Maybe. Not enough to hurt anybody. We are not afraid of what the Government has on hand now, so far as the best information I can get would indicate. They may have sold odd lots of practically washed over stuff that they disposed of, but not enough to affect the market.

Mr. SMITH. Why didn't you go out and buy the tomatoes that your producers wanted to sell?

Mr. MILBOURNE. What?

Mr. SMITH. Why didn't you buy the raw goods and go on canning this year?

Mr. MILBOURNE. The farmers did not have them; they did not grow them.

Mr. SMITH. They did not grow any?

Mr. MILBOURNE. There were not enough tomatoes grown in our county to run one factory.

Mr. SMITH. Do you know why they didn't grow them?

Mr. MILBOURNE. Because they couldn't get contracts.

Mr. SMITH. Oh, you would not give them contracts?

Mr. MILBOURNE. In the spring, before they planted them.

Mr. SMITH. Why didn't you give them contracts?

Mr. MILBOURNE. Because I was not able. In the first place I had my goods on hand packed a year before. The wholesale grocers would not give me any orders for futures.

Mr. SMITH. And you just would not give the farmers any contract because you had goods on hand?

Mr. MILBOURNE. Yes, sir; that is one of the reasons.

Mr. SMITH. Well, they had been your customers. Wasn't it your duty to go and buy from them and give them contracts even if you had the goods on hand?

Mr. MILBOURNE. Not unless I could pay for them, because I couldn't sell the goods I had on hand.

Mr. SMITH. Well, then, oughtn't the same rule to apply to the wholesalers and retailers?

Mr. MILBOURNE. I suppose it should.

Mr. SMITH. I have no further questions.

The CHAIRMAN. Anything further, Mr. Breed?

Mr. BREED. No.

The CHAIRMAN. Mr. Stevens?

Mr. STEVENS. I would like to ask one question. Well, Mr. Daily may have some questions.

The CHAIRMAN. Mr. Daily, have you anything?

Mr. DAILY. Just tell the witness that I am not particularly hostile to the canning industry.

Mr. MILBOURNE. Well, I hope no one is.

Mr. DAILY. Well, I don't want the witness to gather from the trend of my questions any notion that I was hostile.

Mr. MILBOURNE. I am not hostile to anybody, but we are very anxious to have an outlet for our product, if it is possible.

Mr. DAILY. Well, my children do not get their breakfast or their supper unless the canning industry thrives. Now, with that thought in mind I will go a head and question you. So that I am right with the canner.

There are a number of notes that I took during your testimony, Mr. Melbourne. I can appreciate that going on the stand and being asked these questions suddenly, after a long trip down from Buffalo, and getting up against the jobbing trade in the present condition, that possibly you might be a little bit confused, and maybe I can help you on some of these things. But, first of all, how many years have you been a canner of tomatoes?

Mr. MILBOURNE. About 23 years.

Mr. DAILY. About 23 years; you have been canning tomatoes now 23 years?

Mr. MILBOURNE. Yes, sir.

Mr. DAILY. What relative position do canned tomatoes occupy in the canning industry? Let me put it this way: Are there more canned tomatoes packed than any other staple vegetable?

Mr. MILBOURNE. I think so; yes, sir.

Mr. DAILY. In other words, it is probably the largest pack of staple vegetables packed by the canning industry?

Mr. MILBOURNE. Yes.

Mr. DAILY. Tomatoes grow upon the least excuse, do they not?

The CHAIRMAN. Did you ever try to raise them?

Mr. MILBOURNE. I can not convince the growers of that fact.

Mr. DAILY. Mr. Milbourne, that glorious section of the country from Wilmington down to Cape Charles is known really as the heart of the tomato-canning industry, isn't it?

Mr. MILBOURNE. With a part of Jersey thrown in; yes. That is packing less.

Mr. DAILY. I mean the tri-States.

Mr. MILBOURNE. Yes.

Mr. DAILY. They dominated the tomato packing until the last few years, maybe?

Mr. MILBOURNE. Yes.

Mr. DAILY. Now they are getting some tomatoes from California and the West. But what I am getting at is this: There are how many canners, do you know, in Maryland and Delaware, of tomatoes?

Mr. MILBOURNE. Well, if you take—it is hard to estimate, because there are a number of people that call themselves canners that are really very small. I should say if you include all it would be from four hundred to five hundred.

Mr. DAILY. It has been your experience as a canner that it has been exceedingly difficult in the past to forecast or estimate the total of the tomato pack prior to the completion. In other words, what has been your ability on the first day of September to fix the tomato pack for the year? Have you been able to do it pretty much?

Mr. MILBOURNE. Well, not accurately, of course. Of course we have all made bad guesses.

Mr. DAILY. Haven't those bad guesses been very frequent in the past 23 years? I don't mean you particularly; I mean the industry.

Mr. MILBOURNE. I don't know—I don't think so.

Mr. DAILY. Hasn't it been repeatedly going out, as a matter of keeping informed, that the tomato crop was ruined, and then the tomatoes have kept popping up and be canned until Thanksgiving time?

Mr. MILBOURNE. I would say that has frequently happened, that the season has been prolonged because of good weather, and a lot of late planting did mature which under ordinary conditions would be killed by frost about the first of October.

Mr. DAILY. This brings me around to my previous question as to its ability to grow on the slightest provocation. In other words, you can not go into the tomato acreage and indicate or fix with any degree of accuracy just what the yield is going to be?

Mr. MILBOURNE. Well, I didn't say, and I wouldn't say within a degree of accuracy; you can to some degree.

Mr. DAILY. Well, I wouldn't say within a degree; that was exaggerated.

Mr. MILBOURNE. It has frequently been larger than was expected, and sometimes it has been the other way.

Mr. DAILY. Isn't it true that a number of times within the last 23 years that the forecast or prediction concerning the tomato pack has been found to be completely erroneous; that is, now, when I say completely erroneous I mean this: Erroneous to upset completely the calculations of those who bought futures? In other words—

Mr. MILBOURNE (interposing). Well, if they were speculating on a crop it might be so. Some people that may have been convinced—if you will permit me to answer your question this way, and that is only my observation: A man who has brought futures on the expectation that there would be a short crop, and he was deceived, the crop was larger, why he may have been deceived, but I don't think the average packer who has tried to keep posted on weather conditions and on the acreage and all that sort of thing, has been very greatly deceived by the first of September.

Mr. DAILY. I do not wish to indicate, neither do I insinuate in the slightest degree, that any canner ever gave out any wrong opinion. I do not mean that—I mean that honestly.

Mr. MILBOURNE. No.

Mr. DAILY. But in the enthusiasm of sales campaigns that have existed at some time past in regard to tomatoes, enthusiastic—if you wish to put it that way—reports concerning the shortage of tomatoes have been given out, and the

trade have bought, that is, the wholesale grocers have bought, and they in turn have encouraged their retail grocers to buy—check me up if I am not right after I have completed—and then after the pack was completed it was found that there was a very much larger pack than anticipated, and immediately the price fell off, with a consequent loss to the wholesale grocer and the retailer. At least he would be able to buy cheaper. Now that is a very long and involved statement, but I think you as a tomato canner follow it. Hasn't that been a number of time the experience of the trade?

Mr. MILBOURNE. I imagine it has. And when I say "imagine," I think it has I have been told practically that very thing by wholesalers, and if you have been following up the kind of statements I have been making, without any attempt or any feeling on my part, I have some very good friends among the wholesale grocers.

Mr. DAILY. I know you have, Mr. Milbourne.

Mr. MILBOURNE. But I have been told by wholesale grocers that very story and they have given that as the reason why they were not interested in tomatoes and were only going to feed them out as they got the orders. And if you go and tell them now that the situation is short, they will say, "I have heard that old story before."

Mr. DAILY. That is just exactly what I meant; that there is a sentiment in the trade—

Mr. MILBOURNE. Against tomatoes?

Mr. DAILY. No, not against tomatoes, but by reason of their record, that they are unsafe to deal in when it comes to high-priced goods. Now is that not true?

Mr. MILBOURNE. Well, the price is not high now.

Mr. DAILY. Well, maybe not comparatively, but I do not believe I could buy a car of tomatoes on the peninsula to-day, No. 3 tomatoes, under \$1.35, could I?

Mr. MILBOURNE. No, and they couldn't even produce them at any time in the last three years for \$1.35.

Mr. DAILY. I know that, but prior to—

Mr. MILBOURNE. That is another thing, if you will permit me right there, Mr. Daily, it is my idea of this business that the cost of production should have something to do with the sale price.

Mr. DAILY. I do, too, Mr. Milbourne, and so does the wholesale grocery trade on that 22½-cent sugar, for instance.

Mr. MILBOURNE. Yes.

Mr. DAILY. They are just as sore on sugar as they are on tomatoes. They are in the same boat as you are. They contracted at 22½ cents and sold at 6 or 7 cents, didn't they, Mr. Stix?

Mr. STIX. Down to 5 cents.

Mr. DAILY. Down to 5 cents. I don't know. Isn't it true, Mr. Milbourne, that ordinarily speaking, prior to '19—well, I don't have to ask you about the Almanac, but you know and I know in the trade that it was quite common for No. 3 tomatoes to be around 75 and 80 cents and 85 cents prior to 1914?

Mr. MILBOURNE. Well, 1914?

Mr. DAILY. Let me refresh your memory.

Mr. MILBOURNE. I understand. I get your question. It would hardly come up as far as 1914, when you are talking about 75 cents. I think you would have to go back to 1911 or 1912 or thereabouts. It might have been for a short period, but the average of price I don't think was down to those figures after 1911.

Mr. DAILY. Well, then the Almanac is wrong, because in 1914 they give the price at 85 cents.

Mr. MILBOURNE. When is that?

Mr. DAILY. January, 1915.

Mr. MILBOURNE. For three years?

Mr. DAILY. I don't want to press you too rapidly, and I don't want you to get your years confused. Now you said that you didn't think that this low price for tomatoes came up to after '19—what was it?

Mr. MILBOURNE. I said 1911 or 1912.

Mr. DAILY. 1911 or 1912.

Mr. MILBOURNE. I am talking about an average price. What you are speaking of there is about some particular month that might be low.

Mr. DAILY. No; I am giving you six months, Mr. Milbourne. I intend doing that. In January, 1915, they were 65 cents, and in July, 1915, they were 67½ cents.

Mr. MILBOURNE. Is that 3's?

Mr. DAILY. 3's; yes, sir.

Mr. MILBOURNE. Well, I lost sight of that. I didn't have them. I never sold tomatoes at any such prices.

Mr. DAILY. Then when the demand for tomatoes, by reason of the conditions obtaining at that time, came, they jumped up to a dollar in 1916, and then they went back to 95 cents in July, 1916; then in January, 1917—and that was a few months before we went into the war, that is, the United States—they were \$1.30. And then they jumped all the way up to \$1.85 and the opening price in 1917; and in 1918 that was the record high price from the canner, \$1.85. And I agree with you that the cost of production warranted that price.

Mr. MILBOURNE. There was less profit in them at that price than there was in those other years when they were up to \$1.25 or \$1.20.

Mr. DAILY. Isn't it true, Mr. Milbourne, that despite the acknowledged warrant for that high price, and despite the fact that during the season afterwards spot sales were made as high as \$2.25—

Mr. MILBOURNE. I don't know.

Mr. DAILY (continuing). That tomatoes never remained over \$2 very long, did they? You said you didn't know of any sales over \$2?

Mr. MILBOURNE. I don't know of any sales over \$2. I didn't make any at \$2. I did hear of some at \$2.10. I don't know of any above \$2.10.

Mr. DAILY. As a matter of fact, isn't it true that whenever tomatoes ran around \$1.85 or \$2, during that year or two, that there was an immediate stoppage in the demand; in other words, didn't you get the impression that the consumer didn't want to buy tomatoes that were produced on a \$1.85 cost basis?

Mr. MILBOURNE. No, sir; my own impression about that was that they bought them better then. They liked stuff when it was high, until the Government put it on the market at a cheaper price.

Mr. DAILY. Well, of course that happened, too, to the Government, and we all knew—

Mr. MILBOURNE (interposing). Why, it seemed to be easier to sell goods when they were \$2 a dozen than afterwards.

Mr. DAILY. Why, sure it was. Everything was cleaned off the floor as soon as it was packed. But the Government bought a lot of that stuff, didn't they, Mr. Milbourne?

Mr. MILBOURNE. Yes; they requisitioned 45 per cent of it.

Mr. DAILY. The Government requisitioned 45 per cent of it, and naturally the wholesale grocer and the retail grocer and the chain store did not want to get left, and he had to buy if he wanted to or not.

Mr. MILBOURNE. Well, you asked me if it was difficult to sell. It was not difficult to sell until the break came.

Mr. DAILY. I am glad for the correction, Mr. Milbourne. It was not difficult for you to sell.

Mr. MILBOURNE. Well, it was not difficult for the retailer to sell, either. I saw some of that.

Mr. DAILY. Yes; that is an arguable point, though. I am on the selling end of it, and I am not quite ready to accept that.

Mr. MILBOURNE. You may know more about that than I do, Mr. Daily.

Mr. SMITH. Here is a question I want to ask you. What was the highest price the Government paid for No. 3 tomatoes to the canner?

Mr. MILBOURNE. The highest I know was \$1.99.

Mr. SMITH. \$1.99. They paid during 1918—

Mr. MILBOURNE. You are talking about buying. I don't know what they bought. The stuff that they requisitioned was at a set price. I don't know that they bought anything on absolute purchase. I don't know anything about that. We did not sell them and did not try to sell them.

Mr. DAILY. Well, let me put it this way: Do you know the highest price paid by the Government during 1917 or 1918?

Mr. MILBOURNE. No, sir.

Mr. DAILY. I thought you indicated that there was \$1.99 paid.

Mr. MILBOURNE. I said that is the highest they paid us—paid by the Government. That is the highest that we received, and that is the highest that I knew about.

Mr. DAILY. Well, it is natural to assume that they would not pay you—

Mr. MILBOURNE. Well, the reason I say that, I was under the impression that that was it.

Mr. DAILY. I don't want you to commit yourself; your cost of production is no higher than anybody else's. You run a good plant.

Mr. MILBOURNE. I want to get straight on your question, and I understand that the Government bought other goods outside of what was requisitioned, after they had delivered what was requisitioned, but they didn't buy any from us, and they may have had a different price. I don't know anything about that.

Mr. DAILY. Isn't it true, Mr. Milbourne, that as the result of these high prices paid by the Government, that you were able—what price were you able and what price did you pay for acreage when you contracted your 1918 acreage?

Mr. MILBOURNE. I will have to go back a little while to remember exactly. I think it was 40 cents a basket. That is about \$24 a ton. In 1918, you said?

Mr. DAILY. Yes; your acreage for 1918?

Mr. MILBOURNE. I am not sure about that.

Mr. DAILY. Isn't it true that prices as high as 75 cents or a dollar a basket, or maybe more, were paid on the peninsula for tomatoes? Paid to the farmers, either as the result of future contract or spot buying?

Mr. MILBOURNE. Oh, spot buying, yes; but that had no relation to the future contract.

Mr. DAILY. Well, I know, but even if the future contracts were lower the farmer was able, was he not, at the time tomatoes were grown, to get as high as \$1 a basket?

Mr. MILBOURNE. Well, in no quantity that amounted to anything. I understood that there were some places where they did bid them up as high as a dollar a basket, but that was way beyond anything like what was paid.

Mr. DAILY. Oh, yes; I admit that. We know that.

Mr. MILBOURNE. That was a kind of a joke.

Mr. DAILY. Oh, no; it was not a joke, Mr. Milbourne. The farmer did not take it as a joke.

Mr. MILBOURNE. Well, with regard to that, what I meant by the dollar a basket was this, that at the point of sale they would run up a load of tomatoes to, say, \$1 a basket, loaded with, say, 65 or 75 baskets, and there wouldn't be any more tomatoes sold at that price that day.

Mr. DAILY. Did any of the farmers jump their contracts on account of these high spot prices?

Mr. MILBOURNE. I don't know whether they jumped them. I think they forgot them.

Mr. DAILY. Don't you know, Mr. Milbourne, or probably you know that as the result of these very high prices the farmers held out against you, and would not contract at the prices that you felt you should contract at in order to sell your product?

Mr. MILBOURNE. I have already made that statement.

Mr. DAILY. I overlooked that, then; I didn't hear that.

Mr. MILBOURNE. I gave that as one of the reasons. These gentlemen did not seem to catch it. That is one of the reasons they didn't seem to contract, so that we felt there wasn't any price we could have felt justified in naming that the farmer would accept. That was one of the reasons.

Mr. DAILY. In other words, the farmer was a pretty powerful factor in determining the cost price of tomatoes, was he not?

Mr. MILBOURNE. Well, he was under those conditions you are speaking about. But normally that is what I think we have got to meet now if you will permit me to interject another opinion of mine: What we are looking forward to now is to the future; all these things are past.

Mr. DAILY. Isn't this true, that even the prices to-day are much higher than they were in the pre-war period?

Mr. MILBOURNE. Well, I will answer that in this way, that the price, you say to-day for 3's is \$1.35.

Mr. DAILY. Well, I wouldn't say that, because I have been busy down here for so long that I don't know what the prices are now.

Mr. MILBOURNE. Well, so far as I know that is about right; \$1.35 or \$1.40. I believe, and what I believe is based on fair knowledge of the existing quantity of tomatoes that are to be had to-day in the United States, that they are worth more money than that on any market.

Mr. DAILY. I agree with you, and I wish I could be sure that I could sell them. I believe that there has never been a bigger shortage of tomatoes in the country than there is at the present time.

Mr. MILBOURNE. There is no question about that.

Mr. DAILY. I agree with you there. That is true. But people that are badly hurt, that are just learning to walk, can not be expected to run.

Mr. MILBOURNE. But I don't feel willing, before you go any further with this testimony, if you call it testimony——

Mr. DAILY. No, this is an informal discussion. We are trying to get at some facts.

Mr. MILBOURNE. I don't want to be put in the position here of antagonism to the wholesale grocers. My sole purpose in coming here was to voice an opinion that I have on what I believe is the best interests of the canning industry for the future, and that is that we need a better distribution than we have.

Mr. DAILY. Mr. Milbourne, your real thought——

Judge HAINER. Let him finish.

Mr. MILBOURNE. I don't think that the wholesale grocers are in the attitude to give it to us. I base that on observation and on some investigation.

Mr. DAILY. Well, I am not——

Mr. MILBOURNE. I feel, furthermore that a man who is, as I am, and many people that are in the line of business that I am in are doing, carrying stock—the gentleman raised some question here about depreciation, and I don't know what he was driving at on that, but I suppose they are depreciated. I know it is much easier to sell goods packed in 1921 than goods that I will be compelled to sell, goods packed in 1920, and that is not right. They ought to be away from my factory and in the hands of somebody that can be in a position to put them in the hands of the consumer.

Mr. DAILY. Absolutely; there is no question about that.

Mr. MILBOURNE. Now, if you will permit me to go one step further, and I am done along that line. That can not be done if you are going to keep tomatoes completely in a speculative position. Now, if we start out in the spring, the packer is supposed and compelled to contract with the grower, and contract with the can maker and all of these things, and make his preparation for fall delivery, and if at the same time he is not able to go out and sell some of his products for future deliveries, the business can not exist. And that is one of my reasons for favoring the packer.

Judge HAINER. You mean the meat packer?

Mr. MILBOURNE. Yes. My experience with the packer has been that when I went in the spring and made a sale of futures, that it was a sale. If I sold Armour & Co. 10,000 cases or 5,000 cases of tomatoes at a certain price, to be delivered in October, that sale was closed, and when October came I could deliver the goods and collect my money, and no kick. Never had one. I have delivered them to him when the prices were up, and I have delivered them to him when the prices were down, and have had no kick, but that has not been my experience in dealing promiscuously with the wholesale trade.

Mr. DAILY. Not promiscuously.

Mr. MILBOURNE. Well, now——

Mr. DAILY. Not promiscuously, but individually.

Mr. MILBOURNE. Just a minute along this line. I think that if these packers were permitted to go on the market and buy on futures, or any other, that it would have a stabilizing effect, it would have a good effect on some of these people that have been having the packers at their mercy. Who is selling the goods in March at \$1, and when October comes he gets 80 cents, and if he doesn't take 80 cents there is no settlement.

Mr. DAILY. Now let me understand that last statement, Mr. Milbourne.

Mr. MILBOURNE. I you sell futures in March for October delivery, say at \$1, and your price goes down, you are in trouble.

Mr. DAILY. With whom?

Mr. MILBOURNE. With the buyer; with the wholesale grocer.

Mr. DAILY. Oh, no; you don't mean that, Mr. Milbourne?

Mr. MILBOURNE. I positively do.

Mr. DAILY. Not as a class, you don't mean that?

Mr. MILBOURNE. Well, I don't want to be as broad as saying as a class, but I want to say that my experience has been, as a canner, very bitter.

Mr. DAILY. Your experience has been very bitter. Certainly it is just the same as it is of the wholesale grocers with a good many cannery. That is what led to the establishment of the service bureau. Now I know you want to be fair.

Mr. MILBOURNE. I positively do.

Mr. DAILY. And I know you don't want to read this testimony afterwards and see things in here that you did not mean to say, and I honestly do not want to commit you or get you to put down anything that you do not mean to say. I

know that you have had bitter experiences with wholesale grocers. You have only got five meat packers. Why shouldn't they live up to their contracts? But, laws, you have got a big percentage of wholesale grocers, sufficient, I am very sure, to make you qualify that statement, and that as a class you have not had trouble with the wholesale grocer in living up to his agreements.

Mr. MILBOURNE. I have had trouble with 9 out of 10 that I have dealt with.

Mr. DAILY. Well—

Mr. MILBOURNE. I am only giving you facts now. I am not going to speak of them as a class. On a declined market.

Mr. DAILY. I want you to give that a little more thought.

Judge HAINER. Well, he has answered your question, hasn't he?

The CHAIRMAN. Yes.

Mr. DAILY. Well, I mean for his own satisfaction later. I am perfectly willing to let the answer stand, Judge, because we can disprove that.

Were you ever with a salesman for a meat house who was selling tomatoes?

Mr. MILBOURNE. No, sir.

Mr. DAILY. You made a positive statement there in your testimony as to the manner in which a meat packer's salesman sells tomatoes. I just wanted to know how you got that information?

Mr. MILBOURNE. Well, I have been told that by people who were in the business. I did not intend to make it any more positive than that. If I said that I knew it personally—that is, I mean, that I had seen the actual transaction—why, I did not mean that. I did not intend to say that.

Mr. DAILY. I think you also made the statement that no carloads of tomatoes were being sold at the present time.

Mr. MILBOURNE. That I said there were no carloads being sold?

Mr. DAILY. That was the impression that I was carrying. I may be wrong on that.

Mr. MILBOURNE. No; I did not.

Mr. DAILY. Mr. Milbourne, isn't it true, that the Southwest, including the glorious State of Oklahoma, have been buying tomatoes more freely than the Atlantic seaboard in the last six months?

Mr. MILBOURNE. I am not able to answer that question.

Mr. DAILY. You have not had that experience?

Mr. MILBOURNE. No.

Judge HAINER. I like that word "glorious." That is good.

Mr. HALL. Better than "isolated."

Judge HAINER. Next to California, Senator Shortridge says that Oklahoma was the best State in the Union.

Mr. DAILY. How can the wholesale grocer push tomatoes?

The CHAIRMAN. Pardon me a moment, Mr. Daily. You have some more questions you wish to ask?

Mr. DAILY. Yes.

The CHAIRMAN. If you will please excuse me, gentlemen, I will have to leave. I had an appointment at 12 o'clock. And then we will meet here again this afternoon at 2 o'clock. But continue; you can go on without me.

Mr. STEVENS. Is Mr. Milbourne going to continue this afternoon?

The CHAIRMAN. Yes.

Mr. DAILY. I am not through.

Judge HAINER. Mr. Milbourne might be excused until 2 o'clock, and Mr. Craig could go on.

Mr. HALL. Is that satisfactory to you, Mr. Daily?

Mr. DAILY. Yes; that will be all right with me if it is with Mr. Milbourne.

Judge HAINER. I wish you would step aside, Mr. Milbourne, for a moment. Mr. Craig wants to leave at 1 o'clock.

Mr. DAILY. I have but another question. Let me just ask you this question. I don't think it has gone into the record, from the eastern shore anyway: What was the result of the tomato pack this year?

Mr. MILBOURNE. On the eastern shore?

Mr. DAILY. Yes.

Mr. MILBOURNE. Well, I have no figures, nothing that I can give you.

Mr. DAILY. Well, I mean common report. Was it a good pack or a bad pack?

Mr. MILBOURNE. Oh, it was hardly any pack. It was very small; 20 per cent has been accepted by everybody as being about the quantity; 20 per cent of the normal.

Mr. DAILY. I think we know or have had in the record that the acreage was less than usual.

Mr. MILBOURNE. Yes.

Mr. DAILY. I was going to ask you this question: The acreage that was put out, did that yield a normal yield?

Mr. MILBOURNE. More than normal, I think. I think the crop, as per acreage, was above the average.

Mr. DAILY. Do you know anything about the conditions in the Ozark sections or in Indiana?

Mr. MILBOURNE. No.

Mr. DAILY. Or in California or in Utah?

Mr. MILBOURNE. No, sir; nothing at all.

Mr. DAILY. You do not know about that?

Mr. MILBOURNE. Except general reports that anybody would know by reading the trade papers, and that sort of thing.

Mr. DAILY. Summing up, Mr. Milbourne, isn't it true that the thing that you are after is the thing that we are all after, and that is to increase the sales of canned foods?

Mr. MILBOURNE. Well, it is not only to increase the sale of canned foods. One of the things to my mind that is just as important is to change the system of selling canned foods. I do not want to argue, but I don't think the only thing is to increase the sale. I think the distribution is important. In other words, what I am getting at is this: You know and everybody knows—for instance, you take an article—any article of common use. Take shoes, for instance. People don't wait until all the shoes are made for winter before they go on the market to sell shoes. And that is just what the canned goods need. Raise them to a standard where a man can go out before the seed is planted in the spring and sell a part, at least, of his assumed pack, and be able to know that he has made a sale, and based on that sale be able to go to his banks and make arrangements to finance his pack, and knowing when October comes and these goods are ready to be put on the market, that they can be put on the market and paid for.

Mr. DAILY. Why are you in business?

Mr. MILBOURNE. Why, because I can not get out.

Mr. DAILY. Well, now, I do not mean that as an academic question. I do not believe that you mean to intimate that you have no desire to increase the sale of your product.

Mr. MILBOURNE. No; but you asked me if that was not the principal.

Mr. DAILY. Well, isn't it?

Mr. MILBOURNE. No; I do not think so. I think these goods will all be sold. It is not an increase of sales. All the goods that are packed will be sold. But, as I said—

Mr. DAILY (interposing). Well, let me put the question this way: Isn't your principal business object to increase your profitable sales?

Mr. MILBOURNE. Well, I can not say that; no. I would like to sell all the goods I have, and I would like to sell them at a profit.

Mr. DAILY. Well, I mean that.

Mr. MILBOURNE. And of course, unless I can do that I will have to go out of business. But I am not looking for an increase of sale; I am looking for a trade that would help me stabilize this business, not for this year; but it ought to be put on a better plane.

Mr. DAILY. It ought to be put on a plane where you can remain in business and secure a reasonable profit each year?

Mr. MILBOURNE. With no more risk than ordinary business takes.

Mr. DAILY. Answer my question, yes or no.

Mr. MILBOURNE. Yes.

Mr. DAILY. Your answer is "Yes"?

Mr. MILBOURNE. Yes.

Mr. DAILY. That is all.

Mr. SMITH. I would like to ask him two questions.

Judge HAINER. Just brief, Senator.

Mr. SMITH. Very short.

Judge HAINER. All right.

Mr. SMITH. Do you mean that nine out of ten of the wholesale merchants with whom you made definite contracts for the sale of your goods broke their contracts?

Mr. MILBOURNE. No, sir; I didn't say that. I said, or what I intended to say, was this: In the first place, I said that the sale of futures at a certain price,

and when the time of delivery came, that if the price is less—if the market price is less, if the buyer is able to go on the market and buy goods in any appreciable amount for less than the sale I made in the spring—that nine out of ten of that kind of sales under those conditions I have had trouble with.

Mr. SMITH. Do you mean that you contracted for a definite price, to pay you a specific price, and nine out of ten declined to pay the price that they had agreed to pay you?

Mr. MILBOURNE. When the time of delivery would come, if the market was down, I say that nine out of ten, under those conditions, I have had trouble with. I mean by that that the people raise some complaint about the goods, and it meant that you had to settle at a less price than the contract price.

Mr. SMITH. But it was put on not the ground—

Mr. MILBOURNE (interposing). No.

Mr. SMITH (continuing). On not the ground of the price going down?

Mr. MILBOURNE. Certainly not. I never knew but one man to do that. I did have one man that, after meeting all their complaints that he made, finally said, "Well, my neighbor across the street here bought goods for 15 cents a dozen less, and how in hell am I going to compete with him if I pay you 15 cents more than he paid?"

Mr. SMITH. If you sell at a specific price and the crop is very short and the price goes up, you deliver at the specific price?

Mr. MILBOURNE. Yes, sir.

Mr. SMITH. And you ask the same thing be done to you?

Mr. MILBOURNE. The same condition. I think when a sale is made that it ought to be a sale.

Mr. SMITH. I agree with you.

Mr. MILBOURNE. You can not do business unless it is.

Mr. SMITH. Your contracts are legal contracts, and you can make them pay if the difficulty comes up.

Mr. MILBOURNE. Oh, yes; you can do that, but suppose you have—

Mr. SMITH. But you say you have had trouble with them?

Mr. MILBOURNE. If I have a carload of goods in Chicago and a man kicks on 20 cents a case, or \$200 a carload, can I go to Chicago and make him pay?

Judge HAINER. The expense of litigation would be more than the deduction, is that right?

Mr. MILBOURNE. Yes, sir.

Mr. SMITH. Now, is there an arbitration clause in your contract?

Mr. MILBOURNE. I think there is.

Mr. SMITH. As to the character of goods?

Mr. MILBOURNE. Now, gentlemen, you have brought up this question, and I pledge my word I have no feeling against the wholesale grocer, not any in the world. I expect there are just as many bad cannerys, proportionately, as there are wholesale grocers, and I think they ought to be weeded out. I think there ought to be something to do to a man that does not live up to his contracts.

Judge HAINER. Is that all?

Mr. BREED. Could I ask one or two questions?

Judge HAINER. Is it just one?

Mr. BREED. Yes. You are a member of the cannerys' association, aren't you, Mr. Milbourne?

Mr. MILBOURNE. No, sir.

Mr. BREED. Aren't you a member of any of the cannerys' associations?

Mr. MILBOURNE. None at all.

Mr. BREED. Well, do you know that both the cannerys' associations and the various wholesale grocery associations maintain arbitration committees?

Mr. MILBOURNE. Yes, sir.

Mr. BREED. And these various contracts for the sale of canned goods contain an arbitration clause, do they not?

Mr. MILBOURNE. I think they do. I am not positive, but I think so. I think it is printed in the ordinary contract.

Mr. BREED. Now, they were in your contracts, were they not?

Mr. MILBOURNE. I suppose they were; yes, sir.

Mr. BREED. Do you know that for \$5 or \$10 you can get a committee of the trade to pass upon any question with respect to a dispute over the contract?

Mr. MILBOURNE. Yes, sir.

Mr. BREED. Then you don't mean to say that if there was a dispute over your contracts, that there was not a method provided in the contract of determining any such question of dispute as to quality?

Mr. MILBOURNE. Well, now, that is a question that is not fair right at this time, because I had in mind when speaking about this not so much at the present, because during this war period that we have been talking about there has been very little of that trouble. When I have had most of this trouble was previous—

Mr. BREED (interposing). To the war?

Mr. MILBOURNE (continuing). Was previous to the time when this provision was in the contract, or that this arbitration committee was actually in existence. But now I think practically everybody in a contract practically agrees to submit to arbitration.

Mr. BREED. That is what I thought.

Mr. MILBOURNE. Yes.

Mr. BREED. And I did not think that you wanted to convey to the committee the idea that when you and your seller entered into a contract, the one to sell and the other to buy goods at a fixed price, that it was anything other than a legal contract which either party could enforce. Is that correct?

Mr. MILBOURNE. Why, certainly.

Judge HAINER. Let me ask you: Where does this arbitration take place if you would make a sale in Chicago?

Mr. MILBOURNE. It takes place in Chicago.

Judge HAINER. Would it take place at your place of business, or would you have to go to Chicago to arbitrate that, or some other place?

Mr. MILBOURNE. Well, I don't know that I would necessarily have to go there, but the arbitration would take place there.

Judge HAINER. And away from the scene of the transaction?

Mr. MILBOURNE. Yes, sir.

Mr. SMITH. But at the scene that the goods were?

Mr. DAILY. Where the goods could be examined.

Mr. MILBOURNE. Where those could be examined, yes.

Mr. SMITH. Where the goods could be examined.

Mr. MILBOURNE. Yes, I think that could be done, where it is a question of quality, by drawing samples from the goods and taking them to some office and have them examined.

Mr. BREED. One further question. You said that you would like to see the system of sale changed. Have you any new system to suggest?

Judge HAINER. Well, that is a matter of economics that you had better ask this gentleman here.

Mr. BREED. I would like to have an answer to that, if he has any to suggest.

Mr. MILBOURNE. I beg your pardon, what is that question again?

Mr. BREED. I understood you to say that you would like to see the system of sale changed. I am asking you if you have any suggestion as to a new system?

Mr. MILBOURNE. I mean by that a system whereby something could be evolved where a man could sell in the spring, sell futures. In other words, and be reasonably assured that he would be able to make his deliveries, and get a price that would be assured.

Mr. BREED. Now if I may ask Mr. Milbourne some more questions.

Judge HAINER. Yes. There is no question but what he will have fair treatment.

Mr. BREED. There is no question of fair treatment. We feel that some of these gentlemen do not quite understand the economic conditions that are involved in the country, and attribute their misfortunes to a wrong cause.

Mr. Milbourne, I understood you to say that you wanted a system where you could sell the futures in the spring and make sure of delivering them in the fall. Isn't that the system that has been in vogue during practically your entire 20 years of experience as a canner?

Mr. MILBOURNE. Well, if you want to speak of it as a system—I did not mean any change of system. I was speaking of that in relation to the character of customer. And I meant that as an explanation of my reason for wanting to be able to sell to the packer if I saw fit. I know from experience with Armour & Co. and these other people that when I have a contract with them that I am perfectly willing to bank on it and go ahead and pack; I can go to my bank if I need to get accommodation, and know that that sale is made, and when the goods are ready to be shipped, on a specified date, that they will be shipped and paid for promptly.

Mr. BREED. Well, haven't you adopted the same system in connection with your dealings with the wholesale grocers, selling futures to them?

Mr. MILBOURNE. No, sir, I had practically to quit it.

Mr. BREED. Well, haven't you heretofore always sold your goods to the wholesale grocer on future contracts?

Mr. MILBOURNE. I say I have practically quit it.

Judge HAINER. Why?

Mr. MILBOURNE. Because I had this trouble, and I made up my mind not to pack any more goods than I could finance myself and sell them at market, and ship them immediately and collect. I have sold no futures of any kind.

Mr. BREED. When?

Mr. MILBOURNE. For several years.

Mr. BREED. Then you, yourself, have abandoned that custom?

Mr. MILBOURNE. I had to drop it, as I tell you, because I could not follow it, because I was so unsuccessful at it.

Mr. BREED. Well, didn't you a moment ago say that the trouble which you had referred to as having in nine out of ten cases, occurred some years ago before the arbitration clause was put in?

Mr. MILBOURNE. Yes, sir. I would say that since that time I have not been making many future sales.

Mr. BREED. Well, hasn't the arbitration clause been in these general contracts for at least seven or eight years?

Mr. MILBOURNE. No, sir; I do not think so.

Mr. BREED. What is that?

Mr. MILBOURNE. At least it has not amounted to anything. I am not able to answer that question about what is in the contracts, but I will say that I have never had any arbitration over any of my dealings. They have never been of any service to me.

Mr. BREED. Just one further question. The arbitration has nothing to do about an arbitration on price. It is an arbitration with respect to dispute over quality.

Mr. MILBOURNE. Surely.

Mr. BREED. That is all.

Mr. MILBOURNE. Nobody has ever rejected the goods because the price was too high. That is not given as a reason for rejecting them.

Mr. BREED. Or because the prices were too low?

Mr. MILBOURNE. No.

Judge HAINER. But when the price has declined, then there is objection as to quality; is that what you mean?

Mr. MILBOURNE. Yes, as to quality, or I have even had them object because there were wrong labels on them. You sell them one brand, and you give them two brands in the carload, or if somebody should happen to get out a car with the wrong label, why, they would turn them down.

Mr. BREED. Isn't that perhaps justified if he bought another brand?

Mr. MILBOURNE. Well—

Judge HAINER (interposing). If the prices go up is there any objection?

Mr. MILBOURNE. I have made this proposition: I will admit the error and agree that this was a mistake in shipping, and I will agree to turn that in to a warehouse and let us resell that shipment, and then we will send you the right brand immediately, but he will say, "No, the deal is all off."

Mr. BREED. Might I not ask you if there are not many questions arising between canners and buyers with respect to leakage and spoilage, and so forth?

Mr. MILBOURNE. I have not had any of it of any consequence; no, sir.

Mr. BREED. That is one of the questions, however, that frequently rise for discussion, is it not?

Mr. MILBOURNE. Not to my knowledge; no, sir.

Mr. BREED. Hasn't the canners' association during the past five years been employing scientific experts, and offering their service and advice to show how to pack canned goods so that they would not spoil, would not leak, and would bring the goods to market in a better condition than in the older days?

Mr. MILBOURNE. I know they have experts. But I don't think that the idea—that is my impression—is so much to keep the goods from leaking and spoiling, as it is, of course, to improve the quality of the pack. And some investigations have been made relative to the germ question; about the molds, and all that kind of thing that may be on the raw product before it is canned. And a proper selection of the raw material before it is put in the can. The question of leaks, of course, is purely a mechanical one, relative to the can itself, and putting the top on the can.

Mr. BREED. That is all.

Judge HAINER. Mr. Herscher, did you have a question?

Mr. HERSCHER. Yes, I had one.

Judge HAINER. Ask it.

Mr. HERSCHER. This is a question that you can put to him if you desire.

Judge HAINER. No, you ask the question yourself, or have your counsel ask it.

Mr. HERSCHER. You asked the question of the witness before if there was only one place where he could arbitrate the differences under these contracts?

Judge HAINER. Yes.

Mr. HERSCHER. If I am correctly informed there are 34 places in the United States at this time, and have been for several years in the past, where these boards of arbitration are now and have been in constant operation.

Judge HAINER. How are these boards selected?

Mr. HERSCHER. The wholesale grocer, or the chain store man—or rather, the purchaser in his home market submits samples, which are usually examined by brokers or by disinterested parties at the request of the chairman of the committee.

Judge HAINER. Well, who composes the arbitration committee, Mr. Herscher, and who selects the arbitrators?

Mr. HERSCHER. Why, if I may, I will permit Mr. Daily to explain that phase of it to you. But what I wanted to make clear in your mind was with regard to places of arbitration; I gathered that you thought there was only one place in the United States where there was arbitration.

Judge HAINER. No, I thought that wherever the objection was raised to the quality of the goods, that arbitration would take place at that particular point. I did not know there were any particular places selected.

Mr. HERSCHER. This costs the loser a matter of five or ten dollars, and they agree to enter into this arbitration, submit the samples to an unbiased committee that has no interest in the case whatsoever, and they pass their judgment on it, and it is invariably accepted by both parties.

Mr. HALL. And how long does that take, Mr. Herscher?

Mr. BREED. Won't you state, Mr. Daily, the features of arbitration?

Judge HAINER. Suppose goods were sent from here to Oklahoma, some town in Oklahoma.

Mr. BREED. Oklahoma City has an arbitration board.

Judge HAINER. Suppose it were sent to Enid, Okla., where would that have to be arbitrated?

Mr. BREED. May Mr. Daily explain that system to you, Judge?

Judge HAINER. Yes.

Mr. BREED. I think it would be of advantage to you to hear Mr. Daily's explanation of it.

Mr. MILBOURNE. Well, I don't know how this is progressing, but may I ask a question? Suppose the buyer refuses to arbitrate?

Mr. BREED. He is obliged to under the contract.

Mr. MILBOURNE. Who obliges him?

Mr. BREED. Why, it is a part of the terms of the contract, that the seller can demand that the buyer arbitrate.

Mr. MILBOURNE. But suppose he declines to do it, how do you make him do it?

Mr. BREED. He is obliged to. He is a party to the contract, and the court—

Mr. MILBOURNE (interposing). Oh, then you have got to go into court about it?

Mr. BREED. And you don't say that any of these parties are violating the terms of the contract, nor are you claiming they do.

Mr. MILBOURNE. If you have to go into court, of course you can prove your quality and everything there, but if the buyer refuses, he says, "These goods are not what I bought," and damns your arbitration and says, "I have got nothing to do with that," it is up to you, and you have got to fight it out.

Mr. BREED. But these are the terms of the contract between you and the other man, in which he agrees that he will arbitrate if you request it.

Mr. MILBOURNE. But suppose he says, "I won't do it"?

Judge HAINER. How is this arbitration board selected?

Mr. DAILY. The arbitration, Judge, is the outgrowth of a movement which I think was organized by our association.

Judge HAINER. Well, I know the outgrowth, but who composes the arbitrators?

Mr. DAILY. The arbitrators are the result of a consent of the Wholesale Grocers, National and Southern Associations, the National Cannery Association, and the National Brokers' Associations. They have appointed boards of arbitration consisting of wholesale grocers and brokers in the various markets of the country.

Mr. BREED. One man from each, is it not?

Mr. DAILY. There are three men. The board usually consists of six men, but there are only three that sit on a case, and it is always so arranged that no one who has any particular interest in the particular case sits in that; he should not, anyway, and I presume he does not sit in a case in which he is interested. Now those boards, as I say, have been appointed and consented to by the representatives of the four national associations, the two wholesale grocers; that is, the National Wholesale Grocers' Association and the Southern Wholesale Grocers Association, the brokers and the cannery. And they agree to the principle of arbitration. And when these matters come up,—for instance, let me give you a concrete case. A car of goods arrives on the track in a certain market.

Mr. BREED. Say Oklahoma City.

Mr. DAILY. Oklahoma City. The wholesale grocer before he sends his teams or unloads the car sends his man down to draw samples. If he is fair he will draw samples from all over the car, and he will bring them up to his buying department, and he will open them up, and he will say, "All right, John, that is a good delivery. Bring the goods in." If he looks at them and finds that they are not as they should be under the specifications of the contract, he calls in his broker, the broker that sold him his goods, and he tells him his cause of complaint.

Mr. BREED. The broker representing the canner?

Mr. DAILY. And the buyer, both. Both the canner and the buyer. The broker immediately wires his principal and states that John Jones & Co. have complained about a certain shipment. This is frequently a common way of handling it. It is not always a complete rejection, because the wholesale grocer and the canner usually try to get together. The broker asks, "What shall I do?" The canner is apt to wire back and say that the goods were just as sold, or asks for more information. Then the broker's effort is to try and get that buyer and the seller together by means of his usual mollification ability. If he is unsuccessful, then there is only one thing for him to do, and that is to arbitrate. The whole thing can be done inside of 24 hours. It is done by telegraph. The canner says, "I refuse to accept the rejection. I insist on arbitration." The broker goes to the jobber and tells him his story. And if he accepts the arbitration—the feature about arbitration is in the terms of the contract—you can not make any man live up to a contract if he doesn't want to—then notice is given to the chairman of the board in that town, and he appoints three men out of the board to go into the matter and he takes the contract. He calls in the broker that made the sale, or the board does, and they call in the man that rejects it. And I want to tell you, Judge, that there never has been a more successful, practical working arrangement than that national agreement of arbitration. It has settled many, many cases that would eventually have been mighty expensive in trying lawsuits.

Judge HAINER. Well, in my 10 years' experience on the bench and 25 years' experience at the bar, I have found it an exception that you have a board of arbitration that renders absolute justice—

Mr. DAILY. Well, we try very hard.

Judge HAINER. Because, among lawyers, we know—and Senator Smith knows—but he is not here—it leaves the door open; the party can raise an objection, and you have got to go and arbitrate. Any kind of objection can be raised. We have a great deal of trouble in shipping wheat flour to New York City; that is, the western people have. They raise objections that this wheat is a little musty, and does not come up to grade in quality, and it puts the shipper at a great disadvantage. He is willing to go into court and is willing to establish the fact that when the flour left the mill it was in good, sound, marketable condition, but when it reached New York City some objection may be made, and you can see the great disadvantage that the shipper is at in determining that question. That is the reason Congress put in the transportation act the Carmack amendment that the action can be brought at the place where the goods were consigned and shipped; the jurisdiction lies there. Therefore, if there was objection raised where the goods were delivered, suit would have to be brought there.

Mr. DAILY. That is a question of legal jurisdiction.

Judge HAINER. That is a question of legal jurisdiction. Of course you might have a good system. It is very commendable if it works out well and is a good piece of machinery.

Mr. DAILY. But it has worked out very well, practically speaking. You asked me a question, Mr. Hall?

Mr. HALL. Yes; do you mean that the decision of the arbitration is always had in 24 hours?

Mr. DAILY. No; I did not say that—I did not mean that. I say the whole thing can be settled in that time.

Judge HAINER. And we all know as lawyers that this board of arbitration is final and conclusive; absolutely, when you arbitrate a matter, when you submit to arbitration and it is arbitrated, it is final and conclusive. You can not go into court. Neither party can.

Mr. STEVENS. That has not been my experience.

Judge HAINER. That is what our courts have held in our State.

Mr. STEVENS. They have gone into equity sometimes and set aside the arbitration.

Judge HAINER. Yes; if there was fraud in the arbitration, but it would have to be impeached on the ground of fraud in the arbitration. That is a very difficult matter to do.

Mr. BREED. You inquired, Judge, about Oklahoma City, and inquired where the arbitration would take place. I would merely like to call your attention to the fact that the goods over which the dispute arises are, of course, not at the canner's establishment, but are at whatever place it arises, and therefore if the goods were in Oklahoma City I can not see where the arbitration could be anywhere else than at the place where the goods that were in dispute were.

Judge HAINER. But suppose they would arrive at Clinton—in western Oklahoma? Where would the arbitration take place then?

Mr. STIX. If they wanted arbitration?

Judge HAINER. Yes, sir; would that be Oklahoma City, in Oklahoma?

Mr. STIX. It might be.

Mr. DAILY. I don't know whether we have any in Tulsa or not, but our brokers are extending all through Oklahoma, and the jobbers are all through the State?

Judge HAINER. But there are thousands of little places where you ship the goods.

Mr. DAILY. No; I beg your pardon, Judge, there would not be probably more than a half dozen jobbing points in Oklahoma, and these boards are where the goods would arrive, and they are at the jobbing points.

Judge HAINER. You mean where the wholesale jobbers are?

Mr. DAILY. Yes.

Judge HAINER. And you have a board at each of those places; have you?

Mr. DAILY. Wherever the business warrants it, Judge, wherever there is a large enough market or the likelihood of these disputes.

Judge HAINER. Well, at Oklahoma City perhaps you have 10 or 15 or 20 of those?

Mr. DAILY. You probably would have one there. I can give you a list of the arbitration boards of the country, I think, in a day or two.

Judge HAINER. Then you state that they work well?

Mr. DAILY. Very well, very well.

Mr. STIX. In that connection, Judge, if you will permit me to state it, I am a member of the firm of Seeman Bros., and I think we are probably one of the largest buyers of canned goods among the wholesale grocers in the country. We have been in business some 30 years. I have no recollection in the course of the entire 30 years of our ever having been sued on a contract. We never have had to use the courts once in our dealing with any canner, with one exception, and that is where we had a case where we thought a man had not given us a proper delivery on a contract after the market had gone up, and we attached some goods that he finally shipped to our city. I only remember that we had to resort to the court once in 30 years in our dealing with the canners. Every other dispute that we have had with a canner has been settled by arbitration, satisfactorily so.

Mr. DAILY. Do you use arbitration frequently, Mr. Stix?

Mr. STIX. Why, we don't have to resort to it very frequently, but occasionally we do have to resort to it.

Judge HAINER. Have you any questions, Mr. Hall, to ask of Mr. Milbourne?

Mr. HALL. No, I have no further questions.

Mr. STEVENS. In listening to Mr. Milbourne's testimony I developed a sympathetic interest in what I believe to be his underlying idea in wanting the packers back in the unrelated lines of business. Now I want to know if I am right. Mr. Milbourne, am I right in my conviction that your main reason for wanting the packers to get back into the unrelated products business is because they can sell goods where wholesale grocers and brokers can not?

Mr. MILBOURNE. I think it would be an additional outlet, an additional force selling goods.

Mr. STEVENS. I think you said that they have certain methods which succeed better than anybody else's?

Mr. MILBOURNE. I said that they had. My experience has been, or my observation, rather, has been that they have salesmen who are what we termed as "live wires," and that they do push their sales, and when they are selling a full line of stuff, why they push the sale of tomatoes the same as they would a sale of beef, or whatever else they are doing.

Mr. STEVENS. They sell it in connection with the beef trade?

Mr. MILBOURNE. And being able to sell other lines of goods, it does frequently happen—well, when a man sells a man that is in his store, and his place of business, and has the attention of the buyer, and is making a sale of beef, we will say, canned beef or whatever he is selling, if that same seller at the same time is pushing tomatoes, why he has a chance right then and there probably in many instances to place a quantity of tomatoes on the same order, particularly when he is able to ship a mixed car of various classes of goods.

Mr. STEVENS. Then the meat packer has really an advantage over the others?

Mr. MILBOURNE. I don't think so. The wholesale grocer could or does do the same thing, couldn't he? He should do the same thing.

Mr. STEVENS. Well, I don't know.

Mr. MILBOURNE. The other gentleman expressed my opinion in a few words, and I could have said all that I had to say on the subject in just as few: That I see no reason why, when the wholesale grocers, as we know a lot of them do, sell a lot of things that do not come under the head of wholesale groceries, why the canning people should be shut out from this outlet for our goods.

Mr. STEVENS. You do not mean that the meat packers can create a demand for the goods on the part of the consumer, do you?

Mr. MILBOURNE. Yes, I do, to this extent. It is like advertising. If you go in to a man's place of business and push a sale, you can frequently make a sale when otherwise you would not. If the grocer has those goods on his shelf and he pushes them, they come to the consumer. Now they are not pushing now. The retailer is not selling, and the wholesaler is not doing it, and the consumer is not going after canned stuff.

Judge HAINER. Is that all, Mr. Milbourne?

Mr. MILBOURNE. Yes.

Judge HAINER. Here is a gentleman who must get away before 1 o'clock, and who wants to make a statement now. We will hear from Mr. Craig.

STATEMENT OF JAMES CRAIG, WAYNESBORO, VA.

Judge HAINER. Will you give your full name?

Mr. CRAIG. James Craig; Waynesboro, Va.

Judge HAINER. Proceed.

Mr. CRAIG. It was said yesterday that I was hostile to the wholesale grocers. I am not. I simply want better distribution, and we do get more distribution and we hope better distribution by having both the jobber and the wholesale grocer and the packers. As far as the wholesale grocers are concerned, in our territory they are the best advocate of unrelated lines, because I can go in our wholesale grocery stores and buy needles and pins and sweaters and shirts and shells and shot and most anything that you can get out of a hardware or grocery store, or sometimes a dry goods store, or boot and shoe store, shoe laces, etc.

Judge HAINER. Everything except automobile accessories?

Mr. CRAIG. Yes, sir. And I congratulate them on it. I appreciate it. It is quite a convenience for us all, and I hope they will continue.

Judge HAINER. Do they handle automobile accessories?

Mr. CRAIG. Yes, sir; and I hope they will continue.

Mr. DAILY. They are wholesale grocers, are they?

Mr. CRAIG. Well, they are supposed to be. They belong to the association. But we wanted to be decent with all of them; that is all we want.

Judge HAINER. Well, I guess there are no questions on that?

Mr. CRAIG. No. That is all I have to say.

Judge HAINER. We will adjourn now until 2 o'clock.

(Thereupon, at 12.55 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day, Thursday, December 8, 1921.)

AFTER RECESS.

The committee resumed its session at 2 o'clock p. m., pursuant to the taking of recess.

The CHAIRMAN. Gentlemen, let us come to order and proceed with our hearing.

Gentlemen, I wish to call your attention to the fact that a representative of one of the wholesale grocery associations introduced in evidence here the other day an excerpt from Duncan's Trade Register, including a statement that Armour's map was published therein. And as giving color to the whole situation, I want to read into the record a statement which appears on the very front of Duncan's Trade Register, as follows:

"THE LIST OF UNDESIRABLES.

"Some depraved trade papers and many misguided retailers blame the jobbers for the spread of chain stores. It is rank injustice to jobbers. We all know many manufacturers, especially the trusts, give chain stores the same prices that jobbers are compelled to pay. And these direct selling concerns give chain stores the 100-case price on 5-case lots. (See Procter & Gamble deal.)

"What the retailer needs is a list of concerns placing chain stores on the 'jobbers' list,' and discriminating in favor of chain stores. We are going to publish that list. Every concern that practices double-dealing will be listed. Here are a few of the offenders:

"Aunt Jemima Mills, Armour Grain Co., Joseph Campbell Co., Hires Root Beer, Procter & Gamble, Libby, McNeill & Libby, National Biscuit Co., Cream of Wheat. (This last piece of goods is listed because it practices extortion on consumers through retailers.)

"This is but a sample. The complete list will be ready for distribution January 1. The price is \$3 including yearly subscription to Duncan's Trade Register.

"Let there be light. When a hundred thousand retailers have this list framed in their stores, there is going to be reformation among the higher-ups.

"Get the 'List of Undesirables.' Compel them to distribute through the chain stores. Don't let them cut your throat."

I think that should go in, in view of the excerpts that have gone in from Duncan's Trade Register heretofore.

Mr. BREED. Did I understand that that you made the statement that the wholesale grocer introduced anything from Duncan's Trade Register?

The CHAIRMAN. He suggested the thing, absolutely.

Mr. BREED. My recollection of the fact is not to that effect. I remember Mr. Bode introduced Mr. Armour's book containing the picture—it was Mr. Armour's annual book, containing the picture which he produced, and that that book was introduced in evidence.

The CHAIRMAN. And he had before him the page torn from Duncan's Trade Register, which was handed around among the committee, and I am not certain whether he read anything from it or not, but that was circulated around here, and it was suggested that it was reprinted in Duncan's Trade Register; and I just wish to put this in to characterize the reprint of that article.

Mr. BREED. The National Wholesale Grocers' Association make no reference to Duncan's Trade Review whatever, and my recollection of Mr. Bode's testimony was merely that he said that there was a publication that had republished the picture from Mr. Armour's annual book, and had referred to the book as Armourland. Am I correct in that?

A VOICE. Yes, sir.

The CHAIRMAN. Is there anything further?

Mr. BREED. No, sir.

Mr. DAILY. Just one moment, Mr. Chairman. Mr. Chairman, in favor of complete accuracy, and only to eliminate any thought that we intentionally misquoted figures, I want to make a correction. We discovered that in referring to the United States census report for the total pack of canned foods in 1914, we stated that the total amount was 98,925,000. As a matter of fact, we misquoted those figures unintentionally, and the correct figures are 92,875,000; making the percentage different in the 1914 figures of the Virginia pack .0134, instead of .0127. I did not want that to go uncorrected.

The CHAIRMAN. The correction may stand as made.

Do you care to be heard, Mr. Retan?

Mr. RETAN. Yes, Mr. Chairman, briefly.

**STATEMENT OF HON. CLARE RETAN, ASSISTANT ATTORNEY
GENERAL OF THE STATE OF MICHIGAN.**

The CHAIRMAN. You may state your full name?

Mr. RETAN. Clare Retan.

The CHAIRMAN. And your address?

Mr. RETAN. Lansing, Mich.

The CHAIRMAN. What official position, if any, do you occupy?

Mr. RETAN. Assistant attorney general of the State of Michigan.

The CHAIRMAN. Just proceed in your own way, Mr. Retan.

Mr. RETAN. Our department desires to enter a protest to the reopening of this decree, and the basis of it is this: It is rather the result of a grand jury investigation which was held in our State, conducted by Governor Grosbeck, who was then attorney general. In view of the testimony and the evidence there adduced, it is our view that the decree should not be reopened and the packers allowed to enter into the unrelated lines of business.

The CHAIRMAN. Was there any proceeding brought there as a result of that investigation?

Mr. RETAN. There was not, owing to the fact that our statutes did not cover it, and we thought it was a matter for Congress, and not for the State.

I might also add that we intervened in the proceeding before the Interstate Commerce Commission, that was held in Chicago, when, I understand, application was made to modify the order at that time.

This really was not strictly a grand jury proceeding, because we have no grand jury proceedings in our State, but it was under a statute which provides for the discovery of crime.

The CHAIRMAN. And the proceedings are protected by the same safeguards of secrecy as a grand jury investigation?

Mr. RETAN. No; they are not.

The CHAIRMAN. Do you feel at liberty to divulge to the committee what transpired in that investigation?

Mr. RETAN. I am sorry that I could not do it. I telegraphed night before last for a copy of the transcript of the evidence, and I have not received it as yet, and my memory is somewhat hazy as to the facts.

The CHAIRMAN. If you receive a copy of that transcript of the record, are you willing that this committee shall see it?

Mr. RETAN. I certainly am.

The CHAIRMAN. And you will furnish it to us?

Mr. RETAN. I will; yes, sir.

Judge HAINER. When was this hearing?

Mr. RETAN. It was in the latter part of 1918 and the first part of 1919.

Judge HAINER. Prior to the entry of this decree?

Mr. RETAN. Yes, sir.

Judge HAINER. Did you call the Attorney General's attention to that proceeding at the time of the pendency of this suit?

Mr. RETAN. You mean the attorney general of the State?

Judge HAINER. The Attorney General of the United States—Attorney General Palmer?

Mr. RETAN. We did not. It was an independent investigation held under our statute.

Judge HAINER. Didn't you think it was of such importance that you should inform the Department of Justice of it?

Mr. RETAN. As to that I had nothing to say. I was simply assisting in conducting the investigation. That was for the head of the department.

Judge HAINER. You were then assistant attorney general of the State of Michigan?

Mr. RETAN. Yes, sir.

Judge RAINER. And you are opposed to the modification of the decree, as I understand it?

Mr. RETAN. We are; yes, sir.

Judge HAINER. As to the unrelated commodities?

Mr. RETAN. Yes, your honor.

The CHAIRMAN. If that is all, Mr. Retan, we thank you very much.

Now, Mr. Gray, we will hear you, if you are ready.

Mr. RETAN. I wish to make a further statement.

The CHAIRMAN. Mr. Gray, will you pardon us. Mr. Retan wants to be heard again. Mr. Retan, you have something further you wish to say in connection with this statement?

Mr. RETAN. I have. For the purpose of clearing the record, and in answer to the question propounded by the Judge, I want to say that I do not want to intimate that we have discovered anything criminal.

Judge HAINER. I think that was the inference.

Mr. RETAN. Yes, that is what I wanted to clear up. And there was no violation of our statute, so far as we could ascertain, and at that time we did not think there was anything that was of interest to the Attorney General of the United States, for the reason that we could not discover anything criminal, and he was at that time conducting an investigation along this same line.

The CHAIRMAN. And that was the reason why you did not furnish it to the Attorney General of the United States?

Mr. RETAN. Yes; that was the reason.

Judge HAINER. I think that was a proper statement for you to make.

STATEMENT OF MR. DALLAS H. GRAY, FRUIT GROWER, ARMONA, CALIF.

The CHAIRMAN. What is your name?

Mr. GRAY. My name is Dallas H. Gray, of Armona, near Handford, the county seat of Kings County.

The CHAIRMAN. What State?

Mr. GRAY. Armona, near Handford, the county seat of Kings County, Calif. My occupation is a fruit grower. I am a member of the California Associated Raisin Co., the California Prune and Apricot Association, the California Co-operative Canneries, all of which are farmers and fruit producers' cooperative organizations. I am a member of these organizations, as a grower and producer of the fruits handled by the associations, and the associations are all growers and fruit producers' organizations.

Mr. Chairman and gentlemen of the Interdepartmental Committee, called for the purpose of hearing the arguments such as have been and will be presented for and against the modification of the so-called "packers' consent decree," it affords me great pleasure to have this opportunity to speak to you concerning some of the marketing problems that have taken place during the past 25 or 30 years, which I am familiar with.

Again, Mr. Chairman, I am glad to be present here before this committee, which I consider as representative of those executive officers who are the guardians of our prosperity and the protectors of the results of our toil and efforts.

You, Mr. Chairman, representing, as you do, the Attorney General of this great Nation, are ever keen and alert to prevent the drastic, detrimental, and destructive legislation affecting the farmer and his interests, and to protect the farmers, cooperative and otherwise, against adverse and drastic legislation that may be brought before this Nation.

You, Judge Hainer, in representing the Department of Agriculture, are probably the nearest to the hearts of the farmer and the producer, and are very solicitous of our success in production. You teach us how, through your department, to produce more bountiful crops in the time of harvest.

You, Mr. Hall, as a representative of the Secretary of Commerce, are interested in the transporting and uninterrupted flow of our products to the markets of the world.

Upon the shoulders of you gentlemen lies the burden and responsibility of consideration of this decree by the legislative departments. Allow me to warn you against the sinister remarks, the personal attacks that have no bearing upon this case, but have been injected into these arguments by these gentlemen who would attempt to bias your minds and opinions, and cause you to be instrumental in recording the handwriting on the wall, as it was in the time of Daniel, the prophet. I again warn you that unless you take a concerted action, this thing will mean a mene, mene, tekel, upharsin of the farmer's interests, which means the failure of his future success and prosperity.

I have waited for 25 years that this day might come when I can point out to you some of the errors of our national marketing system and tell you some of the experiences that I have had as a producer of California fruits and products, both in the production and the marketing of those products, and some of the encroachments that have been made upon the producer and the distributing of his products by the regular channels of trade.

I can assure you, however, that it will not take me as many hours to express myself as I have in years been waiting to appear before you. It will be necessary, however, that you have a full comprehension of my ideas and the effect of this consent decree upon the farmers' interests that you get a full conception of the underlying principles involved in it, that I relate to you some personal experiences covering this period of time.

By way of further introduction, Mr. Chairman, I might say that I was born a farmer, reared a farmer, and I shall hope to die a farmer, upon the property once planted by my father as one of the largest pioneer orchards and vineyards of some 320 acres in California, some 40 or 42 years ago, and a good portion of which I now own.

My own individual activities in farming have been other than those of fruit raising. I have owned and operated a dairy for five or six years consecutively; likewise, I owned a chicken ranch for the same period of time, with some 3,000 hens in production. And, Mr. Chairman, I mean, of course, the feathered variety of chickens.

The CHAIRMAN. We are glad to know that.

Mr. GRAY. At various times in my farming experience I have been engaged in the production of hay, grain, corn and alfalfa, rice, beans, and other such farm products; and I have also been engaged, directly and indirectly, in nurserying for some 15 years in the production of trees and vines and plants such as are used in fruit production in California.

And I believe, gentlemen, that I have had more than the usual experience in farming and marketing. I have seen the rise and fall of fruit industries—their prosperity fluctuating from times of success and enterprise to the lowest depths of wreck and ruin. Only those staunch pioneers of early history were able to withstand these successive attempts and failures. Only those who with optimism and tenacity, battling with every opposing foe, were able to endure.

About three weeks ago I addressed the fifty-fourth annual convention of California fruit growers at Los Angeles, on farm costs and accounts, and while there I heard a definition and distinction made between the farmer and the agriculturist. Judge Morrison, who gave the address on legislative day, said that the agriculturist was the man who put something into the soil, and the farmer was the one who took something out of the soil, and implying and giving credit to the farmer for an overabundance of prosperity as he made those remarks. While I do not mean to cast any aspersions upon Judge Morrison's opinions, I can not agree with him, and I wish here to interpose an objection to such a distinction. I say that the farmer is the man who puts something into the soil; he injects into the soil, down through the plow handles and through the plowshare, his hopes, his desires, his ambitions and optimism. And in many instances he takes only from the soil as compensation for his labor, toil, and effort the results of the avariciousness, greed, and restraint of the regular channels of trade by way of disappointment and failure.

And, by the way, I have heard a very correct distinction between an optimist and a pessimist. I think it is very fitting in this hearing that I relate it. I heard B. Fay Mills, in Chicago, at one time say that the pessimist was one who Fletcherized on pills, and the optimist was one who was clubfooted and bowlegged, and thanked God that he was not cross-eyed. Now, gentlemen, we may have done many things in marketing that were clubfooted and bowlegged, but we do not feel that we are, at this particular time, cross-eyed in marketing and producing.

Before entering into this discussion, Mr. Chairman, I want to lay before you one premise, and that is, that upon the farmer depends the success of all commercial, social, and economic life; that our national and international prosperity is founded upon the basic principles of the farmer's success. The resources of the community in which the farmers live are spoken of in terms of prosperity. If pestilence and disease attacks his crops, the financial resources of the community in which he lives is so affected; if blighting winds and summer heat curb his production, the financing of that community is so restrained. If you will not agree with me, Mr. Chairman, as to the laying of this premise, I have no further argument regarding this subject; if you do not agree with me upon this fundamental principle, Mr. Chairman, I have nothing further to argue upon.

It is somewhat embarrassing, Mr. Chairman, to stand here and face this array of legal talent, and the greatest marketing brains of our Nation. They are the keenest minds in distribution, and they are here assembled for one chief purpose, and that is to destroy a competitive, economical, and efficient source of distribution. I wish to compliment them for having secured such keen and shrewd attorneys for the protecting of their interests, and I further wish to say that you have dealt most fairly with them in their questionings and discussions.

They have, for days, presented great volumes of testimony and confirmations received from their own members and the elements of their own trade. This data reads to me like the "sounding brass and tinkling cymbals" of former days, when farm organizations on the coast were in the making.

Furthermore, this testimony is, as I have read it, day after day a reiteration of the same basic and fundamental principles, as though it were the product of one fertile mind—yes, I will say two fertile minds, for I shall pay particular respect to the Senator.

Again, I wish to compliment this array of legal talent for having so wonderfully duplicated their efforts, and by thus attempting to show a preponderance of evidence by way of numbers in evading the real issue in this case.

I ask you, gentlemen, who are these men that would stand upon the highway of trade and proclaim, "I thank Thee, Oh Lord, that I am not as other men." I ask you, who are these men that have for years upon years stood at the portals of distribution collecting there their tributes and their unreasonable profits, and by way of extortions and connivings have forced the producers of this country to sustain untold millions of losses. Who are these men, gentlemen of the committee, who have the audacity to present themselves here and ask that our Federal Government join with them in an attack and collusion for the preservation of an autocratic decree for restraint of trade.

Mr. Chairman, I know them all, for I have dealt with them for the past 20 years, and I am perfectly familiar with my father's operations during a like previous period of time. I know their methods and their tactics.

Now, in my arguments I may zigzag a little bit upon this issue, which reminds of the story of the Irishman who, being patriotic to his country, the United States, enlisted in the Army, went across the water and fought on foreign fields. And on his way across on the boat he became much concerned as to his future welfare and began to wonder about the final outcome of his existence. So he addressed himself to his corporal, and asked the corporal how he could avoid the bullets if he got into an attack, and the corporal said, "Pat, that is easy; all you have to do is zigzag, and the Germans can't shoot you." It was some two months afterwards when the corporal ran across Pat in a hospital with his head all bandaged up, only his eyes peeping out, and he said, "Pat, how is this; how did you get here?" Pat said, "I guess I must have been zigging when I should have been zagging." So I may be zigging when I should be zagging, and I may zigzag a little bit in my argument, but I hope I will be able to enlighten you in doing it.

I do not believe in casting personal aspersions, nor do I expect to stoop so low and base my argument upon personal insinuations other than is necessary to covey to you the opposition that I have experienced by individuals in elements of trade. What I shall attack as a producer and grower in California is the system of our marketing that causes the producer to sustain annually heavy losses, the slowness of the vehicle in conveying our products to the consumer, and a restraining of the consumption of our farm products because of the excessive spread between the producer and the consumer.

I wish to present my argument to the effect of the packers' consent decree under four fundamental headings: First, injury to the farmer; second, its economic disadvantages; third, effect upon the consumer; and fourth, its legality.

And as an additional, in conclusion, with your permission, Mr. Chairman, I would like to answer some arguments of the opponents as affecting fruit industries. I refer, Mr. Chairman, to the dried fruit industry, with which I am so familiar.

The first three divisions which I have named, I feel thoroughly competent to talk upon. The fourth and last heading is somewhat of a misnomer, as I do not pretend to be a lawyer, but have some idea of right and justice, and upon those principles my opinion will be based. I have some idea and personal opinion of right and justice.

To show the injury to the farmer, I shall have to cover considerable ground, going back into the very earliest history of our fruit production in California, with which I am very familiar. And I hope you will pardon me, Mr. Chairman, if I refer to some personal experiences, because these personal experiences go to make up my knowledge of this question.

When my grandfather, Andrew W. Gray, led as captain, a train of prairie schooners from a little town in Pennsylvania, and two more times repeated the operation and conducted like expeditions afterwards, to California, the wonderful plains of the wonderfully fertile State of California were unoccupied. In fact, their productivity was not then known. Gold was the thing in mind, and it was for gold that the early travelers to California went. Gold was the natural product of the mountain and hill regions. As the resources of these early pioneers were counted in nuggets and they slowly discontinued their mining activities, the fertile lands of the valleys were taken up and made to produce bountiful crops in harvest.

The transportation facilities of the nation were then being developed and came into use, because when these communities had produced more than they could consume in their own families it became necessary that commerce be set up. In those early days grain farming was the principal occupation, but because of the unprofitableness of this crop, other lines of farming endeavor were sought.

My father then was a mere lad, after the war, but went down into the San Joaquin Valley, near Pandford, in Kings County, and took up a soldier's claim, 160 acres of land. The producing of his crops earned him some money, so that he could buy up some of the cheap lands that existed in the San Joaquin Valley, and he soon bought up some of the land, at some \$2.50 to \$5 an acre, and he had several sections of land as a result of his success in production. Most of the crops of those days were distributed practically to the miners in the surrounding hills, who paid fabulous prices because of their excess of gold in mining.

There came a time, however, when the farm lands produced more than was consumed locally, and it became necessary that these crops be exported to the outside communities of the nation. This exportation made necessary, of course, the channel of trade that has since been built up. The more extensive the trade grew, the less the farmer received for his products, until the crops were not worth their harvesting; the farmer received less and less for his products.

Experiments in fruit production were carried on, and the soil and climate were found particularly adapted to the production of the delicacies. The expansion of the fruit business brought about the necessity for irrigation, so the pioneers in our fruit industry tapped the resources of our snow-capped mountains and flowing rivers that flowed from them. Ditches were dug, irrigation was developed, that the parched ground might become the gardens of the valleys by bountiful harvests. And I might say that my father was one of the pioneers in the making of those irrigation ditches, and in the development of the irrigation system in California. It is absolutely necessary that there be irrigation for the successful farming of our orchards and vineyards, and our success depends largely upon our network of irrigation facilities. As I say, my father was one of the pioneers and leaders in these experiments and in building the irrigation canals and ditches to irrigate the arid plains. In fact, he planted one of the first, if not the first large muscatel vineyards in California, followed immediately by other and large planting of fruits.

The first few years the crops of these fruits brought fabulous prices, but, running true to form, as soon as that production supplied the immediate vicinity the channel of trade was brought into operation, and the farmers'

receipts began to decrease. For many years there was practically a stagnation in the planting of vineyards. In fact, the markets became so poor that orchards and vineyards were uprooted that had been previously planted at tremendous expense.

I remember well as a lad, when some eight or nine thousand tons of raisins were produced, of hearing the fruit packer cry "overproduction." I remember well that that was the hue and cry of the packer of that day, as he was the dominating factor in our production.

Judge HAINER. Do you mean the meat packer?

Mr. GRAY. The fruit packer. I am glad you corrected me. I shall hope to correct myself. The fruit packer of that day was the dominating factor, and his hue and cry was "overproduction." I remember well as a lad my parents selling raisins at \$15 per ton in the sweat box which is the container of the product of the packing house, when the same raisins undoubtedly cost something near \$50 or \$60 per ton in products.

The increase in production of our raisins and dried fruits in California was practically at a standstill between the years 1890 and 1900. I will not go into the details and relate the tragedies and experiences covering those 20 years and the attempts of the elements of trade to throttle the efforts of the farmer to obtain his profits. I will say, however, that the production of raisins and dried fruits was approximately at the stagnation point from 1880 to 1900 because of the oppression used on the farmers in manufacturing and distribution.

The farmers' losses and fruit growers' experiences are written in the records of the county recorders by the mortgages and bankruptcies covering that period. The whole year's toil and efforts of the farmer, who had built up hopes of securing some profit, were but written in the red ink of the balance sheet.

I remember well my father picking a crop of nectarines after having paid for the labor in cultivation, and after having delivered his crop of some 90 or 100 tons, upon which there was not one cent paid to him; to add insult to injury, a bill for the freight was rendered, amounting to some \$248, upon the pretense of the buyer having sustained losses, after he had not received 1 cent of remuneration for the property. Successive years of this kind of treatment only added to the burdens and anxieties, and I can truthfully say that many a farmer went to an early grave because of the anxieties due to such tremendous oppression and burdens.

In 1896 my father passed away at a premature age, leaving some 320 acres entirely planted to raisins, peaches, prunes, apricots, and other similar dried fruits. Added to this, due to the system of marketing, he left as a heritage to his two boys and his widow a mortgage of some \$70,000, that had been accumulated in planting the property, and because of no remuneration for the distributing of his products.

My mother, being of an executive disposition, took up the reins of operation, and for some seven years struggled with every element of nature and the opposition of the channels of trade in production and marketing. I wish to pause here and pay a tribute to that noble woman, my mother, who, because of her stick-to-it-iveness and determination, made possible my present success, because she tackled something and operated successfully that which few men would have attempted. She was the chief superintendent in the employment of some 50 to 260 men at different seasons of the year that were necessary to carry on the operations of the ranch.

I was about 14 years of age when all this happened. In fact, my father died in the midst of harvest, and we boys, my brother and I, did what we could to assist our mother by occupying supervising positions on the ranch. We filled those positions each year until of age, when we operated our own properties. I, following in the footsteps of my parents, disposed of my product through the wholesale jobbers and brokers of the large cities, New York, Chicago, and Philadelphia, and to the other elements of trade that naturally are the handlers of our crops before they reach the consumer. My parents had done that for years, and I followed in their footsteps.

We had our own packing plant, and I likewise came into possession of that property, which was provided with a railroad switch, and make possible shipments direct from the ranch. We packed all of these fruits there for the eastern shipments. There were only five or six of the fruit producers in California who were so equipped to pack and sell direct to the eastern jobbers through brokers. The usual marketing facility of the other growers was to

sell to the fruit packers on the coast, who were, as I have related, the dominating factors in the industry.

It was for years the policy of these men to beat down the producer in price, unreasonable in comparison with his cost of production. Unreasonable advantage was taken of him. Minute technicalities and contentions as to quality were the basic reasons for price reductions. It was the custom of the fruit packer, as well as the jobbing and wholesale trade to carry over each year from 20,000 to 25,000 tons of raisins, or about one-half or three-quarters of the crop, so that they might have a lever to bring upon the producer the following season in crushing him down, and an excuse to offer a very low price for his product. This old crop was a competing factor in naming a price on the new crop to the producer.

For instance, in the fall of the year, when the crop is harvesting, the farmer would go to his fruit packer and say, "Well, Mr. Packer, what are you paying for raisins to-day?"

The CHAIRMAN. Is that the fruit packer again?

Mr. GRAY. Yes; the fruit packer. I wish you would call my attention to that. We refer to the fruit packer on the coast as "the packer," as it is the only one we know out there.

The fruit packer then would say, "Oh, I don't know. We are not really buying raisins now." To which the farmer would reply, "But I need some money, and I would like to sell my crop. I have a note due on the first of the month, and I would like to get some advances on my crop. What will you offer?" The packer, noting his financial anxiety, would offer a ridiculously low price, saying, "I will give you 4 cents a pound for raisins," for instance. And the grower, knowing that he could not produce the product for that amount of money, would say, "Well, I can not produce them for that. But I have got a mortgage due next month, and interest due on the 15th of the month. What will you give me now for my product?" The fruit packer would say, "Well, we can not help the price; we are offering you more now than we can afford, we can not help the price we are offering you, because there are still some 20,000 tons of raisins carried over from last year, which have not been sold, and we can not afford to pay more than that price for the product." So the farmer would refuse to sell at this price, only to find further reduction in price the following week, and so he was forced many times to sell his crop at this price because of the conditions that were set up.

Now, Mr. Chairman, there was no plausible reason for the use of these and other such extortionate methods. My frequent trips to the large markets in the East showed that the retailer was paying from 20 to 60 cents per pound for our raisins when sold through the regular channels of trades, and showed me conclusively that there was a spread of between 5 and 15 times that I received as a grower and the price that the consumer paid as a consumer. That is, the retail price was 20 to 60 cents per pound for our raisins, peaches, prunes, and apricots for which the grower was only receiving from 1½ cents to 3 cents per pound.

I will explain that there were then some 5 or 6 elements of trade in California between the producer and the consumer in the market, of our dried fruits. First, there was the fruit packer on the coast, who was, as I have said, before our cooperative organizations came into existence, the dominating factor in the trade.

The second element in the trade was the broker, to whom I sold, and to whom the fruit packer also sold, who passed the goods on to the jobber and extracted his 5 per cent as brokerage, which was then the customary brokerage.

Next was the wholesaler, and I mean the large wholesaler, who handled the product and bought from 10 to 20 cars in one order of our raisins and dried fruits, and frequently made up associated cars of dried fruits and other products or dried fruits alone, and shipped them; and oftentimes there was another element of trade entered in, which was the district wholesaler, who bought in mixed cars in the smaller cities, and created a distributing depot to his local trade by receiving less than carload shipments. And even if I have known of the third wholesaler or jobber entering in in some smaller towns. He may have had a branch house for one of the other wholesalers, but he would secure his goods in probably half-carload lots, or quarter cars.

The fifth and final element of trade is, of course, the retailer that buys from the wholesaler.

So you see there were four or five elements of trade, each of which extracted a toll of profit, sometimes, and, indeed, too often greater than the price received by the grower who produced the product. I am reciting these facts, Mr. Chairman, that you may to some extent comprehend the system under which the producer of California fruits was forced to operate. As years went by,

the oppression became intolerable, while the elements of trade waxed rich in profits.

We were not covetous of those profits as producers, but we surely felt that as farmers we did want our cost of labor, together with overhead expenses and a reasonable profit on our production. According to the premise that I lay in the beginning, Mr. Chairman, we should first have been allowed to at least take out of the business our cost of production and reasonable profit over and above our overhead expenses.

The successive years of such manipulation wherein the only evidence of the year's toil and effort was the additional mortgage given to the bank to meet the cost of labor caused us to stop, look, and listen. Frequent meetings of the growers were held, which finally resulted in the attempted formations of growers' organizations.

That opposing faction, that element of trade, the fruit packer, was as fully represented, gentlemen of the committee, in our meetings as those elements of trade are in evidence here before you to-day. Their claim, as being necessary factors in manufacturing and trade were proclaimed with as much emphasis as has been displayed in the hearings before you. Their contentions of low profits in the game were as emphatic as the claims shown in the transcript of these gentlemen. The eloquence and keen shrewdness of their attorneys in presenting large volumes of testimony in justification of their past methods of operation were as evident then as they are here to-day. Bankers, merchants, and even Senators were injected into the conference to read stereotyped solicitous protests of these parasitic elements. Such pressure too often became overwhelming in their effort to persuade the growers by preponderance of executive and financial influence to go home and forget his troubles and further produce that they might continue to absorb and add to their profits.

The grower of that day could only think in terms of toil and effort. His mind was shaped and framed to meet his needs in producing. They found themselves victims and easy prey for cunning devices of the fruit packers.

My experience in bartering and dickering with the eastern trade, was similar to that of my neighbor who dealt exclusively with the local fruit packer in his local town.

There was no stability to the market when somebody had something to sell for less. So it was necessary for me, as a grower-packer to meet that competition, and for this reason I seldom, if ever, got cost of production. I would send out half a dozen wires to my brokers in the different cities to sell, we will say, so many cars of 2, 3, and 4 crowns at 4 cents, 4½ cents, and 5 cents, respectively.

My brand and quality were well known in the markets of New York, Chicago, and Philadelphia, and samples were unnecessary. So that when my broker, who had been handling my goods in those cities, as well as those of my parents before me for some 15 years, would put my price to the trade, they would show the broker stacks of wires of lesser quotations. Invariably I would receive this reply, "Can only offer 3 cents, 3½ cents, and 4½ cents." I might decide to think it over a few days, only to find that within those few days the prices had gone off a half or a quarter of a cent below those he had formerly quoted. So it would go, until I would probably sell the last of my crop for a cent less than the prices originally quoted.

If I was able to stick it out long enough until the fruit packer on the coast had squeezed the growers into selling the entire crop to them, I would sometimes be able to take advantage of the rise in price which was a natural consequence after this thing had been done. There was very seldom a rise in price until just before the harvesting of the next year's crop.

These conditions were deplorable, gentlemen, and raisins often went down in price until it meant less than nothing. In fact, they often became the cheapest hog feed on the Pacific coast. I have fed my work horses on the ranch tons of raisins. In fact, little corn or barley was known to be fed to horses on the ranch for some 10 or 15 years in the industry. By the way, raisins are a wonderfully nutritious food, even for horses. They contain a greater per cent of food value than almost anything we eat to-day. It was a Government statistic in 1913 and 1914 that less than seven-tenths of 1 per cent of the total food supply of the American people was dried fruits, of course, taking in all kinds of dried fruits. Some four successive attempts were made at organization by the growers, and I was active in my own county in the work of getting the growers to organize. Each time we found ourselves

surrounded in the organization by the henchmen of the fruit packers, our menace. Even they, themselves, were found upon the board of directors by a majority to rule the affairs of the growers. They voted themselves large and unreasonable salaries, and also voted large bonuses of from \$15,000 to \$25,000 a year to their packer friends, who were thought necessary in the manufacturing end of the business.

The growers soon discovered the trick that was being played upon them, however. At least, if he did not find it out mentally, he determined it financially, and the organizations were soon broken up.

It was not until 1918 that a permanent organization, a real organization, was effected, which is the one now in existence—the California Associated Raisin Co. The only way that this permanency was accomplished was to completely eliminate the fruit packer as a manufacturer and seller of our product. To-day the California Associated Raisin Co. has under its control 93 per cent of all the raisins grown in California which, of course, means in the United States.

I want to tell you, Mr. Chairman, that this enemy is still at work among the growers, by offering them enticements of higher prices. We find him out there even to-day offering a higher price on the outside of the association than is expected will be paid inside of the association. They are offering them an enticement within the organization to come outside by paying from 1 to 3 cents per pound more than is expected within the organization. That is the tactics of the outside packer. These gentlemen that have been so wonderfully represented here in the dried fruit association would entice the grower from within the fold to come out, so to speak, into the dark alley, so that if the organization was broken up he could stab him in the back as he has done in previous history. While this higher price is not actually accomplished during every year as the average price over the association price to the grower, such a higher price is offered at various times and for relatively short periods during the season. This price really has the effect of causing the grower to think that the outside grower gets more than the grower on the inside of the association.

When I took my inventory about September 1, 1912, I found I had 185 tons of raisins in my packing plant, stemmed, packed, and ready for shipment. I had held those raisins over for one year after the harvest, trying to get the cost of production; they had been carried over from the year previous, and it was my 1911 crop. I was aware of the large crop then about ready to be harvested of some 200 tons, and I decided that immediate and direct action was necessary to save myself from financial ruin, for I had gone through several like experiences that had greatly depleted me financially. I had sent dozens and dozens of wires to my brokers in Chicago, New York, and Philadelphia, to Leman R. Wing, of Chicago; Wood & Stevens, of New York, and C. H. McKenzie, of Philadelphia, and there was not one wire that I received that offered me up to the cost of production; nor did they come within a quarter of a cent of my prices quoted to them at which I tried to sell. As I said, I then had about 200 tons of my new crop coming on, as we begin to harvest about the first of September of each season. My situation was keen. I had then for four successive years lost heavily; in fact, an average of about \$4,000 below my cost of labor and production. I thought that I had done almost everything that could be expected of me in going to the natural channels of trade for some 12 years, and following in the footsteps of my father for some 20 years previous.

So I decided then to go direct to the consumer with my product. I took the matter up with some few of my grower friends, and with my banker, Mr. Frank Hiche, president of the old bank of Hanford, Hanford, Calif., and laid before them my plans of going direct to the consumer with my products. I was told by some of the growers who had tried to go direct to the consumer and who had heard of previous methods of direct selling to the consumer that it would be impossible; that I would not get past the first town in selling my product; that the jobber would direct the wholesalers and the retailers to cut prices on my product and by other means of intimidation drive me out of the business, by reducing their prices much below what I could afford to sell for.

I believed then that I knew a little more about the situation than they did, and I did not take their advice in desisting from this method of selling. I knew that the consumers were paying from 30 to 60 cents per pound for cluster raisins, for which I was getting only from 4 cents to 6 cents per pound, according to grades, of which there are four, at any packing house, packed in cartons, ready

for shipment. I also knew that the consumer was paying from 15 to 50 cents per pound for our peaches, prunes, and apricots, all of which I then produced, while I was only receiving from 2 to 7 cents per pound for this product.

I think I made about the quickest move and decision in this matter that I have ever made in my life, because my banker, while he was lenient, my mortgage was great, and my interest was not paid for two years—I had even to sign a note for the interest. I am telling these personal experiences in order that they may have a bearing on my terrible state of mind, and the situation in which I found myself as to my future success.

I went to San Francisco and there secured the assistance of Mr. S. F. Booth, who gave me letters of introduction to the railroad people of the country. Mr. Booth was then the general agent for the Union Pacific, and by securing this letter I got letters of introduction to the agents of each of the railroads from Mr. R. V. Holder of the Chicago & Northwestern, Mr. Staunton of the Chicago, Milwaukee & St. Paul, and Mr. Allen of the Rock Island, and other railroad men, over which railroads I had to handle my goods. These letters gave me really, I must say, preferred facilities, so to speak; not undue discrimination, but allowed me to put my car in yards and on switches upon which freight cars were not usually kept. This gave my car a preferred position in the towns in which I wished to operate. I then secured a quantity of 5-pound and 10-pound cartons, for cluster raisins, from a lithographing company in San Francisco lithographed in five colors of my own design and under my own brands. My slogan was, "Vineyard and orchard to home."

The first car of cluster raisins was ready for shipment on about the 3d day of November, 1912. I immediately started east to Boone, Iowa, where I had decided to make my first stop. I went in advance of the car some three or four days, and arrived at Boone, Iowa, on November 9, 1912. That town is a very resourceful little town, in which the principal occupations are farming and coal mining, and the Chicago & Northwestern Railroad shops are located at this point. It is a town of about 10,000 population. As I say, I arrived at Boone about the 9th of November, 1912, some three days before the arrival of my car, of which I received the date, because I received wires as to its location on the route. I started an advertising campaign, using all the newspapers in the town of Boone, Iowa, and told the consumers that I had been forced to come direct to them with my product; that I had not received cost of production for four years, and that they were paying from five to fifteen times for their product what I was receiving for mine in production; that I was going to sell them my product at one-half to one-third of the prices they would pay in their own town, and that I would even have to pay in my own town in California.

To divert from this story, gentlemen, I can take you to a place within one block of the headquarters of the California Associated Raisin Co., in Fresno, Calif., where the retailer is asking 50 to 60 cents a pound for cluster raisins, which is, in fact, the only eating raisin. And I am getting to-day from 9 to 10 cents for those hand-assorted layers, and then they have to be tied with baby ribbon and put in paper and lace covering and in cartons and boxes. As I say, I advertised in the newspapers and used slides in the moving picture shows, and advertised with a wagon on the street. I used other methods of advertising, telling the people that I was coming direct to them, the consumers, with a carload of raisins from my vineyards and packing plant in California; that I had been forced into this method of selling, coming direct to the consumer, because I could not get and had not received the cost of production for four or five years; that I was going to sell them my raisins at from one-half to one-third the price they were paying in their local stores.

On Monday noon, November 12, 1912, my car having arrived, at 1 o'clock it was spotted, and I proceeded to open it, having in the meantime secured the services of two or three local residents of the town to assist me in handling my product out to the people, which I hope I would do.

My first customers were six retail grocers. They were the first customers I had. When I saw them come I supposed they were customers, but I afterwards discovered their identity. While my men were opening the car, having some difficulty because of the jamming of the cases against the door, these men said, "Well, young man, what have you got here?" I replied, "I have a carload of raisins. I have the cluster raisin, the raisin on the stem, the eating raisin, so to speak."

They asked me, "How many pounds of these cluster raisins have you?" I replied, "Forty thousand pounds, 20 tons, one carload."

They immediately began to smile among themselves and shake their heads, and they said, "Forty thousand pounds! Why, young man, do you know you are the biggest fool that ever hit this town since we have been here?" I would like to put it in stronger words. "You can't sell these raisins in 50 years. You will go home broke. You will go home without your railroad fare. Do you know, young man, that this town does not consume more than 120 to 150 pounds of clusters in a whole year? We are the only grocers in this town handling raisins, and we can not sell in a whole year more than 20 pounds each." I replied, "I thought there was something the matter in California, gentlemen, with the marketing of my product, and that is my reason for coming—the fact that you did not sell more than 20 pounds each in a whole year. I do not know much about selling raisins direct to the consumer. In fact, I have never done it before, but I have followed the regular channels of trade for the past 12 years, as well as my parents had done for some 20 years before me. I will not go home without my railroad fare, because I have a round-trip ticket which I secured before leaving home. I may go broke, but I had just as soon go broke here in Boone as to go broke in California, because I am surely on the road to bankruptcy. Now, you gentlemen stick around and see how this goes."

By this time I could see the people coming from the town from several directions, as I had announced the prompt opening of my car at 1 o'clock, and by the time I had finished talking to these men there were some 25 or 30 people congregated at the car. I was facing the town and they were standing with their backs toward the town. By the time the door was opened, which was done with some difficulty, as I say, because of the jamming of the cases against the door, but when the door was opened I pulled out a 5-pound carton of cluster raisins and said, "Gentlemen I am the grower and packer of this product, and I have come direct to you because I can not get cost of production in California. I stopped off in Los Angeles last week to find out what the retailers were paying for my product, within 200 miles of my vineyard. I went to Goddard & Burles, one of the leading grocery stores in that town, and I was informed that their price for fancy cluster raisins, which was the medium grade, would cost me \$1.50 for a 5-pound package. I get from the jobber or wholesaler for this style and size and quality of package about 30 cents to 35 cents, and I can not afford to produce it for less than twice that amount."

I told the people who were there in front of me about what it cost me to produce the product, and what the store in Los Angeles wanted to charge me for it, within 200 miles of my ranch in the San Joaquin Valley. I told them that I had received from the jobber and wholesalers in the regular channels of trade about 30 or 40 cents for a package, and it was not the cost of production, and therefore I had decided to come direct to the consumer and sell them at about one-half of the price that he would sell it for in California, and still I was making some profit. I told them, "You can not eat potatoes at \$10 a bushel as food. Neither can you eat the raisin, or you are not attracted to the raisin as a food at such an exorbitant price as you have been forced to pay. I am going to sell you this 5-pound carton, such as you will have to pay \$1.50 for in California, and approximately that same price right here in your town. I am going to sell you this at 75 cents, and my 10-pound carton at \$1.25, and my 40-pound cases of 5 and 10 pound cartons at \$4.50. The more you buy, the cheaper they get, and the more you eat, the better you will like them."

The response was instantaneous and unanimous, and the answers were confusing. I heard these remarks, "I will take 5 pounds," "I will take 10 pounds and," "I will take 5," and "I will take 10," until at the end of the first 10 minutes I had sold 380 pounds. I sold that 380 pounds direct to the people. During that afternoon I sold 1,500 pounds, or three-fourths of a ton. The next day I sold a ton and a half, and the following day a ton and a quarter, and then one ton, and so on down until the last day of the week I sold half of a ton a day, before I moved on to the next town of Ames, Iowa. The grocers had previously remarked to me, "You can not sell these raisins in 50 years here." They said they could not sell them, and did not sell more than about 20 pounds in a season. I told them I knew there was something wrong with their method of selling raisins as I wanted them to, and therefore I had come direct to the consumer. I sold 5 tons of raisins in Boone, Iowa, a town of 10,000 population.

I next went on to Ames, Iowa, a college town of about 4,000 population, and likewise in a flourishing agricultural community. There I sold three-quarters of a ton the first afternoon, and the next day a ton and a half, and so on until

I had sold something like three tons and a half of raisins in Ames, Iowa. I then went on to other towns, like Marshalltown, Toledo, Cedar Rapids, Iowa City, Muscatine, and to Davenport, where I finished the car. I tried every town I stopped in along my route, testing out the capacity of those towns, and to see whether it would pay me to stop in the smaller villages.

After I had finished selling this carload of cluster raisins, which was my experimental car, I returned to California and packed four cars more of these raisins. In the meantime I had secured the services of some four men, who I called my car managers, and they, in the meantime, while I had gone to California, secured their crews, four men to each crew, and when I came back with the four cars, they helped me and we covered that season, that winter, every town in Iowa, and Minnesota, and a small portion of Illinois. These first four cars contained all kinds of dried fruits, which I then grew and packed, raisins, peaches, prunes, and apricots. I put them in nice lithographed boxes.

I also packed up four family assorted boxes. My \$1 package contained 6 pounds, a pound of each of fruit in lithographed cartons inside of a corrugated container. This was my most expensive package, on account of the manner in which the goods were packed. My 20-pound assorted cases, contained 3 and 4 pounds of each variety, and sold for \$3. My 35-pound case was suited to the city man, who preferred size of fruit as against quantity, that sold for \$5. I also put up a 40-pound case for \$5, which was based upon quantity, and my 85-pound case also went to the farmer, at \$10 each, containing 10 to 20 pounds of each kind of fruit. Besides my putting up the family assorted cases, I had each variety in 5, 10, 25, and 50 boxes, some 15 sizes of packages in all, to meet the fancy of most any kind of trade.

To condense the survey of my four years' distribution, I will say that my operations covering this period of time were such that my crews of men visited every town of any size and importance, as I have said, in Iowa, Minnesota, and Illinois, and the northern half of Indiana. Each of my crews kept a register, giving the name and address of every person who purchased a pound or more of my products and the price which they paid.

My advertising consisted of the use of all newspapers in each town, slides in the moving picture shows, hand bills in every house, and advertising wagons on the streets. I want to say in this connection that the newspapers of the towns in which I operated were probably my greatest factors in getting to the consumers and in contributing to the success of my selling campaign, because I consider them the molders of public opinion of the communities in which they exist, and I secured the cooperation, in most instances, of the newspapers, which was very valuable to me. By their wonderful support and editorials and the taking of written articles on the subject I was enabled to accomplish a feat of marketing and distribution which had so many times previously been of such short duration and unsuccessful.

My educational and advertising activities, however, consisted in appearing before some seven State universities and before public schools, high schools, commercial clubs, and commercial organizations like the Chicago Association of Commerce. These State universities and other schools were throughout these four States that I have named, and I talked upon raisins and dried fruits, their crating, curing, packing, and marketing, together with their food and medicinal properties. I also appeared before numerous women's clubs and other organizations. I talked before something like 150 of the women's clubs in and about Chicago at the request and with the cooperation of Mrs. Sherman, the president of the National Federation of Women's Clubs. I also talked before rotary clubs and other organizations interested in the great problem of food distribution. I also appeared before a number of advertising clubs, of some of which I was a member. I want to pay tribute to these factors that assisted me. They have championed my cause and came to the rescue in my effort to distribute my products to the housewives of this country, such as no other organization did.

In times when the oppression of the trade was felt by the tremendous pressure brought to bear upon every avenue and outlet for the distribution of my product in the towns and cities which I visited, and it seemed as though my efforts were going to fail, the women's clubs and the housewives' leagues were ever ready to champion my cause and open up the avenues of distribution. They rebelled against these efforts of the local channels of trade at a curbing and restraining of my marketing outlet, and I want to say they came valiantly to my rescue.

There were many instances of this where I was arrested for selling without a license, which I was exempt from, in every municipality and town and city, according to the civil code of the United States; and this fact being brought to the district attorneys, nevertheless I was prosecuted and persecuted in many instances for my efforts, the results of which I shall relate.

I started my third year's operations by establishing headquarters in Chicago, and there I carried on correspondence with some 50,000 people, the names of whom I had secured from the record books that were kept by my car managers. I circularized in advance of my cars, telling them my cars would be on hand on certain dates, and telling them to bring their friends in order to see these products and purchase them.

In Chicago I opened a store at 28 West Monroe Street, the only exclusive raisin and dried fruit store in the United States, and there I distributed some 55 or 60 tons direct to the consumer. I had seven clerks, girls, in attendance there in order to wait upon the crowds that came every day. These crowds thronged this store each day during its four months of operation. In this connection I do not want to be boastful, but this thing so took Chicago that Chief Healy had to detail special police there to keep the crowds passing along the street.

In this store I conducted cooking demonstrations, using the products which I handled, and had a liveryed chef in charge, who made and served to the people pastries, puddings, breads, and other products that were prepared each day from the recipes contained in my cookbook, which I published and distributed freely there.

I put out a 5-cent package there. In fact, I claim to be really the originator of this package which has since been taken up and adopted by the California Associated Raisin Co. Something over 900 stands handled my 5-cent package in Chicago, besides those of most of the large cities east of the Rocky Mountains. I also had a concession at the Cub's Ball Park, and most of the pleasure resorts in and about Chicago, while five or six of the largest circuses in the United States carried this little package of Gray's Nature's Candy, which was a copyright name.

I also put out a better class package called Gray's Nature's Candy de Luxe, which was also a copyrighted name, which was sold in some 30 of the finest hotels in Chicago and in the clubs such as the Chicago Athletic and the Union League Clubs. And under contract they carried my name upon their menus for one year, and advertised the package for me in that way. This de luxe package was also disposed of through the dining car service of two transcontinental railroads, as well as being handled by many of the hotels and clubs of outside cities.

I enumerate these personal experiences, only to show to what extent it was necessary for me to go to the trade at that time in order for me to dispose of my product so that I might have pay for my labor and receive a fair profit as a farmer for my operations in California.

This system of distribution was tedious. The hardships and opposition that were encountered stand out in my mind like nightmares of past experiences. It is needless for me to say that the experience was profitable, for the carloads of raisins that I had previously sold to the jobbers and wholesalers at a gross return of about \$1,200 gave me a gross return by this method of about \$5,000, which was about half what the consumer was paying through the regular channel and methods of distribution.

Judge HAINER. And the consumers got it at lower prices, did they?

Mr. GRAY. From one-half to one-third of what they would pay in their own towns, Judge Hainer.

I can not express to you fully my happiness on that first day, on November 12, 1912. It was the happiest day of my life. I felt like an unfettered slave that could breathe the free air of commercialism. I felt that I received the reward of my 12 years in producing, and had to some extent compensated my parents for their long years of anxiety, worry, and perplexity.

It will not be necessary to go into detail at this time in the matter of direct distribution, except to outline my activities to the extent to which I carried on this work. I handled my first car, as has been related, under my personal and active supervision, so that I might study the problems that came up from day to day: that of advertising, methods of selling, and also to get a personal touch with the consumer, and study his problem. My first carload was made up of cluster raisins entirely, because I knew that the cluster raisin was the hardest raisins we had to sell through the regular channels of trade out of

California. I decided that if I could make a success in selling clusters, I could likewise make a greater success in disposing of my other dried fruits in combinations.

The representatives of the shipping houses frequently came to me and said—as I shall use in quotation marks, "For God's sake, how can you sell to these people four or five tons of raisins? We can't sell 20 pounds a year." This will demonstrate to you that there was something faulty and had been something faulty for 40 years in distribution.

After handling my first car, as I have already related, I returned to California, and supervised the packing of five or six other cars, four of which I brought with me and turned them over to car managers and crews of men that had been previously arranged for. These car managers were expert salesmen and had had much experience in disposing of foodstuffs. These four crews of men covered, as I have said, every town of any consequence in Iowa and Minnesota during the remainder of that season, and a part of Illinois. During the following and subsequent years after that first year I covered every town in Iowa, Minnesota, Illinois and Indiana. These four States were the principal States of my operations. Those four States, during several years, bought my products direct from the car at one-half to one-third the price ordinarily charged in the local grocery stores.

I want to show by a few experiences that the trade obstructionists are not really attacking the so-called monopolies under consideration, but are ready to attack anyone as small as he may be who dares step out of that regular channel of trade in distribution, even because of necessity, and encroaches upon their fields of operation.

And I want to show you, gentlemen, that these gentlemen do fear legitimate competition, and they stand ready as a mighty force, 5,900 strong, and with their additional intrenchments of canners, packers, chain stores, and other sympathetic interests they number far in excess of this amount.

I further want to show you that there is no limit to the extent they will go to crush and ruin, if possible, other elements of distribution.

I want to show you, Mr. Chairman and gentlemen, and deal with some instances showing the compacts and collusions and demonstrate to you by reference to authentic records and citations of the restraints of trade engaged in by these men and their constituents who have so remarkably for the past ten days cluttered up the records of this case with wires, letters, and confirmations, disclaiming all such monopolistic tendencies. They have clothed themselves with their sanctimonious robes that would tend to make them appear as "wise as serpents and harmless as doves."

They loudly proclaim their love and protection for the "dear consumer" as though they were his guardian and protector. As a matter of fact, I want to show this committee that they are the greatest 100 per cent mutual admiration society that has ever appeared in Washington. I have become incensed, gentlemen of the committee, upon hearing this verbatim testimony of reiteration, that to me their argument and their self-praise has been so small that it would rattle in the hull of a mustard seed like a bird shot in a tin wash boiler.

The fruit packers on the coast, the brokers, the jobbers, wholesalers, and retailers never have been concerned in the success and welfare of the farmer, or else they would have all come together and said, "Now, gentlemen, let us get together and first establish the cost of production and upon that foundation we will establish our profits." The cry of oppression by the farmer and producer has been met with a sneer and a jeer and only until recent years has there been legislation affecting the interests of the farmer.

I want it plainly understood, and in order that there shall be no contradictions in the future, and in future arguments, I am not here to champion the cause of the packer, nor do I hold any brief for his past actions, if those actions have tended toward a monopoly detrimental to the interests of the producers and the consumers. My word arguments are directed toward the preserving of this great and wonderful piece of distributing machinery—this great economical machine, and these economical methods of distribution—the most efficient, most economical and truly competitive system that the world has ever known, as has been testified to by these gentlemen themselves in argument before this committee, and which I shall further prove by subsequent arguments. I am interested in the preserving of these great and efficient systems of distribution, as a vehicle for the distribution of the farmers' products.

Since the dried fruit interests by way of brokers and jobbers have come into this so prominently, I want to relate one experience and one instance, which is only one of similar instances and experiences that I have had in trading with these men over a period of years, previous to the organization of our co-operative association. And I shall deal particularly with the brokers at this particular time, which Mr. Dally represents at this conference.

In 1908, my raisin and dried fruit crop consisted of some 12 carloads. I had several times been to New York and other points assisting my brokers in the distribution to the wholesaler, although I paid my brokers 5 per cent commission. But I thought I would again make that trip, and I did so in the fall of that year. Wood & Stevens, of New York, were then my brokers, as they had been for some 12 years previous. I knew Mr. Charles Stevens very well on the coast, where he had resided during these many years while Mr. H. E. Wood operated and handled the eastern end of the business. During these many years of experience there had been built up a sort of friendship and confidence in this firm of brokers in New York, but it surely took me some 15 years to learn their ways of operation. I was then quite young and inexperienced in the methods of commercialism, and may have overlooked many of their injustices that had been done previously.

Mr. Wood sold two of these carloads of raisins and dried fruits during the fall of 1908 to a Mr. H. C. McKenzie, a broker of Philadelphia, and I believe two carloads were sold to William A. Higgins & Co., of New York.

At about this time my wife and I decided to go to Tennessee to spend the holidays and a winter's vacation, and because of the fact that I was going to be absent, I gave Mr. Wood authority, or indorsed the bills of lading on the remaining cars, so that they could be turned over at the time of purchase. They were turned over to Mr. Wood indorsed, so that at its appropriate time he could render the bills of lading.

A few days after my going South the remaining eight cars of fruit were sold, and previous to my going there were the amounts of something like \$4,000 or \$5,000 for the four cars that had been sold. I was after Mr. Wood continuously for these moneys, as it was then the custom to give one and a half per cent discount within 10 days, and if the cash was not so paid within 10 days, no discounts were allowed.

It is not my knowledge now as to whether it is the custom at this particular time, but it was at that time. The condition of affairs financially was then very poor, and upon my insistence for the money Mr. Wood would repeatedly tell me almost every morning: "You have got to wait; you have got to wait. These men must have time to arrange their business affairs so they can pay you, or pay you through me."

After I went south, and the remainder of the eight cars were sold, there was no money sent to me, as I say, during some two weeks. I finally decided to go back to New York and find out what had become of some \$20,000 that had been received for these 12 carloads of raisins. As I went through Philadelphia I stopped off to see Mr. H. C. McKenzie, and I have a very high regard for that gentleman, by the way, as to his honesty and integrity, and I admire him. I said: "Mr. McKenzie, you have held up my money for some six weeks." He said: "Why, I sent that money to New York before the bills of lading were turned over to me." I asked him then to give me a detailed account of just when he had sent this money, how much he sent, and covering the bills of lading by number.

I then went to New York and went to Mr. Higgins, whom I knew very well, and I also objected to the same restraining of my money, and he said: "Why, Gray, I turned this money over to Wood in most instances before I even got the bills of lading, and in the other instances immediately upon the surrender of the bills of lading." I asked him also to give me a statement of how much he had received and the dates of receiving the amounts.

The CHAIRMAN. Received, do you mean?

Mr. GRAY. Received the amounts. The dates of receiving the amounts. I then went in to Mr. Wood's office.

The CHAIRMAN. The broker?

Mr. GRAY. Mr. Wood, the broker; yes; of New York. He then told me that he had not received any money, and that I would have to wait. Now, this was some four or five weeks after I had originally sold some of these goods. I became quite vehement, because I was paying interest on a tremendous mortgage in California.

Mr. DAILY. One moment. May I ask the chair to rule on a point? Is it fair to cite as a trade practice an illustration which might be considered as—well, maybe a misdemeanor, or unfair, at least? It is at least an imputation on the character.

The CHAIRMAN. Well, if he can prove it.

Mr. GRAY. I mean it as both an imputation upon the character and a practice.

Mr. DAILY. You mean it is a general trade practice?

Mr. GRAY. I have not said so.

I asked Mr. Wood then to give me a statement of all the money he had received, if he had received any, the times that he received it, and a complete statement of account of my business. He immediately, seeing that I was attacking him in this way, went out then and hypothecated to Mr. Will Hills, jr., of New York, a carload of peaches which had not then been sold, and for which he held the bill of lading. These peaches had been put in storage in Beach's warehouse, on Beach Street, if I remember correctly, in New York. This, of course, was a criminal affair, and his restraining of my finances in this manner was a criminal affair in the State of New York.

I took the matter up with an attorney that I secured, Mr. Appling, and together we went to the district attorney's office, and the district attorney begged me to allow him to prosecute this man in New York, as he had gone contrary to the laws of that State, which in broad terms say that a broker shall not put to his own account the funds as received for his clients.

I was in New York, some 3,000 miles from my seat of operations, and it would have been impracticable for me to have entered a suit, and a tremendous expense would have been incurred by doing so, and the necessity, probably, of coming back to New York subsequently to fight the case. I decided that the best way out was to arbitrate the matter of the restraint of payment. I contended that inasmuch as an element of trade had kept my money beyond the 10-day period, that that element of trade, though he be my broker, should be deprived of the 1½ per cent discount for cash, and also interest beyond the 10-day period.

I might cite a trifling instance, also, when Mr. Wood, in making up the statement, had overcharged me some sixty or seventy dollars for freight on these two carloads that had been sent down to Philadelphia, and also had padded his statements with storage charges which never existed, and so forth and so on. These are minor, however, and did not amount to probably more than \$100 or \$110 at the time.

This thing kept me in New York for four months, at a heavy expense, with my family there. And when I started to ask Mr. Wood for him to make up a statement for me, he naturally grabbed everything I had in New York. Hypothecated my peaches, refused to surrender what money he had in the bank and placed to his credit and stood pat, so to speak.

I appealed to some friendly interest there in New York, and I will say that Mr. Higgins was very, very fair in this matter, although he did not, or could not, come out openly and declare himself. But the commercial interests of that city, the banks and other institutions, denounce this practice most vehemently.

Mr. Wood then demanded that in arbitration we both select the same arbitrator, and that man was W. L. Juhring, who has been in this conference for several days, of New York, a wholesaler, and manager, as I think I quote correctly, of R. C. Williams & Co.

Now, in fact, Mr. Wood went so far as to say that he would not arbitrate unless I accept Mr. Juhring as my arbitrator; that he had already accepted. I then threatened prosecution. Of course I knew I could not. I had no funds to prosecute anybody with; nor did I have at that time the inclination, really, in my mind. And upon my threatening prosecution he did condescend to allow me to have my own arbitrator in this matter, and I secured Mr. A. C. Worth, a wholesaler of apples, and dealer for many years in New York. And I want to surely pay tribute to this Mr. Worth—because he championed my cause against all the opposition of the wholesale jobbing and brokerage trade in New York, and I want to say that they practically ostracized him in that city because of his action in protecting a grower.

The arbitration was started. Mr. Worth and Mr. Juhring locked horns, of course, Mr. Worth contending for my position in the matter and Mr. Juhring for that of Mr. Wood. The principal point of argument was upon the 1½ per cent, that amounted to several hundred dollars. So they called in Mr. Pierce,

of Palmer & Pierce, also a jobber and wholesaler of New York City, and I was asked to be at a certain office at a certain time to receive the decision of these gentlemen.

I went there with all the intention of getting a square deal, and when these arbitrators came out of the conference, even Mr. Wood was with them, and I knew when I saw that gentleman that I would have no chance in equity. And so I was just one more added to the long list of those that had been plucked, for I received nothing. In fact, together with my expenses entailed, I experienced some \$4,000 loss.

It may have been perfectly proper for these gentlemen to decide against me in this matter as they did, but I thought I was going to get a square deal from at least such men as Mr. Juhring, Mr. Pierce, and others. But I am sorry to say that fate seemed to be against me. Not one of these channels of trade with which I had been dealing so long came openly to my rescue; nor did they champion my cause, with the exception of Mr. Higgins, of William A. Higgins & Co.

The shame of this transaction, however, was loudly proclaimed, as I have already stated, by other financial interests in New York.

This and other experiences has caused me to go direct to the consumer. Now if you can give me any other more plausible reason than that why I should seek other channels of trade, I would like to know what they are. I had not received the cost of production for long periods of time—consecutive years. Attempting to go through the channels of trade, and being robbed and jobbed. What other reasons? So I said: "Direct to the consumer for me," and direct I went.

I want now to state some of the experiences of the opposition of these lesser channels of trade who have so wonderfully represented themselves here by letters and wires covering this period in conference.

One of the principal points of attack in direct selling, which I have already related, the territory which I covered in this method of distribution, was for the retailers to immediately upon my appearance in town reduce the price on the products which I carried. I thwarted this effort, however, and soon got onto the trick by sending some one ahead, or going ahead myself and securing the prices that were asked by all the retailers in the different towns in which I expected to take my cars.

My diary, which I kept the first year, from time to time shows that there was undue discrimination on the part of the Leader Grocery Co., of Boone, Iowa. After I had been in town for three days prices were immediately cut, and they took much advertising space in the newspapers, reducing their prices by half on seeded raisins. Now I had no seeded raisins in my first car, as I have related to you; but the seeded raisin is a cheaper product, as far as selling to the consumer is concerned. The cluster raisin is sold at a much higher figure than the seeded raisin. So these retailers cut the price on seeded raisins—several of them—among them the Leader Grocery Co., and advertised their cut in price, so that the consumers sometimes would come down to me, and particularly those that were favorable to their own interests, and say, "Why, we can buy raisins up town cheaper than you are asking for yours here." So it was necessary for me to tell the 100 or 150 people that I had in front of my car that the seeded raisin was a cheaper product, was the cooking raisin, and not the eating raisin, and some argument was generally encountered out of this thing.

Mr. BREED. Was the Leader Grocery Co. a retailer or a wholesaler?

Mr. GRAY. A retailer. A large retailer. M. J. Riley is the manager of that concern in Boone, Iowa. So I was kind of perplexed over the situation and thought much over it.

Judge HAINER. That reduction occurred after you reached the town?

Mr. GRAY. It occurred three days after I reached town, after I reached Boone, Iowa; yes, sir. My advertisements and theirs will show that. So after thinking over the thing most all night I decided upon a plan of attack the next morning. I went into the Leader Grocery Co., and there first met Mr. Beach, who was the manager, so to speak, of the active operations of the store. I asked him if he had any raisins. He said, "Yes, we have some very fine seeded raisins, fancy and choice, 16-ounce and 11-ounce packages, respectively." I asked him to show me them, and he did, and they were of good quality. "What do you ask," I said, "for these raisins?" He said, "Well, we will sell these at \$1 a dozen; that is, 8½ cents a package. Those raisins cost him that in Des Moines, Iowa, as I did go down there and find them at C. C. Prouty's wholesale house.

The CHAIRMAN. What did they cost him?

Mr. GRAY. A little better than 8½ cents a package, or about 8½ cents a package, if my memory serves me right.

Judge HAINER. At Prouty's store in Des Moines?

Mr. GRAY. At Prouty's store in Des Moines. In other words, he could not have got them to Boone for 8½ cents a package and broke even. So I said, "How many cases have you got?" He rushed down to his cellar in great excitement, thinking he was just going to make a big sale. He said, "I have five cases of fancy, and three cases of choice." "Well," I said, "you will make a better price than that for me, won't you?"—there is a little Jew in me, I guess—"if you will make me a little better price than that I will take them all. I need just about that much." He looked at me in amazement. The first big raisin sale that he had made in his lifetime. So he started to make out the invoice, and I got out my check book, and as I started to write the name in my check of his store, to write that on my check, he said, "What are you, a hotel man?" And I interrupted by saying, "Pardon me, whom do I draw this check to?" He stated "F. J. Riley," and I started to write in the amount, and he said, "Well, what hotel are you at?" And I said, "The amount, how much?" I interrupted him. I didn't want to tell where I was really from, because he had not discovered my identity at this time. So by the time I got ready to write my name he said, "You are at the Hotel Holst?" I said, "I am at the Hotel Holst." That is where I was staying. He really supposing that I was a hotel man, and that I was buying so many raisins because I was a hotel man.

As I got to the door, "Oh, you are the man that has got the raisin car down there?" And I said, "Yes, sir. I will send a dray down here in about five minutes for those goods," and I was out on the street, and in a few minutes I had those raisins in my car, and then took much space in the newspapers and told them that fortunately I had secured some local seeded raisins in their town that had been previously advertised at ridiculously low prices to cut the price, or rather appear to cut the price on my product and that I would sell them for the same price that I had bought them, \$1 per dozen, or a little bit less than that rather.

Of course the Leader Grocery Co. could not at that time get any more raisins into town, because you know, as the gentlemen have testified, it takes two or three weeks for them to get their product from the wholesaler to the retailer. So I bested him, so to speak, in that arrangement, and completely sold out in the first three or four hours that I had those raisins in my car. I sold eight cases of raisins there in the first two or three hours, and they had not sold that many in years.

Another instance that I will relate in that town of undue discrimination is that of the intimidation of a Mr. Stanley, who is a drayman that handles the product of the retailer from the depot to his store on a tonnage or weight basis, I suppose, and had a flourishing business, so he told me, until I came to town. I secured his services in carrying my banners around town to advertise the fact that I was in town with my carload of raisins. I also secured his services to take from my car about 1 ton of raisins out onto the street for night sellers, as I sold one Saturday night, when there were thousands of people in town. I have his story for this—in fact I saw the retailers themselves who came to his truck or wagon and told him, "Stanley, if you don't take those banners off of your wagon and quit handling this man's product we will boycott you in drayage." So Mr. Stanley, being somewhat vehement, told them where they could go, and then did boycott him for the next two or three weeks that I know of, because I particularly went back to Boone, Iowa, to have a conversation with Mr. Stanley regarding this matter.

Another instance of opposition was that of J. J. Grove, of Ames, Iowa, who has a little store there and sells rasins and dried fruits, and according to the editors of the Book papers he never had advertised his product in 30 years previous to my coming to town. That is one thing; the newspapers appreciated my coming, because I had caused him to do some advertising.

And when I got there he got busy with his advertising department, and he also got busy with my product, for that gentleman, J. J. Grove, sent a boy down to my car, my carload, which was at the Chicago & North Western depot, and secured a 5-pound carton of cluster raisins, tore it all to pieces so it would look disheveled, sprinkled coffee dust over it so it would look like the worms had eaten it, and unfortunately for him, he had not ground his coffee quite fine enough.

Now, this story will be related by any resident, almost, of Ames, who lived there then, because it was a matter of general comment on his dastardly tactics, as they were carried on by Mr. Grove to run me out of business. I should have prosecuted him for such actions, but not being financially able, in a way, to stay there and prosecute, I did not do so.

On November 20, 1912, Mr. Grove wrote this advertisement, which was the first one he had put in in 30 years:

"Everybody is hungry for raisins"—and I read this from his advertisement as of that day—"Everybody is hungry for raisins, and we are prepared to satisfy that hungry feeling with new raisins of superior quality at very moderate prices. Fancy seeded raisins, 1 pound cartons, single carton, 10 cents"—previously, 15 cents, as my diary will show—"12 cartons \$1." The more you buy the cheaper they get, and the more you eat the better. "Fancy seedless raisins, 10 cents a pound, or 12 pounds for \$1." Now, I didn't have any fancy seeded, nor did I have any seedless at the time. I had the cluster raisins, which I was selling a 5-pound carton for 75 cents; 15 cents a pound; and a 10-pound carton for \$1.25; 12½ cents a pound; and a 45-pound case for \$11.25.

And I want to go back to Boone just a minute, as I have overlooked one important point. A man came to me there and said, "What is the smallest package you have got?" I said, "Why, a 5-pound carton." "My Lord," he said, "I never saw a 5-pound carton of raisins in my life." I said, "You are going to see more of them in this town than you have ever seen in your life." I said, "How many children have you got?" He said, "I have seven children and my wife and myself." I said, "Nine of you, and never had 5 pounds of raisins in your house?" He said, "No." I said, "Analyze it, and I am here to analyze it for you as a grower in California, that is the reason why I could not get cost of production, it is that you have never had a 5-pound carton of cluster raisins in your house.

"Here is a pound of raisins in my two hands," holding a double handful of raisins in my hands. "If you used 1 pound a month, it wouldn't last each of you two weeks." "Well," he said, "I will try one of those 5-pound cartons." He took it and went home, I suppose, for he came back in about an hour and a half, when I had, I should judge, 125 or 150 people there in front of the car, and said, as he wedged himself up through the crowd and got up under my nose, "Do you remember me?" And I said, "Yes, I sure do; because you are the man that has seven children, your wife, and yourself, and had never seen a 5-pound carton of cluster raisins in your home." I knew he was either going to do something to me or buy some more. So I said, "How did you like it?" rather timidly. And he said, "Well, my kids tore that to pieces in about five minutes." He said, "I want a 40-pound case." And I sold, gentlemen—I am going back now to review my Boone experience again—I sold forty 40-pound cases, as my invoices will show, to the customers of Boone, Iowa, housewives and husbands, in the week that I sold in that town, as a part of the 5 tons that I sold in that town in one week, which was more than all the retailers had sold there in 50 years before. Instead of my not being able to sell the car in 50 years I sold more than they had ever sold in 50 years in one week.

Now, coming back again to Ames, Iowa. To react against these tactics of J. J. Grove I immediately hired a dray, and brought a ton of raisins every day and lodged myself down in front and across the street from J. J. Grove's store. I have pictures and photographs of his store and my dray right close by.

Judge HAINER. I have been there.

Mr. GRAY. Well, it is just across the corner, right across the street down there. And there I sold every day, even after he telephoned the ladies, many of them—I will say dozens of them, in Ames, Iowa, such things as this—I was not going to bring this in, but I am going to, and here is my diary right here. The nice have tried to digest this diary, but I guess it became so noxious to them, they could not consume it. I am glad they didn't. I have got it preserved. Mr. Grove, as I said, phoned to the ladies of that town of Ames and told them that my raisins were wormy and of inferior quality; that I was pretending that I was coming from California as a producer.

To react against his advertising, which he had taken as a first instance in 30 years, I came back the next morning with a whole quarter of a page, and I said in big 200-point type:

"Yes; 'everybody is hungry for raisins,' and always have been, but you have been unable to satisfy that craving appetite with new raisins of superior quality at very moderate prices until the raisin car came to town. Nuf Sed."

Then I said, "I grow, pack, and sell my raisins direct from my vineyard to you. That is why you can and always will be able to buy at moderate prices. California fruit growers are being forced to sell to-day below cost of production. You have been forced to buy at 5 to 15 times that price, and we hear about the high cost of living. I want you to make the raisin, nature's own sweet, an everyday article of diet. At my prices they are cheaper than any food you are eating."

I will not say that every retailer followed these tactics. No; not at all. There was one retailer in Ames, Iowa, who really did appreciate my situation and sympathized with my effort to come direct to the consumer, which was my only source of outlet, and that was a Mr. Valentine, who some 10 days after I had been in Ames met me on the street one day and said, "Why, Gray, where have you gone to? I surely want to thank you for your coming to my town." This is quotations, as is shown by my diary. "For I have sold more raisins since you left Ames than I have ever sold in six months previous. I have completely emptied my shelves, and have had to order new stock. Next time you come to this town, I want you to move right into the front of my store, you can have the whole front and the use of my clerks. You sure have taught me a lesson in merchandising."

This man was some merchant, and I have had more respect for the Jews ever since than ever before. He was not afraid of competition, he was not afraid of monopolies. He was not afraid that some one was going to get a preferred right over him. Rather, if there was competition, if there was going to be monopolies, and if some one was going to have a preferred right in marketing, he surely showed a spirit of cooperating with that thing.

Now I want to refer back for the record, to the instance that I related about Wood & Stevens in New York as brokers for me, and Mr. Juhring's connection in that matter.

Judge HAINER. Mr. Gray. I don't know whether you ought to go into that. Do you care to hear it?

The CHAIRMAN. No.

Judge HAINER. I would rather have you go to the real issue, Mr. Gray.

Mr. GRAY. All right. I want to relate a few experiences here now that I consider very pertinent.

Judge HAINER. Unless you wanted to correct something.

Mr. GRAY. Well, it was to correct an impression, Judge Hainer.

Judge HAINER. Very well, I think that would be proper.

Mr. GRAY. I want to say this for the benefit of Mr. Juhring—and he was here the other day—that I think of his own volition, had he not been intimidated, so to speak, by Mr. Wood, of Wood & Stevens, and had not pressure been brought to bear by the elements of trade of New York, he would have undoubtedly been inclined to give me a favorable and more just decision in my arbitration, which I thought was due me. I am not telling this thing about Mr. Juhring because he is not here, because I told Mr. Juhring the other day, I said, "You are the man that made me lose \$4,000 in New York," and I told him how, and I recalled to his memory the instance, and he still does not admit that I am entitled to my 1½ per cent discount for cash. So I will drop the matter there, so far as I am concerned.

I had one further instance of pressure brought to bear in Cedar Rapids, Iowa, and I want to say that there I made a particular campaign of advertising in every manner possible. I gave samples away to school children, thousands of them, and as a remuneration for their carrying a little yellow tag on their coat lapel, telling that I was in town with my raisin car, and so effective was this advertising that I tested it out by going out on the street and asking some 25 men that I met, individually, each one of them, if they knew of a carload of raisins being in their town and somebody pretending they were from California and had produced the product, and they would invariably answer: "Why, yes, he is right down here by the Union Depot near the high school. He has big banners all over his car there," and I would say, "Is the product fresh and nice, or is it some flimflam that is being tried to be pulled on the public?" "Why no," he would say, "my wife bought some of the goods last night and at about one-half to one-third of the price that they ask us for it uptown, at the uptown retail stores," and out of some 25 or 30 people that I spoke to on the street I did not meet but one or two that had not heard of my advertising.

Naturally I did stir up the antagonism of the trade of that town, retailers as well as wholesalers, for I had shipped my car there on the North Western, and it was spotted at a place that was not advantageous for my getting di-

rectly to the people. I had to contend in many instances with the team tracks being at considerable distance from the center of the town, and I had to make transfers to other roads, and I requested of Mr. Fuller of the Chicago, Rock Island & Pacific that he take a diversion of my car to his tracks, so I could put it down right near the high school at the Union depot in Cedar Rapids there where it would be immediately in the center of town.

He replied, as my diary shows, "That this could not be done, as their company could not permit their sidetracks to be used for unloading purposes when goods had been shipping over competing roads." I immediately looked up the interstate traffic rules on this, and found that if I wanted to pay a diversion charge, which was excessive—rather excessive—the road would have to take my car on their line. So I demanded this of Mr. Fuller, that he take my car, and I would have to pay, I think, \$5 or \$10 for diversion charge, which he might consider as excessive, as the usual diversion was only \$1 or \$1.50. I told him that I had been a consistent patron of his company, and that I wished to have him extend me this favor.

He again replied that he thought it quite impossible, but that he would pass the matter up to Mr. Merrill, the division superintendent at that place. I thereupon called upon Mr. Merrill and laid the matter before him. I told him that he might think it unreasonable for me to ask for a diversion to his road because I had not shipped in over his line, but on account of towns I had wished to visit not being on his road, it had been impossible to ship on his line, but that if he would afford this privilege of diversion I would from this place ship over his road to other towns in the State, and as I had been a liberal patron of his road in the past I told him that I thought he should give me this request.

He stated that the asking of this privilege had put him in an embarrassing position, as the retail and wholesale organizations of the city would make complaint for his affording me special privilege, but that if I wished to take this matter up with the Commercial Club of the city, which is, of course, made up of the retailers and wholesalers and other business men of the city, and if I would get a letter from them requesting that he make such a disposition of my car he would immediately do so. Otherwise he could not see his way clear to antagonize local interests. Now, that is the purport of the conversation that I had with this gentleman regarding this matter at that time, and as I wrote this dairy up from day to day as these instances transpired.

I immediately then took the matter up with Mr. Booth, of the Union Pacific, as this particular gentleman was considered then as one of the big men in railroad affairs, and I disregarded his request that I take the matter up with the Commercial Club, as I felt and knew that I would get no redress from that source, and I was immediately given the privilege of using this track down near the Union Depot and in the middle of town.

And one of the railroad men came down and complimented the pressure which was brought to bear through Mr. Booth in this regard. It was a perfectly legitimate transaction, and was a privilege that was afforded me by the rules and regulations of traffic.

I will cite another instance of Cedar Falls, that of L. H. Keeps. It was usually my custom in going into a town to first go to the mayor of the city and make friends with him, if he had not been a wholesale grocer or broker, if it was possible to make friends with him, and then to the banks and the newspapers and others that I wish to be friendly to my enterprise. The mayor of this particular town of Cedar Falls was a very reasonable individual, and he argued with me: "Why is it that you come into this town and compete with our local retailers in the disposition of your goods?" I then recited the reasons that I have previously given in my testimony, that I could not get cost of production by any other method. "Well," he said, "would you, if there are grocers here that will take your goods into their stores, put those goods into their stores and sell them through their stores, giving them a reasonable profit?" I said, "I sure will," and I did that very thing in Mr. Keeps's store—L. H. Keeps, of Cedar Falls, Iowa.

Now, Mr. Keeps was a very strong-minded individual, and when he set his mind to do anything he generally did it. I had not been in his store more than three days when I knew of a representative of wholesale jobbers in Des Moines being in town, and they were working among all the retailers in town to put a boycott on L. H. Keeps, cut all the prices on all kinds of raisins, and run me out of business. I never stayed in a town more than a week—six or seven days—and this thing was actually and actively carried out in Cedar Falls,

Iowa, and was an instance that was freely commented on by the consumers of that city.

The matter was taken up before the commercial organization at a banquet at which Mr. Keeps was present, and I was there with him as his guest, and they highly denounced me in coming into their town, even selling out of a retail store. I could not do that, even. And expressions were made at that banquet that would have tended to intimidate Mr. Keeps. But he very emphatically told them that he was running his own business, and that he would do as he saw fit in disposing of any product.

But their activity was further expressed by the fact that about three days after I came to town every retail store in that town was loaded up with raisins, as many as 100 cases in a store, and they cut the price down to about—in fact in instances, according to the best of my knowledge now, of less than the wholesale price on seeded raisins. And fortunately my activities in that town were about at an end, and I went away and left them with all those raisins on their hands. I don't know whether they have sold them or not.

Another instance I will cite of Mankato, Minn. Mr. George Hetler was my car manager in that town. I was in Chicago at the time he opened his car there, and he wired me, saying that the sheriff had come down and put padlocks on his car and demanded from him a license for the selling of the product. This license was prohibitive—\$150. Some days I did not sell more than probably \$150 or \$200 worth of produce, so that would have been unreasonable.

I went to the district attorney, who, unfortunately had been—I can look his name up here for the record, if it is necessary—a wholesale grocer, or had worked in a wholesale grocery, and whose mind was more or less warped against my interests—of course, naturally so. And I argued with him, gave him the citations as were expressed in his civil code, as I have already recited to you, and my diary shows this comment on this matter [reading]: "The next morning the district attorney was very decided and emphatic in his decision and would not consider any phase of the proposition that I might present to him, and I was met with the statement that I had already transgressed the law for which he could have me arrested"—because I had sold some little goods, about three or four hours' work; sold some little goods—"but if I wished to immediately leave town with my car, he would forget the occurrence and do nothing in the matter. During this conversation I was shown the law of the State wherein a license of \$150 is required of a transient merchant per year"—which meant per week for me—"for doing business in any county. I argued the point that I was not a transient merchant, but with no avail, whereupon the above threat was made. I told the district attorney that I would give him my decision in the matter later.

"I then went up on the street and visited four of the leading grocers of the city, laying the proposition before them that I was a grower of my own product"—and by the way, I carried letters of identification from my district attorney in Kings County, the superior judge of my county, and from three or four of the banks of my county, stating that I had been a grower all my life, was born in the industry, and that I was actually selling my own product—"and being unable to get cost of production in California was forced to come direct to the consumer; that I wished to cooperate with them, place my goods in their store, pay all of the expenses of advertising and selling, and give them 10 per cent of the gross proceeds. I was flatly turned down on this proposition by all of these grocers, with the exception of one, Otto Bros., who were about persuaded to take me in when, after some consideration they thought they had better ring up the district attorney to see if they could be in any way legally involved. The district attorney immediately gave them the decision that he would not permit of such a thing, as it would not be justice to his brother groccerymen."

Now, these are my own comments on this matter, written at that time, while these conversations were fresh upon my mind. [Continuing reading from diary:]

"It was then that I found out that the night previous the retail association of the city had met and calling the district attorney into their presence had ordered him to take this step of chasing me out of town. I immediately grasped the weak point that the district attorney had taken and consulted Mr. Wilson, a prominent attorney of the city, telling him that I knew there must be an exemption of this law for a grower of his own products, so that he might sell without being molested. Upon looking through the laws of the State, and directly under the law which the district attorney had shown me, there was an exemption for those who conduct sheriffs' sales, bankrupt sales, for traveling

men, and for those who grow the products of their own farm and garden. To these, this law was of no effect. I immediately went to the district attorney's office, and as I entered the door he sarcastically asked me if I had yet obtained my license. I answered that I had not nor either was I going to. Whereupon I asked him if he would object to looking at some citations of the law as I had found him wrong in his decision. He gruffly replied that he would not object, and after being shown the exception that followed the law, he remarked that he had not noticed that, and immediately followed it by saying that this exception did not affect those who grew their products without the State. I replied that the exemption did not say that the products must be grown within the State, therefore I would come under the exemption."

Judge HAINER. You surely could not come under interstate commerce.

Mr. GRAY. Well, the interstate laws also, Judge Hainer, reiterate these things as a protection to the farmer and his rights to distribute. [Continuing reading from diary:]

"He then answered that he guessed that I would have to go ahead and sell, but if 'they' (meaning, undoubtedly, the local retailers) would order to have me arrested he would have to carry out the law in the matter, and attempt to enforce this law that did not apply to me.

"This final decision was rendered about 4 o'clock in the afternoon, and all during this day Mr. Hetler had the car open and had put the goods on display. People were coming continuously trying to buy our raisins and dried fruit, but were refused by Mr. Hetler, stating that the sheriff had ordered him not to sell, the district attorney requiring a license of \$150. Farmers who had driven in miles from the country begged for the goods, asking Mr. Hetler to hide some cases of goods under the car and they would steal them or do anything in order to get them, as they had come in long distances in answer to our advertisements and did not wish to return without purchasing some of these fine goods. The people became very much enraged during the day and were watching the situation with keen interest.

"Upon receiving orders from the district attorney to sell I immediately went upon the street and hired about 20 newsboys, and I gave them a pound package each to go out and holler 'eat raisins.'"

Judge HAINER. You should have hired a lawyer the first thing.

Mr. GRAY. Well, I did. I had Mr. Wilson. And I hired them to go out on the street and holler in a bunch "Eat raisins. One carload at the Union Depot." And the response was very satisfactory. I sold more raisins from 3 o'clock that afternoon until 6 than I had sold in any day previous, and I really at that time made up my mind that I would like to pay some of these fellows if they would have me arrested.

Judge HAINER. Well, did they arrest you?

Mr. GRAY. They did actually—we settled this thing before the judge, and I argued my case before the judge and told him that I was absolutely at the mercy of the public as a producer and as a distributor. And then I had my car manager previously take these boys up there on the hill, as Mankato is one long town, just one street about a mile long, and the river is on one side and the bluff on the other, and when these boys started down through town business was stopped.

Mr. BREED. Then, when I asked you in the early part of the proceeding if you were a lawyer, that is the reason, I suppose, you hesitated, because you were confused?

Mr. GRAY. I learned considerably, Mr. Breed, about law.

I am going to recite now one instance which is very vividly on my mind of compact and collusion and the restraint of trade and the setting up of a monopoly by the wholesalers, jobbers, brokers, and retailers of Minneapolis, Minn.

I went into Minneapolis about the first of May, 1913, as I then was finishing up my season's operations and had just two cars left. I went to Mr. Clifford, of the Minneapolis Journal, and said as usual: "Mr. Clifford, I would like to take out some advertising in your paper." And he said "You are selling something?" I said "Yes." He said "You are advertising something?" I said "Yes, I am advertising and selling raisins and dried fruits direct from my vineyards and orchards in California to the consumers." He said "Do you sell out of the retail stores?" I said "No." I says "I sell right out of my car down at, as it will be next Monday morning, Third Avenue and Fifth Street. I have already ordered it into the city down near the bridge."

I also have photographs of all of these cars, if you wish to review them. He said in reply to my answer, "Well, we can not take your advertising." "Well," I said, "for what reason, Mr. Clifford?" "We can not allow"—and here are his exact words, "We can not allow any person or concern to come into this city and compete in price or quality with our local retailers." My diary will bear out this quotation.

I said "Mr. Clifford, that is a wonderful statement from a gentleman like you. You conduct undoubtedly the largest newspaper in the Northwest, the Minneapolis Journal. You decry the trusts every day in the newspapers, and you build one so consistently in your office by such actions." "Can't help it, Gray; we can not allow such trading in our city." "Thank you sir," I said. "Good day."

I then went down just three doors from his office to the Minneapolis Tribune, which is on the same street and on the same side of the street, and there I went to Mr. Gerald Pierce, the advertising manager of the Minneapolis Tribune, and again I requested that I be allowed to advertise in his paper. He said—and he was a big, wholesome, jovial sort of a fellow—"Sure, Gray. Write out your copy." I said "Hold on, Mr. Pierce, you are too fast for me. I have just had such an experience," and I related to him the opposition that I had met from Mr. Clifford. And to use his own phrasing, he said, "Well, I will tell them to go to hell if they come around me." "Then, Mr. Pierce," I said, "I thank you certainly for your championing my cause in this matter." And as I had previously explained to him in the conversation, that this was necessary, not as an opposition to the elements of trade through which I had so long dealt, but as a matter of necessity, and with me a survival of the fittest.

I gave him copy for Sunday morning's paper, about the 1st of May in 1913. If I remember correctly around the 7th or 8th of that month.

Monday morning our trade was good. Tuesday was fair, and Wednesday afternoon about 4 o'clock I put in another advertisement. And as he met me in the outer office he said "Gray, they are about to get my scalp, but give them hell." I says "Thank you." Now you ladies will pardon the expression. I do not mean to be rude this way, but I must give the quotations. So I gave the foreman my copy, a four-column ad. I was told by him that I could receive proofs about 9 o'clock that evening, and I came back about 9 o'clock to get proof. And there was a beautiful set-up, 200 points "Eat Gray's raisins" right across the top. "But," he said as he handed it to me, "This ad has been ordered out." I said "By whom." "Well," he said, "by Mr. Pierce." "Why," I said, "that is very peculiar. I just saw Mr. Pierce this afternoon at 4 o'clock when I gave you the copy, and he said for me to go ahead and put it in." "Well, Gray, he just rang up a little while ago and told me not to run the copy to-night. He said he wanted you to call him on the phone."

So I went to the telephone and I said, "Mr. Pierce, why is it that you can not take my copy?" And he said "Well, Gray," he says, "they tell me that you are not doing it down there just right. They sent a boy down there who got some of your goods—and I can not talk over the 'phone—but I can not take that copy to-night. I want you to come up about 9 o'clock in the morning and we will talk it over. I am sorry," he said, "that we can not take that ad to-night for to-morrow morning's paper."

I spent a very restless night, for I didn't know what had been revealed to me; I didn't know from just what point of attack I was going to be attacked. I have had, as I have related, them sprinkle coffee dust over my raisins, and had other very improper and unfair things against me. So I thought that inasmuch as they had sent down for a sample of my raisins that they may have done something to these goods to show them to be unsanitary and of bad quality.

In the morning I got up about 7 o'clock, and went to four of the leading stores of Minneapolis: Donaldson's Yerxe's, Bracketts and one other store which I do not remember just now, and took samples from them all of the products that I handled. I had some 15 or 20 samples altogether, and came up to Mr. Pierce's office with that quantity of samples. Pierce was mad that morning. He had been worked on in some way during the night, and he said: "You are charging these people a dollar and a half for the carton that you advertise that you will sell for a dollar and twenty-five cents. That is unfair, and we are not going to be a party to such advertising, and misrepresentation. They sent a boy down who bought a package from you, and he says he paid a dollar and a half." Of course I then knew who the "they" was.

I answered by saying "Mr. Pierce, I have no argument to present, other than that I keep a register of my cars. All of my crews keep a register recording the name of every person that buys a pound or more, what they buy, and the price they pay for these products. I will allow you now to send your boy down to my car, and give you written authority to bring that record up here, and if you will find one person that has paid \$1.50 for a ten-pound carton of cluster raisins I will write you out a check for a thousand dollars, and there are some 600 names on my register already for the first three days' work."

This, of course, was convincing argument to him, and he had no further reference to it. But he said, "Well, Gray, I might as well be plain with you and get down to facts. A committee of five, representing the wholesalers, brokers and jobbers of this city waited upon me last night and said: 'Now, Pierce, we told you Monday that we were not going to stand for this, and this is our ultimatum. If you take that copy that Gray gave you at 4 o'clock this afternoon'—indicating that they had somebody watching me—'every wholesaler, jobber and retailer in the city will boycott you tomorrow.' Now, Gray, I told you I would stand behind you and by the Gods I will, but it is going to cost us \$6,000 a day to do it.' And I says, 'Mr. Pierce, I will never ask you to make that sacrifice. You go ahead, conduct your paper, and I will conduct my selling.'"

The next day a wholesaler came to my car where some 40 to 50 people were there congregated, buying and listening to my talk that I frequently, and in fact continuously made at the car, giving them a little idea of our production, propagation, how we start our vineyards and orchards from the pits and cuttings of the trees and vines, and some idea of the production and manufacturing of our products, and their food values, nutritive values, and while I was there addressing these people—I have got this gentleman's name in my record, but I am sure it was the same gentleman who viciously attacked me in conversation afterwards—that of George Newell, wholesale grocery of Minneapolis. I want to correct the record, however, or rather insist in the record, that I may be mistaken about this man's name. He told me before this audience that I ought to be tarred and feathered and run out of town for thus attempting to disturb the channels of trade of that great city of Minneapolis. Of course I turned upon him and told him some few things regarding production and distribution that undoubtedly he had not thought of, and the crowd jeered and laughed at him and went away, because they were naturally there in my interest as consumers.

Mr. Pierce, however—going back to the newspaper conversation—told me that he would give me every assistance, morally, that he could for the disposing of my goods.

I then was in a quandary to know just what to do, because in a large city like Minneapolis it is hard to let the people know where you are unless you have the advantage of newspaper advertising, which covers so well the territory. I, however, rented a store on Nicollet Avenue—I don't know just exactly the location, but I have it here in my record. However, that is immaterial. And I also opened another store on Hennipin Avenue, 417½ I think it is. I am sure that is the number, but I won't take time to refer to the record. The first store I opened I had to move twice, because of pressure being brought to bear—I know it—as a consequent fact on the owner of that property, because I was a disturber of that channel of trade, and naturally should be made to move.

The other store on Hennipin Avenue moved once. The owners of the property had leased me their stores as temporary locations, pending permanent leases. The first store I was not in more than four days until I was told I would have to move, and during my six weeks' stay in Minneapolis that store was not even swept out, although they had told me that they had rented it.

A part of my equipment of this campaign, together with other advertising facilities, was banners which were put up on wagons, express wagons secured locally in each town, that went about the city and told the people where my cars were located. I have a picture of one there that will give you an idea of it.

My advertising being cut off, it was necessary to put this wagon on the street and tell the people that my car was located at Third Avenue and Fifth Street. This was done. It had not been upon the street more than a day until the chief of police called me up and told me that I would have to take the wagon off the street. I insisted, however, that I should surely be allowed delivery wagon; that meat packers and milk dealers were allowed delivery wagons, and grocers had great big display advertisements over their canopies, and because

I had previously made a friendship with the chief of police he said, "Well, will you cut down your banners a little bit, and put a package or two in there, and have it addressed to somebody down town, and that will be all right, and I will see that the boys don't disturb you." And I did have to cut down the size of my banners a little bit that went about town telling where my car was located.

I then made an appeal to the women's clubs as an outlet of distribution, and met Mrs. Della Armstrong, the editor of the Market Basket, the women's club organ of Minneapolis. I wrote several articles for that magazine. And she introduced me to the president of some 40 or 50 women's clubs in Minneapolis and in St. Paul, before which I spoke upon the subject most interesting to me, that of marketing and production. These women surely championed my cause and came to the rescue, so that eventually I did sell out. But really that enterprise was carried on at a loss.

I had previously told Mr. Clifford that I was not through with him; that I was going to bring the matter to the attention of the Post Office Department, for I had been told by Mr. Pierce that I had cause for action, because the Post Office Rules and Regulations then read—but I believe not so now—that "no newspaper or periodical will be taken through the mails that discriminates against advertisers."

I went to Mr. Fay, the postmaster at Minneapolis, and he read me this rule and regulation, in fact gave me a copy of it. But he referred me to Mr. Haupt, the attorney general of the State of Minnesota, at St. Paul. I had an interview with Mr. Haupt, explaining to him at some length my predicament, and he said, "I know, Gray, they have surely got you in a hole, and I sure would like to do something to get at these fellows who are all the time trying to disturb distribution, but some way a newspaper is a quasi-public utility." That was a new phrase entirely to me in those days, but I committed it to memory, and I so relate it. "I think you had better take the matter up with Postmaster General Burleson at Washington. You write him at length about this matter and tell him that I told you to write to him. Lay before him detailed conversation regarding this matter, and I am sure you will get some action, for this is a matter that the Post Office Department should handle."

I did write something like a three-page letter to Postmaster General Burleson, and about six months afterwards, when I returned to California, I got a letter from Postmaster General Burleson saying that he was very sorry—saying in substance, that he was very sorry, but this was a matter for the legal department of the Government to handle. In other words, he passed the buck. Of course, I carried the proposition no further, because I felt that it would almost be impossible to get redress.

I won't go on and recite little instances of this Minneapolis experience, because they are not pertinent to the question exactly, but I want to tell you one instance of others against which there was discrimination, and that is the case of Gamble, Robinson.

The CHAIRMAN. Where is that, Minneapolis?

Mr. GRAY. Minneapolis. Gamble, Robinson was a wholesaler of fruits and vegetables, and belonged, if my memory serves me right, to the Wholesale Jobbers' Association of that city. This instance and this history was related to me by a prominent broker of Minneapolis, whose name I would not wish to give at this particular time.

Mr. BREED. He is not a wholesale grocer, is he Mr. Gray?

Mr. GRAY. He is a broker.

Mr. BREED. Gamble, Robinson?

Mr. GRAY. Gamble, Robinson, if my memory serves me right, was a wholesaler of fruits and vegetables only, and no other products.

Mr. BREED. Well, they are not usually members of wholesale grocers' associations.

Mr. GRAY. Well, I may be wrong. That is immaterial anyway. This broker told me, he said, "Gray, they have certainly treated you just like they have treated one of our wholesalers in this town. Gamble, Robinson has been chafing at the bit for a year and a half to two years trying to handle sugar and canned goods. They have had some experiences, and you have had some experiences, and I am going to get you fellows together. Will you see Mr. Gamble or Mr. Robinson to-night at your hotel?" I said, "Sure, I will be pleased to, and send him down."

Mr. Gamble did come down, and we talked over the matter at some length, and he related his experiences where he had been trying to sell canned goods

and sugar. They, being vendors of fruits and vegetables, would buy a carload of peaches from California and, wanting to distribute 50 cases, we will say, out to a north-side greener, and with that 50 cases of peaches wanted to carry up on the same delivery three or four sacks of sugar to that retailer, and possibly some canned goods to that retailer. I am trying to give his conversation as he explained his situation to me.

But the wholesale jobbers of the city of Minneapolis said: "No, Gamble, Robinson, you can not handle sugar nor canned goods. If you handle these products we will put you out of business."

Now, I can see that this was an economical method of distribution to these gentlemen and, gentlemen of the committee, these gentlemen who have so wonderfully represented themselves here before you did not want an economical method of distribution to the retail trade and, consequently, to the consumer. They wanted two trucks to go out there, one with peaches and one with sugar.

Now, these gentlemen claimed they did not make anything on sugar. They must have lost on the delivery.

Mr. Gamble said, "What would you do, Gray?" I said, "I will tell you what I would do, and I would start in to-morrow morning at 8 o'clock. I would take the district attorney of this county with me, too, and I would say, 'All right, you gentlemen put down here now what can I handle and what can't I handle.' And from that evidence you will have proof as to a compact and collusion and violation of the Sherman antitrust law and restraint of trade before the Federal Government." Mr. Gamble did this very thing, so I was afterwards told, and a letter was written to me in substance that Mr. Gamble did do this very thing the next day, and kept it up for three or four days. And then the Wholesale Jobbers' Association of Minneapolis disbanded because of a fear of Federal investigation. I do not know whether they have revived since or not. I suppose they have, from all the activities that have been carried on in this conference.

I will recite again that I put a car into St. Paul about two weeks after I had gone into Minneapolis. This car was under the direction, as manager, of Dr. Eli Browning, of Iowa City, Iowa, a very thoroughly efficient salesman—a competent man in the handling of products. About the middle of the afternoon of one day a few days after he had been in St. Paul, as the car was located just opposite the Chicago, Milwaukee & St. Paul depot, police officers came down, accompanied by three or four retailers and wholesalers of that city. My diary shows this just as I am giving it, and I won't read it, because I am going to jump over much in there. And the policeman says, "What are you doing here selling on the street?" Mr. Browning told the policeman that I was the producer of this product and that he had been hired by wage to sell them.

JUDGE HAINER. Was this carload of raisins shipped from California?

MR. GRAY. Yes, sir, direct from my vineyards and orchards and packing plant.

JUDGE HAINER. To Iowa City, Iowa?

MR. GRAY. To St. Paul, Minn., this time. Mr. Browning lived at Iowa City, Iowa. And the policeman said, "Well, you had better come and go with me, unless you have got a license." Dr. Browning told him that we were exempt—that I was exempt from a license, because I grew and had credentials to show that I produced these products. "Well, it don't make any difference," the policeman said, "you had better come with me anyway." And there was some comment by the wholesalers and retailers who accompanied this policeman. Doctor Browning was out loud when he said anything; he did not speak under his breath at all; so all the way up the street as this policeman took him he was talking loud and making a big stir and fuss and denouncing the methods of the policeman, and denouncing the retailers and grocers; that it was a shame that a man could not come direct to the consumer when he couldn't get cost of production at home, and in fact he made so much noise that the policeman took him into a near-by drug store to get away from the crowd, because there had some crowd accumulated.

St. Paul, in that particular district where I was, there was a lower class of people, so to speak, and more or less socialistic, and the crowd denounced surely the tactics in very loud terms, and some of them wanted even to fight because this man had been so treated. Padlocks were put upon the cars, and we were made to load in some ten and a half of fruit that was piled alongside of the car on display, and by which much inconvenience was caused. So the policeman says, "You had better come in here to this drug store and let

us talk it over." So Doctor Browning went in with the policeman in the store, and they talked it over, and the policeman said, "Well, I guess you had better go back and go to selling." So that ended that disturbance, but the newspapers of St. Paul, both the News and the other prominent papers—I don't remember which now.

The CHAIRMAN. Post-Dispatch.

Mr. GRAY. That is it exactly. I have got one of their ads here. I think I got one ad out of the Dispatch. And the News took my money for the first ad, and then returned it to me. Actually returned me the money and said, "We can not handle your ad. You are opposing the wholesalers and retailers of this city in distribution, and we don't care to have their antagonism." So I got no advertising in the city of Minneapolis and St. Paul, but I did sell out after some six weeks and returned to California.

That is all.

The CHAIRMAN. We will adjourn, gentlemen, until 10 o'clock to-morrow morning.

(Thereupon at 5 o'clock p. m. Thursday, December 8, 1921, an adjournment was taken until 10 o'clock a.m. Friday, December 9, 1921.)

FRIDAY, DECEMBER 9, 1921.

The committee met at 10 o'clock a. m. in room 704, Department of Commerce, pursuant to adjournment on yesterday, Hon. Herman J. Galloway (chairman) presiding.

The CHAIRMAN. Gentlemen, let us come to order and proceed with our hearing. Proceed, Mr. Gray.

STATEMENT OF DALLAS H. GRAY, ARMONA, CALIF.—Resumed.

Mr. GRAY. Mr. Chairman and gentlemen of the committee, I want to recite a few more experiences of opposition by the regular channels of trade and distribution. And I want to call your particular attention to that of Marshalltown, Iowa. This instance relates to my first car in this distribution and to the third or fourth town that I stopped at on the North Western Railroad. At Marshalltown, Iowa, I met some opposition by the complaints of wholesalers for placing a wagon upon the streets and for the distribution of my product. Unfortunately, the Chicago & North Western yards are some distance from the center of town in Marshalltown, and it was necessary for me to go down town among the people, and I employed one Dave Mellen and a special wagon that he had at that time for peddling, which was particularly adapted to the handling of my product. Mr. Mellen was asked by the retail and wholesale trade of that town to desist from the handling of my product in his wagon on the streets, and further pressure was used by the authorities, and the authorities did come to me—the police of that town—and forced me to abandon the street work. Fortunately, Mr. Mellen had a little hole in the wall, so to speak, of a store, and we moved into that, of course, which was probably in their eyes a more legitimate method of distribution.

One Carroll Davidson, of Des Moines, Iowa, met me at the Pilgrim Hotel. Mr. Davidson is a wholesaler of fruits and vegetables in Des Moines. I made up my mind, according to his conversation, that he undoubtedly had been sent there to buy my product, to buy me out, so to speak, so that I could not further conduct this method of selling. Mr. Davidson wanted to buy the remainder of this car, and I told him that I would sell on my price, which would have meant a profit to me as a grower in California, but which would have been probably 25 per cent higher than the product was being sold for—that was being asked for the product by the wholesalers in his own town of Des Moines.

When I asked him this price, which seemed exorbitant, he immediately turned on me and began to abuse me by saying that I ought to be put in jail, to use his exact words; and I asked him why, and, as I read from my diary, he stated: "That there were 40 grocery stores in the city of Marshalltown, and that there were actually many of them unable to pay their rent," as if I had something to do with the paying of their rent.

I told Mr. Davidson that because of the fact that there were 40 grocery stores in Marshalltown, Iowa, the consumer was made to pay an exorbitant price for food products, because that distribution—that method of distribution that created a condition where there were 40 grocery stores in Marshalltown, Iowa, so divided up the distribution of food products that the overhead which the gentlemen were carrying was eating them up, so to speak.

Judge HAINER. How large was Marshalltown at that time?

Mr. GRAY. Marshalltown, Iowa, was then 13,000 population, by statistics.

I will call your attention to Davenport, Iowa, and I will read from my diary a little of this experience. I hope to confine it, and I am going to go through it and pick out the important features.

"My next move was to Davenport, Iowa," from a previous town. Davenport is 55,000 in population and situated on the Mississippi River, about 55 miles north of Muscatine, the town from which I had just come. Quoting from my diary:

"The morning of the arrival of my car I had my assistant open up and start selling while I went to secure a license." And I will say that I had not, up to that time, discovered that I was exempt under the law. "I thinking that I would have little trouble to secure the same. I was referred to the city clerk and to the mayor, Mr. Mueller, who passes upon all licenses. Mr. Mueller is an attorney, and upon my asking him for a license to sell the products of my own vineyard, for which, if I had known, no license could have been secured from me, he replied that the license would be \$50 per day. This sort of an exorbitant license was contrary to the laws of his own State and he well knew this fact, but he insisted that I would have to pay the same before I could dispose of my goods."

"I argued the thing with him at some length, explaining my reasons why I was forced to come direct to the consumer as for four years I had been unable to get cost of production for this finest of all fruits. That there were only four channels of trade through which I might sell my goods; that is, through the packer who buys from the grower; but owing to the fact that I packed my own goods, it would not pay me to sell through this source; to the jobber with whom I had been selling for 10 years to my own account, and my father before me for 20 years, and owing to the fact that I had to compete with the coast packers, who purchased from the grower at from generally \$20 to \$30 below cost of production, and seldom at a higher price than \$60 per ton, which is considered about cost of production, it was of little profit to me to dispose of my goods through this channel. It was of little use to go to the retailer on account of his being afraid to antagonize the jobber, so there was really only one other outlet for the disposal of my goods, that being direct to the consumer, and I further explained to him that I thought since I had played the game fair and square, for 10 years that I should surely be permitted to adopt that law of nature, 'the survival of the fittest' and be allowed to sell my goods direct to the consumer. At times this gentleman seemed to be persuaded to yield, but I could see that he thought it was to his advantage to hold me up if it were possible, and thus assist in filling the coffers of the city. I told him that this sort of a license was nothing more than robbery and that I would not stand for it, that I was going to order my car opened, which I had closed pending his decision, and continue to sell my goods. He then stated he wished me to see the city attorney regarding the matter, as he considered me a transient merchant."

And I want to say that although I had showed him some half a dozen different credentials, as I have previously cited that I carried, which said that I was a grower and producer of the product that I was selling, he said this [continuing reading from diary]:

"I explained to him that I was not a transient merchant, as I did not buy but sold the produce of my own farm; that I was of the opinion that the dictionary's definition of a 'merchant' was one who 'bought and sold,' although I had not looked this point up at that time. "He insisted that I was wrong in the matter; whereupon I asked him for a dictionary, and with much reluctance he looked up the definition of this word 'merchant' and we found it defined as 'one who bought and sold; one who bought and sold continuously; one who trafficked, traded, and bartered.' This seems to be enough for him, and with a laugh, he closed the dictionary, but still insisted that I was, to his mind, a transient merchant and would be subject to the license fee, although he wished me to call upon the city attorney, and his decision in the matter would be final.

"I called upon the city attorney and after stating my case to him he replied that he would hold to the city ordinance. I then with much hesitation told him that I was ready to have a test case made and for him to send his officers and arrest me, as I was then going to open my car and offer my goods for sale. Upon thinking the matter over a second time he stated that he wished to see me at 2 o'clock that afternoon, when he would give me his final decision in the matter. I met him at the City Hall upon that hour, and there

I found the mayor, the city attorney, and the assistant city attorney in consultation, and after a wait of about a half hour I was called into the office and told that they had decided that the license of \$50 per day was exorbitant and asked what license I thought would be proper. I answered that I would give them an idea of the licenses that I had paid upon previous occasions, which was from 50 cents to \$1.50 per day, but that I would not stand for a charge of \$50 per day. I was then asked how a charge of \$3 per day would affect me. I told them I would not pay it, whereupon we agreed upon a license of \$15 per week, and I thereupon left the office. Within a few days the remainder of my car was sold out, and I then returned to California after placing my banners and other fixtures of the car in storage."

Now, I want to comment upon such bartering and dickering and trading among these officials who so faithfully represent their constituents, the public, but who did so wonderfully represent the wholesale and jobbing trade of Davenport in this instance.

I want to go back and make some little reference to a Minneapolis experience of which I related some last night. Being in a corner, so to speak, as to my advertising facilities and distribution, not being able to secure newspaper advertising and other cooperation, I went out to the Soo shops. I used some of the letters that I had secured from my railroad people and went out to these large shops that employ from four to six thousand men, or did then, and during the noon hour I gave talks before them on my problem. They were the consumers. I was the producer. And I related my experience, as I have related in my previous testimony, of the conditions of California fruit growers and how we were being forced out of the business, or direct to the consumer.

At the close of my remarks my two assistants that I had with me began taking orders, and I want to say that these people responded so wonderfully that we could not book the orders fast enough. So I assured them, these men at the shop, that the following day during the noon hour I would bring out a drayload of my goods and they could buy them directly out of the wagon without having to book their orders. I did this the following day and completely sold out the load of nearly 1 ton of goods in an hour.

The following day I repeated the dose again and sold out; until over 2 tons of goods were sold at the Milwaukee shops, while the Soo shops took over a ton of these goods. I was not able to do much business at the Soo shops, because when I came to make delivery of the goods I was told by the superintendent that I would not be permitted upon the grounds, as they did not wish to entangle themselves with the city authorities in permitting me, as they termed it, to peddle on their ground. This is the purport of their conversation with me.

The facts of the case are that one day previous to my making delivery at this shop the superintendent was called up by "some one from down town"—those are my quotations—"some one from down town," who said, "You keep that man Gray off of the company's ground with those dried fruits and we will see that he is not permitted to sell out of the wagon on the street." The superintendent told me this himself as a reason for not letting me come on the grounds, after I had finished selling.

Although the law does not say in what manner a producer is allowed to sell his goods, I was told by the inspector of licenses of Minneapolis that I would not be permitted to sell out of a wagon on the streets, or to peddle from house to house. And not wishing to have any trouble, since the city had been so lenient, I decided, in working this particular shop, I would take orders and deliver the following day, which I had been told could be done without resistance. This I could do with no violation of the law, so I had printed small cards about two inches wide and three inches long on which was printed: "I have ordered." And these cards were given to the men, and upon which cards was described the different fruits that I was handling. These cards were passed out to the men, upon which they wrote the quantity they desired of each variety, and also gave their street number and address in an assigned space. Each time upon making delivery for these goods it was necessary to have the wagon stand on the street, which was about a block and a half away from the shops, and it was only possible to deliver these goods while the men were going to and from their work during the noon hour or in the evening. This was a very poor time to make delivery, as the men hardly felt like standing around waiting in line for the 40 or 50 customers that were already crowded around our table, so I lost considerable patronage on account of this

rush of business. The police were much in evidence during the time of delivery of these goods, to see that each order blank had been previously filled out, and they were watching to make arrest in case this was not done.

I want to now read an excerpt from the law of the State of Minnesota.

The CHAIRMAN. You read that, didn't you?

Mr. GRAY. No; not that particular law. This is entirely affecting peddling. This is Article IV, section 35, of the law of November 6, 1888:

"Any combination of persons, either as individuals or as members or officers of any corporation to monopolize the markets for food products in this State, or to interfere with or restrict the freedom of such markets, is hereby declared to be a criminal conspiracy, and shall be punished in such manner as the legislature may provide."

Further, Article I, section 18, adopted in 1916, is as follows:

"Any person may sell or peddle the products of the farm or garden occupied or cultivated by him without obtaining a license therefor."

This law particularly exempted me from a license for even peddling my product.

I want to again cite that in Burlington, Iowa, my car was closed for four days by the authorities there in collusion with the trade of that town. I will not go into this in detail. It is not necessary.

I now want to read something from the newspapers of Perry, Iowa, showing particularly the evil of this thing, and how I was handled in that town.

Mr. Stockford Wheaton was manager of my car at that time, and opened the first car of the season some time in November of 1914, at Perry, Iowa. He had not had his car open more than two or three hours until the officers came down and put padlocks on it, and it was closed for several days. I am going to read a portion—just a small portion—of an advertisement that was made out on November 27, 1914, and put in the Perry Daily Chief.

"Arrested and out on bail."

This is a half page advertisement.

"Some one objects to our selling fresh, new, 1914 crop raisins, peaches, prunes, and apricots direct to you from the ranch at money saving prices without paying a license, which State laws exempt us and any farmer or producer from paying when he sells farm products to the consumer from a car or in any other manner he elects. It is an awful crime we are committing, saving you money and giving you better goods. Farmers, we are farmers and are fighting for the right to sell other farmers and the public our products without paying a license every time we turn around or give our product to the middleman. Why should we be forced to sell through the middleman and get next to nothing when you pay big prices? For instance, we get 7 cents per pound for cluster raisins in California this year on board the cars. The railroads get 1.1 cent freight. You pay usually 35 cents per pound, never less than 25 cents, for the lesser grades of clusters. Sometimes 50 cents. Our price, a 10-pound box, \$1.25." For the 10 pounds.

I will quote from the Daily Chief of November 27, 1914, of Perry, Iowa:

"Wheaton arrested for violating ordinance. Man with car of raisins will fight case. Trial set for next Friday.

"Stockton Wheaton, one of the men employed by Dallas H. Gray, of Armona, Calif., in the distribution of a carload of raisins and other dried fruits, was arrested yesterday by Chief of Police McGoeve."

He must be Irish, and I have love for the Irish, too.

"upon information sworn out by Mayor Jack Bruce. He is charged with the violation of the city ordinance relating to transient merchants. Wheaton appeared in the superior court this morning, pleaded not guilty, and his hearing was set for Friday, December 14. He will fight the case, and an interesting lawsuit will doubtless result.

"Mr. Wheaton contends that the code of Iowa gives him or anyone else permission to sell the products of a farm or garden any place in Iowa without paying a single license. He states that a number of test cases have been made, and that he has always been victorious. The city officials take the stand that he is a transient merchant, because his goods are disposed of at retail, and about the only point of law upon which a case can be built seems to be whether or not the raisins and other fruit are farm products or manufactured products. It is claimed that the process of drying"—and I will say in the sun, as is implied—"and packing them makes the fruit a manufactured article." Wonderful construction of production! "The city will be represented at the trial by Solicitor Dugan"—I will ask you what nationality he is?—"and Mr. Wheaton

will have some of the best legal talent in Iowa to take charge of his side of this case."

Now, I came out, upon Mr. Wheaton wiring me that, as soon as I could, which was, I think, three or four days after he was arrested, and our car was locked up during that period of time.

I will again quote from the Perry Daily Chief of December 4, 1914. Now, November 27 to December 4 was probably the period in which we were locked up:

"City wins the case from fruit man. Fine of \$30 and costs is assessed against Mr. Wheaton on two counts to-day.

"S. Wheaton, who was arrested several days ago for violations of the city ordinance pertaining to transient merchants, was fined \$30 and costs in the superior court this morning, \$15 of the amount being for violation of that ordinance, and \$15 for obstructing the public streets. The city was represented in the action by Attorney A. S. Dugan, who convinced the court that raisins, prunes, apricots, and other fruits disposed of were not farm products, but manufactured articles. Mr. Wheaton was represented by Dallas H. Gray, the owner of the California ranch upon which the fruit was grown and packed. The latter contended that his goods came under the head of farm products, and declared this afternoon that he had the opinion of the Attorney General to that effect. He says that he will appeal the case in order to get a Supreme Court decision."

I want now to refer you to just a little comment on this particular instance, which I gave in a lecture or talk, or whatever you want to call it, given in Chicago.

Judge HAINER. Why didn't you use the great poor man's writ, the writ of habeas corpus?

Mr. GRAY. Well, I was out on bail. Now, I commented on this in a talk which I gave before the Chicago Association of Commerce in 1915, which was written up in their official, Chicago Commerce, of Friday, November 20, 1915, which quoted my entire talk and argument upon this matter.

This paragraph or subject is headed, "Thirty dollars fine, says the judge."

"May I speak," quoting myself—

Judge HAINER (interposing). Mr. Gray, you had a much better point than what you urged.

Mr. GRAY. What was that, Judge?

Judge HAINER. You were dealing in commerce, interstate commerce.

Mr. GRAY. I pleaded all those things, Judge Hainer.

Judge HAINER. Until your raisins were delivered to the ultimate consumer, why, they were still in commerce, and you could have sued out a writ in the Federal court, and you would have had the Iowa people looking for a lawyer.

Mr. GRAY. Judge Hainer, I was too poor then for such lengthy arguments.

Judge HAINER. Yes; it is embarrassing—

Mr. GRAY. My mind is very fresh in regard to this particular instance yet.

Judge HAINER. You come under the commerce clause of the Constitution.

Mr. GRAY. Interstate commerce clause.

Judge HAINER. And that in reference to selling the products applied to intrastate, the farmers and raisers in Iowa, but they could not enlarge it and discriminate against you. Of course, it would apply to a California producer, or it would apply to a producer in any other State. You had both this local law and the national law to support your contention.

Mr. GRAY. That is true, Judge, and I cited both.

Judge HAINER. But, of course, they could not put you in jail, but they put you there.

Mr. GRAY. That is true, Judge. I cited both the State laws and the interstate commerce laws, which I carried at that time. I bought copies of both and learned to carry them around.

Mr. BREED. He did not know, Judge, that a dog is entitled to one bite. To one sale.

Mr. GRAY. This paragraph will explain just how they did get me. They did not get me on the proposition that I was a transient merchant at all. They had to evade that. They were forced to, because they knew that I was not a transient merchant at all. They had to evade that. They were forced to, because they knew that I was not a transient merchant.

In quoting this talk or address that I gave before the Chicago Association of Commerce, I said:

"May I speak of a few of the struggles. I have been arrested four or five times"—and I might comment outside that I had been arrested eight or nine times before I got through with it—"but have never been put in jail. My advertising has been refused for the reason that it would antagonize the local retailers, and as I told one advertising manager, 'You decry the trusts every day in your paper, and you are building the biggest one that God in heaven lets you build when you refuse to permit the grower or the farmer come into this city and give the people honest goods for reasonable prices.'"

Further I said:

"Last fall one of my men telegraphed me that he was under arrest, and I immediately went down to get him out. There seemed to be some question in the mind of the judge as to whether raisins and dried fruits were farm products. I said to him, 'You consider wheat, corn, oats, etc., farmers' products?' 'Yes,' the judge said. 'Well, your honor, God's own sunshine dries the corn, and God's own sunshine cures the wheat, and God's own sunshine cures the raisins, peaches, and prunes taken from the stem of the tree or vines, the same as the wheat is taken from the head, and the same as the corn is taken from the husk.' 'Well, I can not see it,' said the Judge. 'Thirty dollars' fine, or \$200 cash bail.' 'I thank you,' I said, paid my fine, and got out."

Judge HAINER. Just judge.

Mr. GRAY. Some judge!

Judge HAINER. Shylock's judge.

Mr. GRAY. I want to cite a short instance in Red Wing, Minn. Now, I am leading up to a premise that I want to establish in this case by these citations, and I hope not to infringe upon your valuable time.

Judge HAINER. He was Pontius Pilate acting as judge.

Mr. GRAY. Previous to January 6, 1914, one of my cars entered Red Wing, Minn. And I will read an excerpt from the Red Wing Eagle of January 6, 1914:

"Fruit sales stopped by city authorities. Two hundred dollar license fees demanded from the carload vender. The 1913 law with regard to transient merchants was put into effect in the city to-day when Dallas H. Gray, of Armona, Calif., was stopped from disposing of raisins and dried fruits from a car which was sidetracked at the Milwaukee freight depot. Chief of Police Andrew Jackson"—and I hope he is no relative to our wonderful and eminent former president—"served notice on the man to-day that he would not be allowed to dispose of any goods until he had first obtained a county license."

And I want to tell you, gentlemen, not quoting the article, that in every instance the first thing that I did upon entering town was to show them my credentials from just as eminent people in California; the district attorneys, the judges, and the bankers, and the prominent men of my community, who had known me all my life. But these were of no consequence to them in their tenacity to oppose me in this method of distribution.

Now, to continue quoting:

"Chief of Police Andrew Jackson served notice on the man to-day that he would not be allowed to dispose of any goods until he had first obtained a county license costing \$150, and a city license costing \$50. The latter license was raised from \$25 to \$50 by a city ordinance May 10, 1911.

"According to the 1913 law, passed by the State Legislature, a transient merchant includes all persons, individuals, copartners, and corporations, both principal and agent, either in one locality or in travelling from place to place in this State selling goods, wares, and merchandise, and who, for the purpose of carrying on such business, hire, lease, occupy, or use a building structure, vacant lot, or railroad car for the exhibition and sale of such goods, wares, or merchandise."

A quotation from the law.

"There is another clause to the law, however, which states that the persons raising the produce sold or to be sold shall not be included within this definition or transient. Thus, if Mr. Gray can prove to the satisfaction of the authorities that he personally raised the goods offered for sale, no license will be expected of him."

And I want to say that these letters, upon the letterheads of these gentlemen that I brought from California, were not sufficient in this case, and they actually sent wires out to California confirming those letters, as though I would purposely falsify in this regard. Anything in the world to drive me out, to any means or limit.

"City Attorney Hall"—I apologize—"in speaking of this subject to-day, said 'orders have been issued to the police to have the sale stopped. Under the

new 1913 law there is no other course open to traveling merchant but to pay the license required by the county."

Not by the county; no; but by the wholesalers and retailers of Red Wing, Minn., to make it so prohibitive that no one dare come and oppose their extravagant and expensive method of distribution. [Continuing reading:] "'Or else prove to the satisfaction of the authorities that the produce to be sold was raised by him personally. This will have to be proved to our satisfaction before the sale of Gray's fruit will be allowed.'

"Many people who thronged to the car to-day were accordingly disappointed in not being able to make purchases.

And, gentlemen, I want to tell you that there is in my mind the vision of these men standing across the street from my car for two or three days, while my attendants were there guarding it, sneering and jeering, among those opposed to this form of distribution, they having compacted and colluded with the officers of the city to bring about and produce a stagnation of the marketing of farm products.

"Mr. Gray said this afternoon that as a grower he was entitled to dispose of his products anywhere in the country, and added that he had been in touch with the attorney general's office"—which I had. I do not remember his name just now, but I have it in my diary—"and added that he had been in touch with the attorney general's office at the State capital"—it was necessary for me to go up to the State capital from Red Wing and see the attorney general—"at the State capital to-day, and had received assurance that he would be allowed to proceed with the sale. 'As soon as your city attorney communicates with the attorney general's office he will find out his mistake,' said Mr. Gray. 'I expect the license difficulties will be settled by to-morrow noon, and the carload of fruit will again be placed on sale.'"

Now, then, I read: "Fruit car embargo lifted. After ascertaining that Dallas H. Gray"—and by the way, this is a quotation from the same paper—"was owner and proprietor of a ranch in California on which the produce offered for sale by him in this city was raised, the city authorities removed the ban on carload of dried raisins and fruits at the Milwaukee freight yards, and the same is now offered for sale to the citizens of Red Wing. Considerable trouble was experienced in the matter, both by the authorities and by the vendors of the fruit. It was not until late this afternoon that the owners were in position to go ahead with the sale, which was stopped yesterday morning by the authorities."

A very small comment by the papers of two little paragraphs, while there was a whole column against me in this matter.

I want to again cite an instance at Freeport, Ill. And I lay particular stress upon this Freeport experience, because of reasons which I shall afterwards relate. I am now quoting from the Freeport Journal:

"Raisin men need not obtain peddler's license. After a consultation with Mayor France and State's Attorney Mitchel Dallas Gray, of Armona, Calif., who has a car of dried fruits on the Illinois Central tracks at the foot of Stevenson Street, was permitted to dispose of his wares without obtaining a peddler's license, as it was clearly shown that the city had no action of any kind against him. Yesterday Mr. Gray was ordered to close the car and refrain from selling any more of the goods. Mr. Gray immediately called upon the city officials, and he stated that he was merely disposing of his own goods, those which he had grown on his own property, but that if the city desired to go into litigation he would fight the case, and would also continue to sell his wares as long as the case was pending."

And then there is a like comment in the Freeport Daily Bulletin, which I won't recite.

Now, the point which I want to bring out is this: About half of my experiences covering these four States, in Iowa, Minnesota, Illinois, and Indiana—in about half of the towns, or better than half of the towns, as I have looked it up, I was arrested, or such intimidations were brought upon me as to drive me out of these towns, and it is of some serious consequence when a man has some three or four men in his employ at a high wage, as I was paying my men good wages, \$100 a month and all expenses, including laundry and everything else, or about \$30 or \$40 a day expense to carry on this work; and the longer they could stall on this thing and the more pressure that could be brought to bear by the jobbers and retailers of the cities which I visited the greater they were pleased, and it was only by absolutely overwhelming them by preponderance that I was what I originally represented myself to be that

I was allowed to go on. When I came to a city I always went to the city attorney and to the mayor of the city and the newspapers and the banks before my car was ever put in their town and showed my credentials and presented convincing arguments to them that I was actually a farmer, and had been born and reared a farmer, and was selling the products of my own farm.

I will state further than Mr. George Hepler went up to Beloit, Wis., in advance of a car to make arrangements to put a car into Beloit, Wis., and was told there by the newspapers, two of them, who had undoubtedly an understanding between themselves and between the trade of that town—to quote their remarks, they said, "If you put your car in this town we will run you out of town if we have to tar and feather you."

Now, those are strong remarks as coming indirectly, I will say—I give the compliment—from the trade of this great country who is to supply the consumers of this country with farm and food products. They do not want cheap distribution, gentlemen of this committee. They want to do everything in their power to hold up the products of the farm of this country.

I will also read a clipping that was a part of our advertising at Faribault, Minn., and will picture better than words that I can frame the situation that took place there. It was even necessary, on account of not having newspapers in the immediate town, to do other advertising; and it became necessary to put out posters or handbills, so they are called, to the houses in the smaller towns which were sometimes visited, not having a regular daily newspaper but having semimonthly or weekly papers.

This is the text of a little handbill that was handed out at Faribault, Minn., by Mr. Eli Browning, the salesman whom I had employed, and who was, as I related yesterday, arrested in St. Paul and handled so roughly by the officers and the crowds. "Between the devil and the deep sea" is the title of this hand bill [reading]:

"Were you ever there? We hope not, and we are not, but for the last several years cluster raisins were sold in your town and all over the Middle West at from 25 to 40 cents per pound, but owing to the combination and the greed of the middlemen, the producers in California could not realize the cost of production. So we come direct to you with our crop and are offering the consumers such bargains that the retailers are frantic; and owing to the pressure brought to bear upon the moving-picture man of this town he refused to run our slides by which we hoped to advise you of our presence in your city. There are no daily newspapers here, and therefore this circular is published. We are here to help you lower the cost of living and ask you to help us get something for our crop honestly produced. Will you do this? Come and see us and we will assure you courteous treatment.

"DALLAS H. GRAY,
"Armona, Calif."

"Eli Browning, salesman.

"Car standing at the C. R. I. & P. Railroad depot for a few days only."

Now, gentlemen, I think I have conclusively proved to you that there has been no attempt by the wholesalers, the brokers, the jobbers, the retailers to have taken up this matter of the distribution of the farmers' product—from the farmer to the consumer. They have made no attempt in my instances, with one or two exceptions, to assist me in this distribution, and I have no fight to make with them. This matter, as I have said hundreds of times, was purely a matter with me of the survival of the fittest. I am willing and ready at any time to stay between the plow handles in production. But when the element of trade for 30 years did not give me or my parents before me cost of production how can I be expected to stay there and starve to death and go broke?

This thing has gone on for years and years. I want to relate one experience that I know of in Minnesota, at Minneapolis, where I saw the original orders from the M. & St. L. agent, instructing him to dump into the river at Minneapolis or the city dump, which was near there—called the city dump, because I suppose it was their practice to dump food in there—500 carloads of potatoes at Minneapolis in 1913. These cars had accumulated in Minneapolis, and there were people in Minneapolis, as the women's clubs told me, and the good fellows' league, as it is called, that carries the basket around at Christmas time, who were absolutely starving for lack of food in Minneapolis, and this holding of the bills of lading and orders on these cars would not permit the free distribution of those potatoes to the consumers of Minneapolis. And it was necessary for the

railroads, as the agent told me, to pay the expense by truck to dump that food into the city dump.

I was interested, and am interested, and always have been interested, in the distribution of foods, and I made a particular study of this thing. I went down to Austin within one or two days after I had this interview with the agent of the M. & St. L. to study the conditions of production of potatoes, and there I met at the depot in front of a line of freight cars about 85 or 90 wagons, if I remember the number correctly, a string of them a half a mile long there, the farmers sitting there waiting for their turn to put more potatoes into cars to be taken to Minneapolis and dumped in the city dump, and I went up and interviewed eight or nine of these farmers, told them who I was, and some would say, "Oh, yes; you were at my town last week," etc., and so on; they knew of my distribution there. And I said, "What do you get for these potatoes?" And they said—and I am going to quote from my diary—"We are getting for these potatoes 15 cents—"

Judge HAINER. Fifteen cents for what?

Mr. GRAY. Fifteen cents per bushel [reading]:

"which, of course, is way below our cost of production. We could have got last winter 25 cents per bushel for the potatoes, but we could not produce them for that, even. So we held them all winter, kept them from the frost and freezing, and now are forced to sell them because of their rotting at 15 cents per bushel."

The CHAIRMAN. Mr. Gray, isn't there a large meat-packing plant at Austin, Minn.?

Mr. GRAY. I think there is. Yes; there is, I believe.

The CHAIRMAN. Do you know the name of it?

Mr. GRAY. I do not; no. I remember of a packing plant there, but I really don't remember the name.

The CHAIRMAN. Do you know whether they are connected with the big meat packers in any way?

Mr. GRAY. I really don't know, Mr. Chairman.

The CHAIRMAN. You don't know whether they are handling unrelated commodities now and are not covered by this decree, do you?

Mr. GRAY. I really can not tell you. If I knew the name of them I might. But it is one of the larger packers, I know.

Judge HAINER. Do you mean Austin, Minn.?

Mr. GRAY. Austin, Minn. Now, I want to correct the data there; I think it was Austin, Minn., from my memory. I don't want to take the time to clutter up the transcript with so much of this diary, but I can look it up if necessary.

(At this point Mr. Gray suspended his testimony, and Mr. Rolland Morrill made a statement in the record, in order that he might leave before Mr. Gray concluded his statement. Mr. Morrill's testimony, however, appears at the end of the day's session.)

The CHAIRMAN. You may resume, Mr. Gray.

Mr. GRAY. I want to confirm, Mr. Chairman, and say "Amen" to the remarks made by Mr. Morrill, who has just spoken. He is but speaking to you the secret ballot of the brokers and producers of this country. Now, with all proper respect to these venerable gentlemen that this thing that they so represent, the cooperative and farmers' organizations of this country, I want to say that they do not.

Judge HAINER. Do not what?

Mr. GRAY. They do not represent the farmer and cooperative organizations of this country.

The CHAIRMAN. You mean the wholesale grocers?

Mr. GRAY. The wholesale grocers; yes, sir. He has told you the truth, Mr. Morrill has. He is a man of long experience in this thing. I know it, and I have never seen him before, and I tell you that he has laid before you some facts that should impress this committee with this thing; that this thing should not be allowed to go through, and if the thing goes through, these wrecking crews of the farmers' prosperity will bring destruction to this Nation.

These trade obstructionists, gentlemen of this committee, have no interest, or little interest, in the prosperity of the farmer or the consumer. They would by all manner of conniving means disturb distribution other than through their so-called wholesome channels of trade.

I want to recite an experience that I have actually had—which I actually engaged in in St. Paul, Minn. A certain broker of that town showed me the original documents in 1913 of two carloads of peaches and prunes that had been

in storage in St. Paul for three years. They had been processed and reprocessed four or five times. And he was then signing the order sending those goods to the wholesaling establishments of that city for another processing, that they might be presented for inspection and possible distribution to the consumer. And as this gentleman told me—and I will not give you his name, unless you here insist, as I do not think it is necessary—that these goods were nothing but skins and pits, and were vital products for consumption. They were wormy, and had been processed numerous times.

MR. SMITH. Is this gentleman stating what he knows?

MR. GRAY. I know it.

MR. SMITH. I am not asking you. I am addressing the committee.

THE CHAIRMAN. He says he does.

MR. SMITH. I ask the chairman whether he is stating facts, or whether he is making an argument.

THE CHAIRMAN. He says he knows it.

JUDGE HAINER. He says so.

MR. GRAY. Gentlemen of the committee, I am giving you facts. I am quoting to you the purport of this broker's remarks, and he said, "Gray, it is an unfortunate thing in the distribution of the fruits from California that there is allowed to remain here two carloads of these fruits that have been bartered and sold like wheat that never existed."

And I tell you I protest against this thing, and I tell you why. My vision comes to me of my mother going through the vineyards with her skirts wet to her knees, that these gentlemen who are so ably represented here by their wires and letters, may have a profit by pretending to be interested in the consumption of the consumer and in the producers' production. I say I know their allegations, they are false.

MR. SMITH. He does not know that they are not interested. The statements are arguments, and not statements of facts. If we are putting in testimony, I think it should be limited to the facts.

THE CHAIRMAN. He says he knows that they are not interested in production.

MR. SMITH. How does he know that they are not interested in production? He states it as an argument.

THE CHAIRMAN. He states it, and he prefaces it with an experience he said he has had with the grocers.

MR. SMITH. Then this is argument on that statement.

THE CHAIRMAN. No; it is based on his experience.

MR. GRAY. I do not wish to be interrupted, Mr. Chairman, I wish to make my statement to the committee. The gentlemen have had a week to make their statements and arguments, and they have argued indefinitely.

MR. SMITH. I shall not interrupt him unless I think the situation calls for me to do so. And I am appealing to the board and not to him.

JUDGE HAINER. We are giving great latitude on these matters, Senator, and unless it goes entirely outside, we will allow it. We have been indulging both sides in that respect.

MR. GRAY. I want, gentlemen of the committee, to relate another actual experience along that line, which shows the actual conditions with reference to these luscious and delicious fruits which we grow in California, and of which we are so proud in California.

In Freeport, Ill., on about November, 1914, a lady came to my car, which was then on the sidetracks—I think on the Chicago, Milwaukee & St. Paul Railroad—and I was enlightening the people in some discussion as to our production; what we had encountered in California in production, and what we had encountered in trying to get the cost of production. And she interrupted me and said, "Are you Mr. Gray?" I said, "Yes; I am." She said, "You grow these products, do you?" I said, "I do." "They look very nice and fresh," she said. And she said, "I want a dozen packages of seeded raisins."

And I looked up somewhat in amazement, because it was not customary for a lady to buy such a quantity. The men would buy 40 pounds at a time sometimes, but the women not so. And she said, "These look so nice and fresh. I bought a dozen packages from my local groceryman in this town last week, as I like to have raisins to make my holiday cakes and edibles; to mix them in with them, and when I took these raisins home and broke open a package I found they were wormy. The worms were crawling out of them"—and I am quoting her just as she told it to me—"I broke open a second package, and they were wormy, and I broke open the third package, and likewise it was wormy. So I took it back to my retailer and said: 'Mr. Groceryman, these

must all be wormy, because the first three packages I broke were wormy. I would like to have credit for these goods, please. I can not use them.' And the groceryman said, 'Oh, that is all right, lady. You just put them in boiling hot water and the worms will come out, and then you can skim them off, and the raisins will be all right.'"

Why, such a revolting experience. And I could enumerate any number that have actually been kept in the wholesalers' warehouses, just as I told you before the interruption from the Senator.

I want to say right here, in this connection, that at that time the distribution—during 1912, 1913, 1914, and 1915—I had occasion to be in many retail grocery establishments. I am not going to say a majority of them, but it was very generally the rule, so to speak, that the local retailer in the little towns of Iowa, Minnesota, and Illinois had his own dipping vats in the rear of his store, or in his warehouse, where he processed these products every two or three days, so that they might have the appearance, but denying the power thereof, of being real wholesome feeds.

I want to say, gentlemen, that these people are here, coming before you and trying to mold your minds to set aside one of these channels of distribution—one of the channels that have been tried—and they want a channel of distribution that has been tried in the balance for 30 or 40 years to my knowledge and has been found wanting.

I want to read, in connection with the interest of the farmer and his connection with distribution and supporting his prosperity, just a few extracts from this wonderful message of our President, which was given to the Congress on the 6th of December. The President said:

"It is rather shocking to be told, and to have the statement strongly supported, that 9,000,000 bales of cotton, raised on American plantations in a given year, will actually be worth more to the producers than 13,000,000 bales would have been. Equally shocking is the statement that 700,000,000 bushels of wheat, raised by American farmers, would bring them more money than a billion bushels. Yet they are not exaggerated statements. In a word, where there are tens of millions who need food and clothing which they can not get such a condition is sure to indict the social system which makes it possible.

"REMEDY IN MARKETING.

"In the main, the remedy lies in distribution and marketing."

And so truly those words are said. [Reading:]

"In the main, the remedy lies in distribution and marketing. Every proper encouragement should be given to the cooperative marketing programs. These have proven very helpful to the cooperative communities in Europe. In Russia the cooperative community has become the recognized bulwark of law and order, and saved individualism from engulfment in social paralysis. Ultimately they will be accredited with the salvation of the Russian State.

"There is the appeal for this experiment. Why not try it? No one challenges the right of the farmer to a larger share of the consumer's pay for his product; no one disputes that we can not live without the farmer."

I do not wish to try to correct the President's message, but I think there has been somebody disputing this fact. [Reading:]

"He is justified in rebelling against the transportation cost. Given a fair return for his labor, he will have less occasion to appeal for financial aid; and given assurance that his labors shall not be in vain, we reassure all the people of a production sufficient to meet our national requirement and guard against disaster.

"The base of the pyramid of civilization which rests upon the soil is shrinking through the drift of population from farm to city. For a generation we have been expressing more or less concern about this tendency. Economists have warned and statesmen have deplored. We thought for a time that modern conveniences and the more intimate contact would halt the movement, but it has gone steadily on. Perhaps only grim necessity will correct it, but we ought to find a less drastic remedy."

I will not go on further, although the purport of this heading reiterates the statements.

Now, then, gentlemen, you can not build up a farming community and have the boys leaving the farm because of the social environments and those things that tempt them to the city, but if you will give them the prosperity of the farm, those who were born and grown in this production will stay there.

I want now to refer to some of our organizations in California, and I am going to base some of my argument that these gentlemen who are so well represented here, originally and at the time that our successful farm organizations in California were organized, were not in sympathy with this movement, and that there was a propaganda from broker to jobber to wholesaler to retailer to thwart the efforts of our organization. And in that connection I will read an excerpt from an article which I wrote on this subject immediately on my return to California after discontinuing the direct method of selling.

And, by the way, this advertisement will also ably represent to you gentlemen how necessary it was that all manner of means be taken to encourage the growers in joining the association for the marketing of their products [Mr. Gray here referred to a picture in a newspaper]. Here are pictured the trenches in which the farmer is located, and out beyond are all the methods of distribution opposing the trench bulwarks.

And I said when I wrote the article for the Fresno Morning Republican, Sunday, February 20, 1916—our organization then—the California Associated Raisin Co. had been in operation three years and had done considerable toward relieving that terrible condition or production of the raisin growers of California. The contract had been expired between the growers, and they were released, of course, and the campaign was put on for the forming of another association. And I want to read just these few remarks, that will give you an idea of what I learned actually in communing with the trade day by day in Chicago and those four States that I have mentioned. The article reads:

"The present California Raisin Growers' Association was launched about eight months after I put in my first raisin car in the East. At that time it was interesting to notice the effect of the growth of the association upon the elements of trade, particularly the brokers, wholesalers, and jobbers. At first, with a shrug of the shoulder and a cynical smile, they dismissed even the thought of its success."

Of course they did, because it had been opposed for some 20 years in formation by the packers and the wholesalers and jobbers.

Judge HAINER. You mean there the fruit packers again?

Mr. GRAY. I mean the fruit packers. [Reading:]

"Later, when its funds and finances were assured, their alarm became more apparent, but their disturbed minds were relieved with their own satisfying assurance of the failure of previous attempts of the growers to organize. When it became known that an overwhelming acreage was under control and that the policies of operation had been announced, their shrug of the shoulder, their cynical smiles, and selfsatisfying assurances were at once turned into frenzied denunciations, for their previous uncontrolled greed was to be curbed and their speculations, at the expense of the producer, were to be eliminated. They knew that they would have to fight and fight hard to overcome the splendid progress that was being made. The association meant the final elimination of all unnecessary elements of trade between the producer and the consumer, and an establishment of brands and trade-marks that would necessarily dispense with all private brands and trade-marks. It became a question of the survival of the fittest. The struggle was on."

And I want to say in this connection, while I think of it, that there were some trade-marks by the wholesalers, Sprague, Warner & Co. and Reid, Murdock & Co.; I think Reid, Murdock & Co.'s trade-mark was the White Horse, and they sold those raisins under their brand. You know a brand is necessary, because when a brand becomes known, it will sell the better. [Reading:]

"Mr. Grower, you will remember the three or four years previous to the forming of the association, when we received a price for our raisins about equal to, or less than, that paid for raisins as hog feed. You also well remember and know of the struggle that was made by the packers at the time of the forming of the association to down our efforts to get something more than half the cost of production for our raisins. The packers refused the association the use of their packing facilities until they found that there were few goods on the outside to be bought. You were probably not aware of the fact that while the packers were fighting the association and its growth in California"—The fruit packers, I mean now—"the trade in the East was attempting to strangle the efforts of the association to place before the consumer fresher, cleaner, and cheaper raisins under its own brands. In other words, what the packer was trying to do to the growers here in California, the distributors of the East

were doing to the consumer, in an attempt to curtail consumption by discouraging the use of the already established associated's brands.

"I can cite no better illustration of such tactics than to give a personal conversation with a Chicago retailer sometime ago. Upon entering his store I observed a small quantity of cluster and seeded raisins on his shelves. There were two different brands of clusters in pound cartons, one brand was that of a well-known local packing firm in California that is to-day operating outside of the association. The other was of the associated's Sun Maid brand. Naturally interested, I asked the prices, and he replied, '25 cents per package,' and volunteered the following information: 'The Sun Maid brand is of inferior quality. They are not packed well and are dirty. The quality is not there because the raisin association spends too much money in advertising, while these,' pointing to the outside packer's package, 'are of the very finest quality, are packed well, and the very best goods are put in the package, as they do not spend large sums of money in advertising.'"

And in commenting on this, I want to say, of course, they would not, because what inclination would they have to advertise the growers' product. It necessarily and always will become necessary for the growers to take the lead in this particular method of distribution, that of advertising. [Reading:]

"I then asked him about his seeded raisins, one brand of which was put out by a large Chicago wholesaler and the other package was of the Sun Maid brand. He continued to knock the associated's brand by saying: 'Their seeded are no good,' they are dirty and are poorly packed; the raisins are all mashed, and have not the quality of these that represent the very finest that can be produced;' pointing to the other package. He further denounced the Sun Maid brand because of their extensive advertising. The price of each package of seeded was 15 cents per pound. I might cite many such experiences wherein there was shown during the first two years of the association's operations, an apparent attempt by the trade to educate the retailer to discourage the use of the associated's brands of raisins, while, as a matter of fact the same quality existed in both instances."

And this ignoramus, who had not posted himself on the distribution of raisins from California, said, "They are mashed." Of course they are mashed. In seeding them it is necessary to run them through rollers, and one of the rollers is a pin roller, pushing the seeds out of the raisins, and it goes then between the rubber roller and, of course, it is mashed as it goes between the pin roller and the rubber roller. [Reading:]

"The situation has changed materially in the past year, for the same jobbers and wholesalers who two or three years ago were with all their influence and energy denouncing the association, refusing to purchase from it, and placing every obstacle in the way of its progress, are now falling in line and cooperating with its ideas and freely quoting its prices."

This was the situation. And these fruit packers in California, together with these other men, were opposing us, gentlemen. They brought pressure to bear on the banks to refuse to loan us money to pack our goods. That statement is so well put by Mr. Giffin, the president of the California Associated Raisin Co., before the Agricultural Committee. And these same gentlemen are the wholesalers of this country.

The CHAIRMAN. What committee was that—the House?

Mr. GRAY. I will read it.

The CHAIRMAN. If you care to, you may cite it or read a very short excerpt from it.

Mr. GRAY. I want to read it. I will answer that in my brief remarks here regarding this thing.

I want to say that this is the annual report of the Federal Trade Commission for the fiscal year ended June 30, 1920, wherein the wholesalers and jobbers of this country, together with the fruit packers of California, filed charges against the California Associated Raisin Co. in 1920 for being extortionists, for giving to the growers an unreasonable profit, which made necessary their charging to the consumers an unreasonable price. This is Exhibit 9.

The CHAIRMAN. What page?

Mr. GRAY. Page 183 of this annual report.

Judge HAINER. What volume?

Mr. GRAY. It is one volume. This is the only real data I have from the Federal Trade Commission. That matter was treated more or less here in confidence by the Federal Trade Commission. This is Exhibit 9.

"REPORT TO THE ATTORNEY GENERAL IN RE CALIFORNIA ASSOCIATED RAISIN CO.

"SIR: On September 30, 1919, you requested the Federal Trade Commission to make an investigation of the California Associated Raisin Co. (hereinafter called the 'Raisin Co.') and to advise you whether that company, first, 'is obtaining and maintaining more than fair and reasonable prices for its products'; and second (under section 6 (e) of the Federal Trade Commission act), 'to make recommendations for the readjustment of the business of said corporation, in order that the corporation may hereafter maintain its organization, management, and conduct of business in accordance with law, and to give notice of such proceeding to the said corporation so that it may appear and submit thereto.'

"In compliance with your request, the Federal Trade Commission instituted an inquiry, giving notice thereof to the Raisin Co., in the course of which a large amount of testimony was given, a transcript whereof accompanies this report to you. In addition the commission heard argument and received briefs on behalf of the Raisin Co., as well as on behalf of the American Seedless Raisin Co., Bonner Packing Co., Rosenberg Bros. Co., Guggenlime & Co., and Chaddock & Co., packers of raisins, and the National Wholesale Grocers' Association of the United States. Copies of these briefs are also transmitted to you with this report. The essential facts disclosed and the conclusions and recommendations of the Federal Trade Commission thereon are now submitted for your consideration."

Not being successful, gentlemen—the point I want to bring out, Mr. Chairman and gentlemen—not being successful in their propaganda down along the lines, these gentlemen, the wholesalers, the brokers, and the retailers—not being successful in thwarting the efforts of the grocers in selling their product through this Nation; not being successful in their attempts on the coast at trying to disarrange the finances of the association through the banks, they filed these charges to disrupt that organization.

Now, as was shown in the report of the testimony of Mr. Giffin with reference to this matter in the hearings before the subcommittee of the Committee on the Judiciary of the United States Senate, Sixty-seventh Congress, first session, on H. R. 2373—that is a long voluminous affair, and I am not going to go into details on that, any more than to give my version of the testimony as given there. Not being able to set up charges where unreasonable profits had been given, because Mr. Giffin—and I had the honor of presenting to Mr. Giffin the cost of production sheets which I kept for some four years, and which went before the Federal Trade Commission in that connection, as substantiating our cost of production; it went into the hearings, to the traffic commission, which was represented by Mr. Culberson, of Fresno, and were not disproved as to the cost of production. And they could not prove that we had paid exorbitant prices to the growers in production, because this statement shows that the growers in 1917, the average grower actually lost \$27.90 on every ton that he produced on every acre that he handled. Now, the average production in California was about 1,665 pounds in 1915.

The CHAIRMAN. Pounds per what?

Mr. GRAY. One thousand six hundred and sixty-five pounds per acre; yes, sir.

Mr. Giffin told me that it was his opinion that the average cost of production now is something less than 1 ton. But I am admitting that it is 1 ton, and the average grower lost \$27.90. When you come to the overhead expenses which he is entitled to, the taxes, the insurance, the sweat boxes, the teams, the harness, etc., all of those depreciation charges are said by the growers and those who know in California to be very low, or low enough. Interest on the investment, 6 per cent, which he surely will be entitled to, and the depreciation on the vineyard.

We know that a vineyard will last about 22 years; it will live to be about 22 years old in California. Some may last longer, but that is about the average.

We also are entitled to managerial expenses. I am entitled to a salary as a manager. And we are entitled to that as part of the expenses.

The 1918 report shows a loss of \$98.14 in production. That year, if you had eliminated the depreciation charges and the overhead and the managerial expenses, he would not have yet broken even. Unfortunately that was a year we had a great deal of rain, and it destroyed a great many grapes because of the weather. I myself fed 40 tons of raisins of the finest you ever saw to the hogs because they would not keep; they were damaged and spoiled by the rains.

In 1919 the average loss was \$10.23.

In 1920, when these gentlemen filed their charges of wonderful extortion, the loss was \$22.19.

And I might say in this connection, to substantiate these arguments, the California Associated Raisin Co. and the Peach and Fig Association, together with other State organizations, have requested me to edit a farm cost and account system, which I am now doing, and which I left to come here to take part in these arguments. In fact, they are financing this work, so that the farmers in California can be reliably and well informed and can keep authentic records of their cost of production.

Now, the evidence I present as refuting many of these charges against them—

Mr. BREED (interposing). To make the record clear, I would like to ask if that is the organization that the Government is proceeding against, and in which the proceeding is pending against them in equity?

Mr. GRAY. Yes; that case is still pending; while it has been recessed, so to speak, it is still pending in the courts of Los Angeles, I believe. The charges have not been further pushed, for reasons that I hope to show a little later on in my arguments.

Mr. BREED. Is that the one?

The CHAIRMAN. Yes; I thought that was in the record before.

Mr. SMITH. He has made this statement about the losses, and I think it would be valuable for him to hand to the reporter the figures upon which he works out his conclusion showing the amount of overhead and the amount of labor, and what he allowed as the basis of compensation of the men engaged.

Mr. GRAY. I will be glad to do that.

Mr. SMITH. Also the investment.

Mr. GRAY. I will be glad to do that, and shall hand it to the committee. For a full report of that I will further state that the reliability of these figures are based on these facts: I request and require of every man that works for me, of whom I keep about six or seven the year around, and up to as high as 100 during the harvesting season of some months, to make out a daily time report of the number of hours they work; where they work on the ranch—on one particular section of land—and what they do in their labor. My report will show, for instance, two hours' irrigating on 60 acres, or a day's plowing or harrowing or shoveling around the vines, or some such work. I can take that report and at the end of the month put it in a column under a separate heading under that class of work. And at the end of the year, taking those columns under the separate headings I can determine the cost of any kind of work that has been done on my ranch. I might say that is a system established on my ranch, and has proven very successful for five years, and that, in fact, has been so largely taken up by these farm organizations in California, and I am editing it because of any light it might give to the growers' organizations and of whatever benefit it might be to the growers' organizations, and of whatever benefit it might be to the growers' interests in California, with no remuneration to myself.

The CHAIRMAN. Do you want to put that in the record, or not?

Mr. GRAY. Yes; I will put it in the record.

The CHAIRMAN. Do you want it in the record?

Mr. GRAY. Yes, sir.

The CHAIRMAN. Very well, if you want it to go in the record.

Mr. GRAY. I will say, too, that I am able to determine the cost of bringing my vineyards to production, and I will ask that that go in, too. This shows the total cost of bringing a Thompson raisin vineyard to production, a period of three years, a cost of \$199.23 per acre, without taking into consideration the cost of the land, and giving the proper deduction for crop credit, will make the net cost, outside of the cost of the land, \$287.84.

I will put these papers in the record, if agreeable.

The CHAIRMAN. They may go in.

(The papers referred to, headed "Cost of raisin production taken from actual daily labor reports and conservative estimates of overhead expense," and "Cost of planting and bringing a Thompson vineyard to bearing," will be found at the end of this day's proceedings.)

The CHAIRMAN. We will adjourn now until 2 o'clock p. m.

(Whereupon, at 12:35 p. m., the committee stood on recess until 2 o'clock of the same day, Friday, December 9, 1921.)

AFTER RECESS.

The committee resumed its session at 2 o'clock p. m., pursuant to the taking of recess.

The CHAIRMAN. You may proceed, Mr. Gray.

STATEMENT OF MR. DALLAS H. GRAY—Resumed.

MR. GRAY. I want to take your minds back this afternoon to one connection that I made this morning of the slow handling of food products and the necessary destruction of food products as a consequence of that slow handling. And I want to just read into the transcript one little short article here from the Chicago Daily Tribune of September 16, 1915, which sums up all the words that I have said, and couches that language in proper terms. [Reading:]

"Peaches! Loads of 'em wasted! Merchants throw away enough lucious ones to feed hundreds.

"Peaches were the principal topic of conversation along South Water Street yesterday. Commission merchants reported that entire carloads of big, lucious specimens from Michigan were carried to the dump, a total loss to shipper and producer, while sound, ripe Albertas went begging at 60 cents a bushel. No arrangement, so far as could be learned, was undertaken for distributing the discarded fruit to the poor, although the amount thrown away was said to have been enough to supply hundreds of families with a generous supply. Instead of receiving the profits they expected, the Michigan growers were called on to pay freight and cartage charges on their abandoned consignments. One commission man who wired a shipper that he owed \$18.50 received this reply: 'Have no money, but will send another car of peaches in payment.' 'Hold the peaches,' wired the commission man; send something else.' 'And,' mused one of the dealers, 'wasn't it just the other day that Mayor Thompson proclaimed a peach day, and urged Chicago housewives to buy peaches at \$1.50 per bushel?'"

Now, I merely cite this to show that, under the regular channel of trade, as it has been for some 30 or 40 years, and which the gentlemen who have appeared here before this committee would like to still be carried on, it makes it necessary for such a thing to happen. They have resisted, as I proved to you this morning, the organizing of the farmers' cooperative organizations, and I will further state proof of that, that I have learned the information that the wholesale jobbers mention, assembled at Philadelphia, if I remember correctly, last year or in 1919, passed a resolution opposing the Capper-Herzog bill, which makes exemptions and provisions for the organizing of the farmers into cooperative associations.

MR. DAILY. Is that the Wholesale Grocers of the United States, Mr. Gray?

MR. GRAY. Oh, yes.

I want to now bring to your attention again the raisin situation, summed up in the few words that Mr. Giffen recited before the subcommittee of the Committee on the Judiciary, United States Senate, as it is recited in the hearing before that committee on H. R. 2373. Showing the conditions under which the organization was perfected, showing the opposition of the packer on the coast, and the affiliations of the wholesalers and jobbers in the East to cooperate with those packers in opposition. On page 114 of that volume I read:

"As a matter of fact, our competitors"—he is now relating about the independent fruit packers on the coast who now do buy about 7 per cent of the raisins produced by the growers on the outside of the association. "As a matter of fact, our competitors, who are complaining bitterly against us, were, at the time we made this 15-cent price"—he refers there to the price that was supposed to be paid to the grower in 1920—"paying from 18 to 20 cents a pound for raisins." On the outside. "They will tell you they had to do that because we controlled 88 per cent of the crop"—this data of 88 per cent of the crop having been since revised to read 93 per cent, is now under control—"forcing them, in order to protect their business, to pay those high prices. Now, if they were buying these raisins at 18 and 20 cents a pound and selling them at a loss, that would be proof that they were sincere in those statements. But they were not; they were selling those raisins in competition with the raisins of the world, at a price that would justify them in paying 18 or 20 cents."

And these very gentlemen who, as I read before the noon recess, filed charges against the California Associated Raisin Co., together with the wholesalers and

jobbers of the East, attempted to disrupt that organization which we so cherish by offering 3 or 4 cents more to the growers on the inside whom they might think they could get on the outside. That is, there was the impression set up among the growers on the inside that "Why should we stay in this organization when the outside packer can pay 18 to 20 cents a pound and we get only 15?"

Now, as a matter of fact and as a matter of record, the growers of 1920 did not get 15 cents per pound, but we received eleven and about one-tenth cents, due to the reduction in price that was necessary to move the balance of the crop which was carried over into the producing season of 1921.

Further, I want to show, on page 117, as will express these sentiments:

"The rule of the market, the law of supply and demand, I believe it is absolutely necessary to apply to all these crops, and this was the condition last year when we made these prices." I am further quoting from Mr. Giffen in this testimony. "We knew that depression, so far as these people—the other farmers—were concerned, had started; and as I said a while ago, as the board of directors we did not want a 15-cent price, not because we do not like money. We do. That is what we are organized for. But it was because we were looking to the future of this industry, and we believed that a 10 or 11 cent price, from an industry point of view, would be better than a 15-cent price. But we were up against this proposition, that our competitors on the market—and it was justified at that time—were paying 18 or 20 cents for raisins, and we had a contract with the growers by which all they had to do was to pay us \$40 a ton indemnity, damages"—or 2 cents a pound—"and sell their crop where they pleased.

"And because of that contract the outside packer tried to thus disrupt. Now, if we had made a 10-cent price when the market condition, as I can see by what our competitors were doing, was 18 or 20 cents, half of those growers in that district—and rightly, too, and they would not have been violating their contract—would have paid us \$40 a ton and sold their raisins to our competitors, and we would have been stranded, so far as our own orders were concerned, and we could not have filled them."

Now, that testimony of Mr. Giffen clearly indicates that there was an attempt to disrupt the association on the coast at that time, and I can testify as to the continuance of those attempted disruptions.

Page 121, Mr. Giffen further states, answering the question of Mr. Preston, the attorney for the dried fruit and fruit packing interests of California:

"Mr. PRESTON. I will restate the question. It is really your position, then, that the price paid to the outside growers really determines the price you pay to the inside growers?"

"Mr. GIFFEN. As a rule, both prices are fixed on the market conditions. It was the market conditions that enabled you people last year—or your clients—to pay 18 cents for raisins; and we did not follow you. We felt that it was too high, and we were going to get more also if we could, but we did not feel that we could make an 8-cent difference. We made a 3-cent difference and sold our raisins for less than you sold yours for. We felt that if we made an 8-cent difference we would disrupt our organization."

And I think he was right.

I want to again call your attention to page 113, showing the difference between the producer and the consumer. This is Mr. Giffen's statement:

"The average retail price in the investigation I made," and he refers to an investigation that he made over the country, traveling, "was 32 cents a pound; and, as I say, I do not think that the retail merchant was profiteering, in most cases. I inquired particularly, in as many cases as I could, as to the prices they were paying, and they were paying as high as 27 and 28 cents for raisins that we had sold in California for 15 cents a pound."

Correcting there, that we actually got about 11.1 cents a pound. This testimony was given before the figures that were paid to the growers were actually known, as the growers received the net returns from the sales after all expenses were taken, one year after production. [Continuing reading:]

"I am taking these figures from your statement, Mr. President, which I think are relatively correct, as I have no figures with me."

Senator Walsh, of Montana, asked the question:

"Then, when the grower got 3.46 cents, the consumer paid 15 cents?"

"Mr. GIFFEN. Yes; and when the grower got nothing," referring to years ago, under the old régime, "on the consignment basis, when he got red ink, the con-

sumer paid 15 cents. There was practically no change in the retail price of raisins in all those years, from the investigation that we have made."

I want to read from page 122, as to the source of this prosecution brought on by the alleged wholesalers and fruit packers on the coast, as has been cited. This is Mr. Giffen's statement:

"Coming back to the 30-cent price, we were criticized for this price, and Mr. Preston stated to you that the wholesale jobbers complained to the Attorney General. Now, I want to say to you that the inspiration of that complaint came from Fresno, and it was not the wholesale jobbers, but it was from our competitors in Fresno. It was the voice of Jacob crying in the wilderness; and we appealed to the Attorney General; but it was the hairy hand of Esau manipulating things on the Pacific coast that furnished the inspiration of this suit; and there is nobody but Mr. Preston that knows that better than I do."

And I want to say in this record, that Mr. Giffen told me personally before coming here that the chief fliers of this complaint were the wholesale jobbers of the United States that had been encouraged to do so by the fruit packers on the coast.

Now, right here, Mr. Chairman. I am going to read into the record telegrams to refute all of this argument regarding the assistance that the cooperative organizations of the State of California have rendered these gentlemen who are opposing modifications of this consent decree. I think it necessary to do this at this time. They have read large volumes of wires and letters on this subject and have reiterated them verbatim time and time again for the last 10 days, representing that some of these gentlemen here have been wired authority, and were representing their constituents, the growers in their districts.

I am going to read a wire of September 17, 1921, from Visalia, Calif.; that is in the San Joaquin Valley, about 40 miles south of Fresno. It is from the Swall Land Co., addressed to Hon. H. M. Daugherty, Attorney General, Senator Hiram Johnson, Senator F. M. Shortridge, and Congressman H. E. Barbour. I don't remember of Senator Shortridge reading this telegram.

The CHAIRMAN. He read one from the Swall Land Co., I am quite sure he did so.

Judge HAINER. I don't recall that he did.

Mr. GRAY. I would like to inject it at this time. It is just a short one.

The CHAIRMAN. I think it has gone in already, but read it in.

Mr. GRAY. I don't like to duplicate these, but I would like to be sure that it is in. It reads:

"Fruit men of California practically unanimous for modification of packers' decree. Allow existing organizations with years of experience, efficient, and economical distribution to market their fruit. Every avenue must be kept open for our crops."

Here is another telegram dated San Francisco, Calif., September 22, 1921:

Hon. H. M. DAUGHERTY,

Attorney General, Department of Justice, Washington, D. C.:

This association's principal source of supply of pears to canners in California. Many canners believe modification of decree would bring producer and consumer closer together and increase both demand for fruit from growers and total volume of business. My opinion is they are being intimidated by jobbers to whom they sell canned product and coerced through strong pressure here to send you wire not representing their real views, through possible loss of certain jobbers' trade. Read all such telegrams with a grain of salt.

CALIFORNIA PEAR GROWERS' ASSOCIATION.

FRANK T. SWETT, *President*.

Here is one from the Sonoma Farm Center:

SEPTEMBER 21, 1921.

Hon. H. M. DAUGHERTY,

Attorney General, Washington, D. C.:

The members of the farm bureau of this district ask that the packers' decree be modified to permit them to distribute our canned and dried fruits. We want our products marketed at the lowest possible cost and believe every channel of trade should be open for this purpose.

SONOMA FARM CENTER.

MORRIS LEVY, *President*.

Here is one from the Napa County Fruit Growers' Association:

SEPTEMBER 21, 1921.

Hon. H. M. DAUGHERTY,
Attorney General:

We wish our fruit distributed at lowest cost. This can not be done without a modification of the decree to permit the packers distributing our products.

NAPA COUNTY FRUIT GROWERS' ASSOCIATION.
EGBERT SMITH, *President*.

VISALIA, CALIF., *September 16, 1921.*

Hon. H. M. DAUGHERTY,
Attorney General:

Fruit-interests of California, with exceptions of few private concerns who work with wholesale grocers, earnestly desire modification of packers' decree allowing those efficient and economical distributing organizations to market our products. We have ahead of us tremendous increase in production and need all possible outlet to avoid stagnant markets and financial disaster.

VISALIA GROWERS' ASSOCIATION.

SAN JOSE, CALIF., *September 20, 1921.*

Hon. H. M. DAUGHERTY,
Attorney General:

I respectfully and earnestly urge as a grower of California fruits and as vice president of the Growers' Bank of San Jose that you exert every effort at your command to so modify the decree that the packers may again resume the distribution of California canned goods. I do not believe the people in the East fully realize the injury that would be done to the fruit industry of California if the packers were denied the right to handle California canned goods.

GEORGE SINGLETARY.

A telegram addressed to Congressman Curry:

SEPTEMBER —, 1921.

Hon. CHAS. F. CURRY,
House of Representatives, Washington, D. C.:

We wish our fruits distributed at lowest cost. This can not be done without a modification of the decree to permit the packers distributing our products.

NAPA COUNTY FRUIT GROWERS' ASSOCIATION,
EGBERT SMITH, *President*.

SAN FRANCISCO, CALIF., *September 16, 1921.*

Hon. H. M. DAUGHERTY,
Attorney General:

Santa Clara Valley Growers' Association, with a membership of 300 fruit growers, respectfully petition the modification of the packer decree. Fruit growers of this State have suffered extensively as a result of the Government destroying one of the best means of distribution of California products.

SANTA CLARA VALLEY GROWERS' ASSOCIATION.
FRANK U. REIDY, *Secretary*.

PORTLAND, OREG., *November 15, 1921.*

Hon. H. M. DAUGHERTY,
Attorney General:

Cooperative fruit organizations should be afforded every channel possible for marketing products. Modification of packers' consent decree, permitting them to distribute these products under supervision of Secretary of Agriculture would be of assistance at this time.

WESTERN FARMER.

Mr. E. F. Faville is the editor of that journal.

A telegram from the California Cultivator:

LOS ANGELES, CALIF.,
September 24, 1921.

Hon. H. M. DAUGHERTY,
Attorney General.

Many California fruit growers are confronted by great losses, even probable ruin, unless modification may be had in packers' decree. In cooperating to secure market for canned fruits arrangements were made providing economical distribution in addition increase of production calls for greater rather than restricted marketing possibilities. As a farm paper vitally interested in the productive interests of California we urge most serious consideration of modification of packers' decree.

CALIFORNIA CULTIVATOR,
By C. B. MESSENGER, *Editor.*

Mr. SMITH. What was the date of that publication?

Mr. GRAY. September the 24th. Another telegram:

SEPTEMBER 19, 1921.

Hon. H. M. DAUGHERTY:

Cherry growers of California suffered severe losses last year owing to lack of markets. Price canned cherries low with no demand.

Fresh markets quickly glutted. This organization believes that a broad and economic system of distribution is essential to success. Packers' distributing organization go far to stabilize canned-goods market. We ask modification of decree in interests of California producers.

SANTA CLARA VALLEY CHERRY GROWERS ASSOCIATION.
A. T. KING.

SAN JOSE, CALIF.,
September 24, 1921.

Hon. H. M. DAUGHERTY,
Department of Justice:

As an extensive fruit grower of this State and realizing the necessity of protection for the canning industry as a means of securing to us a fair return I urge that large packing industries be allowed to assist in marketing canned products. Kindly assist us in modifying packers' decree.

S. C. KIMBALL.

I might say that Mr. S. C. Kimball is a very prominent grower in my district.

A telegram from San Jose, Calif.:

SEPTEMBER 24, 1921.

Hon. H. M. DAUGHERTY:

Being a representative grower of the Wrights district I respectfully request that you do your utmost to modify the decree preventing the packers from handling our products. A low distribution cost is absolutely essential in order to increase consumption and the large packers have by far the most economical system.

D. D. EMERY.

SAN JOSE, CALIF.,
September 24, 1921.

Hon. H. M. DAUGHERTY:

As a fruit grower I am vitally interested in the marketing of our products and respectfully urge you to use your influence in modifying the decree preventing the packers from using their low-cost distributing system in handling our canned and dried fruits. In endeavoring to build up a means of delivering to the ultimate consumer our rapidly increasing production we must consider low cost and believe that of the large packers to be the most economical.

F. J. REIDY.

These are all from growers, as you can see.

SEPTEMBER 21, 1921.

HIRAM W. JOHNSON,
United States Senator, Washington, D. C.:

The very best interests of both producers and consumers will be served by immediate modification of packers' decree to take care of 1921 crop. We grocers absolutely need every available distribution facility. We beg to request favorable and early action on said modification.

J. J. McDONALD,
Past President Federation of American Farmers.

SAN JOSE, CALIF., September 20, 1921.

Hon. H. M. DAUGHERTY,
Attorney General:

As owners of five fruit ranches in Santa Clara Valley we urge you to do everything possible to so arrange that it will be possible for the packers to handle California canned fruits. If possible for packers to handle California canned goods, it will seriously and adversely affect the fruit business of California.

LEWIS CO.,
 STARR BRUCE, *Secretary.*

SAN JOSE, CALIF., September 16, 1921.

Hon. H. M. DAUGHERTY,
Attorney General:

After careful consideration, I believe that the best interests of both producer and consumer would be best served by modification of packers' decree, as the grower absolutely needs the distribution made available thereby. Our growers respectfully request favorable and early action on proposed modification.

S. E. JOHNSON,
President Growers' Bank.

He is also a very prominent fruit producer in the Santa Clara Valley.

LOS ANGELES, CALIF., September 28, 1921.

Hon. H. M. DAUGHERTY,
Attorney General:

As managing director Bay Cities Mercantile Co., owning 19 chain stores operating southern California, I recognize need, and petition the modification of the packers' decree, thereby insuring more economical distribution foodstuffs as evidenced when formerly handled by them. President has said more business in Government, less Government in business.

BAY CITIES MERCANTILE CO.,
 ED. STANTON.

SEPTEMBER 24, 1921.

Hon. H. M. DAUGHERTY,
Attorney General:

Orchard and Farm, California's most widely read farm journal, believes producers should have every available facility for distribution. Inasmuch as packers are now under control of Secretary of Agriculture, we believe so-called consent decree could be safely modified as to distribution of California's agricultural products. Our position is that efficient distribution will benefit ultimate consumer.

J. C. KNOLLIN,
Editor Orchard and Farm.

SEPTEMBER 16, 1921.

Hon. H. M. DAUGHERTY,
Attorney General:

As chairman of the State legislative committee of the Farmers Educational & Cooperative Union of America of California and as an extensive fruit grower

vitaly interested in cooperative marketing, I am sending you this telegram, earnestly urging upon your consideration the necessity of modifying the decree regarding the handling of canned fruit by the meat packers. In my opinion there is nothing that could be done that would be so beneficial to the fruit growers as this modification, and at the same time it would result in lower prices to the consumer. The farmers union stands irrevocably for the policy that returns a fair price to the producer and a reasonable one to the consumer.

L. WOODARD,

Chairman State Legislative Committee Farmers Union.

SEPTEMBER 22, 1921.

Hon. H. M. DAUGHERTY,

Attorney General:

We, the fruit growers of Santa Clara Valley, do not understand why we fruit growers of California should be deprived of the benefits of the great distributing system of the big packers. Without them the only outlets we have are through the wholesale grocers, who speculate in our products and add great profits before sending them on to the consumer. The packers helped control these distributing costs and can send our fruit at low cost throughout the world. We ask you to modify the decree and allow them to resume the marketing of California canned and dried fruits.

JOSEPH W. SEITZ,

C. C. SPABURG,

E. A. SMITH,

BRACHER FRUIT CO.,

OMAR OAKS FRUIT CO.,

Growers of Santa Clara and Mount View District.

GEO. M. BROWN,

ALFRED L. BROWN,

F. A. HUNTER,

C. F. JOHNSON,

CENTERVILLE, CALIF., September 25, 1921.

Hon. H. M. DAUGHERTY:

Having for the past 25 years been vitally interested in the fruit-growing industry of Alameda County, Calif., hence being thoroughly familiar with producers burdens, for the sake of simple justice to one of the class who feed the world and can not fix the price of what he raises, I earnestly request that you exercise your high office in modifying decree now preventing packers from handling California canned and dried fruit.

B. C. MICKLE.

TULARE, CALIF., September 23, 1921.

Hon. H. M. DAUGHERTY,

Attorney General:

We earnestly believe that a modification of the decree preventing the packers from selling and distributing our canned and dried fruits is for the best interests of our fruit growers, and we respectfully urge such action be taken.

FIRST NATIONAL BANK OF TULARE, CALIF.,

By W. E. DUNLAP, Vice President and Manager.

SARATOGA, CALIF., September 27, 1921.

Hon. H. M. DAUGHERTY,

Attorney General:

I have raised fruit in Santa Clara Valley for 20 years. Have made careful study of marketing problem. Wish to call your attention to fact that Government action prohibiting meat packers from marketing our products deprived us of best outlet we ever had. I therefore urgently request in name of this organization modification of this decree to allow packers to handle our products.

R. V. GARBOD,

*President Farmers' Educational and Cooperative Union,
Santa Clara Division.*

SAN JOSE, CALIF., September 21, 1921.

Hon. H. M. DAUGHERTY,
Attorney General:

Being vitally interested in the growing of fruit in California, I respectfully ask for the modification of the decree for the packers to handle canned and dried fruits, as I know the same is essential to our welfare.

F. H. EASTEY.

SEPTEMBER 19, 1921.

Hon. H. M. DAUGHERTY,
Attorney General:

We fruit growers of the Sunnyvale district of Santa Clara County need every channel of distribution for our canning fruits; production is increasing every year, and unless we can get our products in the hands of the consumers at the lowest possible cost we can not avoid tremendous losses. We believe that the economical marketing organization of the large packing companies should be used to reduce the present cost of distribution and reach new markets, and we therefore urge that the decree preventing the packers from handling our products be so modified as to allow them to market our fruit.

C. C. SPALDING,
Assemblyman Forty-fifth District.

F. C. WILLSON.
ADA J. WRIGHT,
A. C. BUTCHER.

H. G. STELLING.
A. P. FREEMAN.
F. P. MCCRAY.
Mrs. N. B. SCOFIELD.
W. J. CLEMENTS.

CUPERTINO, September 22, 1921.

Hon. H. M. DAUGHERTY,
Attorney General:

As a grower myself since 1886, and as secretary of Cupertino Apricot Growers, I protest against decree preventing packers from handling California canned and dried fruits.

H. O. H. SHELLEY.

Hon. HIRAM JOHNSON,
Washington, D. C.:

We ask your support in behalf of the modification of the packers' decree limiting the packing interests in the handling of farm produce other than meat. We have built canneries and packing plants on the strength of a contract with Armour, which is not yet fulfilled, to handle our products. If this modification is not granted, it would mean a serious loss to the growers of California fruits.

TULARE COUNTY FARM BUREAU,
ALLEN THOMPSON.

VISALIA, CALIF., September 17, 1921.

Hon. H. M. DAUGHERTY, *Attorney General.*

Senator HIRAM JOHNSON,
Senator F. M. SHORTRIDGE,
Congressman H. E. BARBOUR,
Washington, D. C.:

Protect California fruit crops, modify packers' decree. Permit experienced distributing concerns continue marketing of our pack. Markets should be available for increased production. Holdovers must not occur as past season.

W. J. FULGHAM.

Mr. MCKINNEY. Where is that from, please?

Mr. GRAY. That is from Visalia, as I state. Mr. Fulgham is one of the largest growers of canned and dried fruits in Tulare County, also a director of the Live Stock Association of the State.

Mr. MCKINNEY. Also a member of the cooperative canneries?

Mr. GRAY. Also a member of the cooperative canneries; yes, sir.

Hon. H. M. DAUGHERTY:

We feel certain that the consent decree, which eliminated the packers as distributors of fruit products, is very detrimental to our growers' market.

FARMERS & MERCHANTS NATIONAL BANK, MOUNT VIEW,
WILBUR L. CAMP, *President.*

SAN JOSE, CALIF., September 20, 1921.

Hon. H. M. DAUGHERTY,
Attorney General:

Representing an organization of fruit growers numbering 150 members vitally interested in the welfare of the fruit industry of the Santa Clara Valley, we respectfully urge that the decree preventing the large packing interests from handling our canned and dried fruits be modified so that we growers will be benefited by their extensive means of distribution through branch houses and refrigerator cars.

KARL A. FRIEDRICH,
Secretary of the Cupertino Improvement Club.

Mr. McKINNEY. Also a member of the cooperative canneries?
Mr. GRAY. Oh, I don't know whether he is or not. I can't answer that.

Hon. CLARENCE LEA,
House of Representatives, Washington, D. C.:

The members of the farm bureau of this district, producers of pears, cherries, apples, peaches, and prunes, want our products distributed to the consumers at the lowest possible cost; therefore we ask such modification of the decree which will permit the packers to handle our canned and dried fruits. Advise Attorney General.

SONOMA FARM CENTER.
MORRIS LEVY, *President.*

Mr. DAILY. Is Morris Levy in more than once?
Mr. GRAY. I don't think so. I have not read a telegram from him before.
Mr. DAILY. Yes; you read one before.
Mr. McKINNEY. Yes.
Mr. GRAY. Well, if that is so, he has just expressed it a little different this time. I may get another.

Mr. McKINNEY. Mr. Chairman, wouldn't it clarify this if he indicated each time whether they were members of the Cooperative Canneries?

The CHAIRMAN. Well, Senator Shortridge read a lot of letters and telegrams here, and he did not indicate whether they were members of the California Canners' League.

Mr. McKINNEY. Aren't you interested in this point?

The CHAIRMAN. Well, I don't believe it is a disreputable organization.

Mr. McKINNEY. No.

The CHAIRMAN. And it is not wrong to be a member of that organization?

Mr. McKINNEY. Not a bit.

Judge HAINER. Well, how is it material?

Mr. McKINNEY. Well, if you are interested it is; if you are not, it is not.

Judge HAINER. Well, we will be glad to hear from you when he gets through. He is reading these telegrams now. You have got a right to put on your rebuttal and show the interest of the witnesses, or their hostility. We will be glad to hear from you when he is through, but I suppose he ought to have an opportunity to read these telegrams now.

The CHAIRMAN. Go ahead.

Mr. GRAY (reading):

SANTA ROSA, CALIF., September 21, 1921.

Hon. H. M. DAUGHERTY,
Attorney General:

We need wider distribution for our cherries, berries, pears, and other fruit. Prices paid by commercial canners this year below cost of production. Our fruit must be distributed at lowest cost. We urge modification of packers' decree so that they can market our products.

CALIFORNIA CHERRY GROWERS' ASSOCIATION.
F. W. MADDOCKS, *President.*
L. A. FRET, *Secretary.*

SAN JOSE, CALIF., September 24, 1921.

Hon. H. M. DAUGHERTY:

Being a representative grower of the Wrights district. I respectfully request that you do your utmost to modify the decree preventing the packers from

handling our products. A low distribution cost is absolutely essential in order to increase consumption, and the large packers have by far the most economical system.

D. D. EMERY.

SANTA CLARA, CALIF., *September 19, 1921.*

Hon. H. M. DAUGHERTY:

In view of depressed business conditions throughout the country and the pending hard times, we believe that every effort should be made to have California fruits and vegetables delivered to the consumers at the lowest possible cost. Our cooperative organizations endeavor to deliver their products to consumers as direct as possible and with reasonable profits to the producers. We urge you to modify your decree so as to permit the large packers handle and distribute our products.

SANTA CLARA COUNTY WALNUT GROWERS' ASSOCIATION,
C. J. PARKS, *Secretary.*

SEPTEMBER 19, 1921.

Hon. H. M. DAUGHERTY:

Cherry growers of California suffered severe losses last year owing to lack of markets. Price canned cherries low with no demand. Fresh markets quickly glutted. This organization believes that a broad and economic system of distribution is essential to success. Packers' distributing organization go far to stabilize canned goods market. We ask modification of decree in interests of California producers.

SANTA CLARA VALLEY CHERRY GROWERS' ASSOCIATION,
A. T. KING.

SANTA CLARA, CALIF., *September 30, 1921.*

Hon. H. M. DAUGHERTY:

As a grower of California fruits, as president of the Wilcox Fruit Co., and director of the California Pear Growers' Association, may I request that you please exert every power at your command to so modify the decree that the packers may again resume the distribution of California canned and dried fruits? Rapidly maturing young orchards make imperative the opening of new markets and tremendous wrongs would be done our growers and the consumer to whom we desire our fruit delivered at the lowest possible cost without adding to them the profits of the wholesalers.

F. A. WILCOX.

NAPA, CALIF., *September 24, 1921.*

Hon. H. M. DAUGHERTY:

Realizing that we growers of Carneros district would be benefited by the decree being modified so as to allow the packers to distribute our canned and dried fruits, we respectfully ask for the same.

JAMES FIRTH.
J. F. WHITE.
B. H. LONG.
HOWARD LITZ.

GEO. W. SCHAFER & SON.
F. A. BLACKMAN.
HENRY CARREG.
PETER LAWSON.

SONOMA, CALIF., *September 24, 1921.*

Hon. H. M. DAUGHERTY:

Interested in the growing of California canning fruits, we respectfully ask to have the decree allowing packers to use their distributing agencies be modified as we may receive benefit of same.

WILLIAM O. POST.
G. C. RUBKE.
J. I. KISER.
E. M. CUTTER & SON.

SONOMA, CALIF., September 23, 1921.

Hon. H. M. DAUGHERTY:

Being a fruit grower of Sonoma and being in touch with the condition of our fruit growers here, I respectfully ask you to exert every means to have the decree modified restricting the packers from handling our canned and dried fruits through their channels of distribution.

F. T. LOWELL,
Supervisor First District.

SONOMA, CALIF., September 24, 1921.

Hon. H. M. DAUGHERTY:

Realizing the importance of the distributing system of the packers, as secretary of Sonoma Valley Apple Growers' Association, membership 100, respectfully ask the decree be modified so that the growers of this district will receive full benefit of the packers' channels of distribution.

A. J. RUBKE, *Secretary.*

NAPA, CALIF.

Hon. H. M. DAUGHERTY:

We, the following fruit growers of Union district, Napa County, earnestly urge that the decree preventing packers from distributing our California fruits be so modified that we can receive the benefit of their great distributing agencies. This is of vital importance in getting our products to the consumer at a reasonable price.

S. H. WYCKOFF.
M. B. HESTON.
S. KELLY.
O. L. HARMON.
W. M. FISHER.
W. L. BALLMAN.

SARATOGA, CALIF., September 27, 1921.

Hon. H. M. DAUGHERTY:

I have raised fruit in Santa Clara Valley for 20 years. Have made careful study marketing problem. Wish to call your attention to fact that Government action prohibiting meat packers from marketing our products deprived us of best outlet we ever had. I therefore urgently request in name of this organization modification of this decree to allow packers to handle our products.

R. V. GARROD,
*President Farmers' Educational & Cooperative Union,
Santa Clara Division.*

SONOMA, CALIF., September 24, 1921.

CLARENCE F. LEA,
Congressman, Washington, D. C.

As a grower of California fruits and interested in the canning business, after careful consideration I respectfully ask you to use every effort in having the decree modified giving packers the distribution of our canned and dried fruits.

C. S. CUTTER.

NAPA, CALIF., September 23, 1921.

Hon. H. M. DAUGHERTY:

As the director of the Carneros Farm Bureau, numbering 20 members, we respectfully ask for the modification of the decree allowing the packers to use the marketing distribution, as the problem of marketing our fruit needs such help.

D. W. ROTHBOCK.

SONOMA, CALIF., *September 24, 1921.*CLARENCE F. LEA,
Congressman, Washington, D. C.:

In the interest of our growers and producers of canning fruits, we favorably request earnest and early action on proposed modification of decree allowing packers distribution of fruits.

SONOMA VALLEY BANK,
FRANK M. BURRIS, *President.*SONOMA, CALIF., *September 24, 1921.*

Hon. H. M. DAUGHERTY:

Having an interest in two canneries in California, realizing the importance of modifying the decree preventing packers from distributing canned and dried fruits, I respectfully ask for the modification of the same.

R. L. WATT.

Mr. GRAY. Mr. Watt is a member of the California Cooperative Canneries, I guess.

SONOMA, CALIF., *September 24, 1921.*CLARENCE F. LEA, M. C.,
Washington, D. C.:

We, the undersigned, respectfully ask you to use every effort in having the decree modified so as to allow the packers distribution of our canned and dried fruits from California.

VESTAL BROS.

Now, gentlemen of the committee, we could have gone on and got thousands of wires if it was necessary to get individual wires from growers. These gentlemen have set up that they have so ably and wonderfully represented the cooperative organizations of California, and I contend that they have not done so by legitimate means. They have pretended here to represent them because of the fact that the Dried Fruit Association of California, which has in its membership the California Associated Raisin Co., the Prune and Apricot Association, the Peach and Fig Growers, and like organizations, have been getting together for the purpose of standardization of fruits, for the purpose, as this organization of dried fruits association is formed, of taking up matters of freight adjustment, freight rates, and handling of boxes, and facilities for marketing, etc., marketing conveyances, and it is quite a problem out there, and those fruit associations have to do with the working out of those problems many times. It is not for the purpose of a representing of the growers' interests in any regard. It is simply for the handling of the problems that come up from day to day pertaining to the transportation and standardization of fruits and packages, etc.

I want to read into the record, while I am reading here, a letter from the Federal Grocery Co., of Los Angeles, Calif. These are wholesale grocers. [Reading:]

"LOS ANGELES, CALIF., *September 28, 1921.*"Hon. H. M. DAUGHERTY,
Attorney General, Washington, D. C.

"DEAR SIR: Note by the newspapers that there is considerable agitation on over an attempt to modify the packers' consent decree. I am engaged in the retail business through the operation of 80 chain stores"—

While I said they are wholesalers they are wholesale-retailers in a way—"to the extent of several million dollars annually, and have given the matter some thought and believe I have appraised myself of the facts pretty thoroughly, and I want to go on record as stating that this corporation is heartily in favor of the modification of the decree.

"I have been in the retail business for some years. I have seen the coming of the automobile and a few other modern inventions in my day, all of which have been decried by the men whose monetary interests were most affected. Such a class are always willing to stop the march of progress. We are being governed by a Republican administration at this time, and under the guidance of the G. O. P."—

You know what that is—
"is not a good time to stop the march of progress. The man most affected by the modification of the packers' consent decree is naturally the whole-

sale grocer, a committee of whom came before our State convention of retail grocers a few days ago and admitted to us that their operating expenses had gone higher than their profits. If such is the case, there must be something radically wrong with the distribution of foodstuffs through the medium of the wholesale grocer.

"Our good President said, when he took the oath of office, 'More business in government and less government in business.' Here is a wonderful opportunity to take the Government out of business.

"Which is the greatest menace, I would ask—to allow the packers to have control over food commodities, or a combination of the National Wholesale Grocers' Association and the National Specialty Manufacturers' Association? I have come in contact with both in the past 10 years to a large extent, and the packers' methods of doing business have been the ones that appealed to me, because they know what they are doing, and the other fellows have been guessing at it most of the time, as they admitted, in a meeting held in June in the Congress Hotel, Chicago, a transcript of which will be very interesting reading to you, and the results of which meeting were: 'The patient is sick; where is the doctor?'

"We had a good example of the inefficiency of the present method of distribution by the wholesale grocer last year, when warehouses were bulging with canned goods and their distribution broke down completely and was unable to carry the burden, with the consequence that the canners went direct to the retail trade and the greater part of the pack was cleaned up, as I understand from the big canners, through the media of the chain stores. Certainly in a time like this the most direct method of food distribution can not be decried by anybody who wants to give full assistance toward getting the country back to a normal condition, and the more middlemen that are eliminated, with their costly overhead, the more direct the distribution. You fully realize that the overhead on the whole industrial and commercial industries of this country to-day is overtaxed, and we can not help but believe, and sincerely so, that a modification of the packers' consent decree is one of the many big steps that will have to be taken by the Republican Party to undo the political entanglements of our Democratic friends, who got their nose into everybody's business during their recent reign, before the country can be brought back to a normal system of distribution.

"I did not intend to launch into a lengthy dissertation of this subject, but I only wish I could meet you individually, for my past 10 years of experience in dealing in foodstuffs between the combinations I believe would be of interest to you, and it is from this past experience that I am willing now to state that a modification of the packers' consent decree is not only fair and just at this time but a step toward further reconstruction, and to deny the modification I sincerely believe would be poor evidence of the fact that the Republican Party want to take Government out of business.

"Yours very truly,

(Signed)

"J. A. DALEY, *President.*"

This man must be a Republican.

Now, along the line of these wires, gentlemen, that I have read here, and due to the fact that there has been so much stress laid upon the canners, their interest in the growers' interests, and due to the further fact that Mr. Campbell is here representing the California Cooperative Canneries, of which he is manager, I want to say that I had some little experience in assisting this organization in organizing. I have taken an active and prominent part in the organizing of fruit interests in California, and farm bureaus, etc. I have donated weeks and months of my time in organizing—in assisting to organize, rather—the Raisin Growers' Association, the Peach and Fig Growers, the Prune and Apricot Association, etc. And when this organization, which so vitally affects the canning organizations of the State, came in, I likewise donated much of my time and assisted in their organizing.

In 1919 I was asked by the management of the California Cooperative Canneries to manage the delivery of some 6,000 tons of peaches out of Visalia. To defend themselves against the resistance of the canning trade in Tulare County, there was formed the Tulare County Peach Canning Association, many of the members of which I have read wires from. These growers got together and pooled their fruit. They did not and could not afford to buy canneries, but they pooled their fruit. Profits were made off their product. Many times the California Packing Corporation bought it. In fact, they had so frequently done this that they seemed to think that they had a God-given right to be the

only ones that might submit a bid for this fruit. And previous to this there had never been a cooperative canning institution in the State of California of such importance as the one new being attacked.

Mr. BREED. What one?

Mr. GRAY. The California Cooperative Canneries. I thank you, Mr. Breed. So the management of the California Cooperative Canneries asked me to go to this conference, which was held at Visalia at the city auditorium about the 4th of June, if I remember correctly, and place a bid for them.

Mr. BREED. What year?

Mr. GRAY. The 4th of June, 1919. And place a bid for them on this pool. And as is the usual process among business men, to get together on a price, and as has been customary many times by the California fruit packers, to my personal knowledge—when I was seen coming into the hotel, at which place most of the gentlemen who were going to offer bids on this pool were staying, I was accosted by one Leslie S. Smith, who had, I am sure from the tone of his conversation, already aligned himself with the other proposed bidders on this pool. Mr. Smith, whom I know very well as a canner at Armona, my own town, asked me: "Gray, what are you doing over here?" "Oh," I said, "I don't know. I don't know." I evaded him somewhat. And he was cognizant of the fact, however, that I had come there for the purpose of putting in a bid for the California Cooperative Canneries, as it had been quite widely noised around. So he said: "Now, Gray, what are you going to offer for this fruit?" "Oh," I said, "I don't know yet. I haven't received my final confirmations, which I hope to receive about 1 o'clock." "Well," he said, "you know we want to get together on this thing, and the other boys are figuring out a price of about \$60 on this fruit; \$55 to \$60, not over \$60. And what do you think about it?" "Oh," I said, "I don't know. I haven't made up my mind, and in fact I am acting under the directions of those that I represent."

The bid was placed about 2 o'clock, secretly, of course, in secret bids, and the price that was bid by the California Canneries, that was in keeping with the price received for canned fruits from the trade at that time—the price named by the Cooperative Canneries was \$92.50 on cling peaches, all varieties, including lemon clings, which are said to be "lemons" in the canning business, and \$55 for free-stone peaches.

I took delivery on that fruit and opened an office in Visalia, had some 55 or 60 men under me in delivery, covering some seven or eight stations in the county, at which points the fruit was received from the growers, and trucked to central points for shipment.

The CHAIRMAN. Who did you say bought that?

Mr. GRAY. The California Cooperative Canneries.

The CHAIRMAN. I thought you said the California Packing Corporation.

Mr. GRAY. No; the California Cooperative Canneries. The California Packing Corporation had previously bought, many times, and they thought they had preferred rights.

The CHAIRMAN. Well, I thought you said the California Packing Corporation.

Mr. GRAY. No; it was the California Cooperative Canneries.

Mr. BREED. You bought the fruit, in other words?

Mr. GRAY. No; I did not. The California Cooperative Canneries.

Mr. BREED. Well, I meant the California Cooperative Canneries.

Mr. GRAY. The California Cooperative Canneries bought the fruit, yes, sir.

The task of delivering some 6,000 tons of fruit was some job, and considered so, and in fact I knew it when I took the job, and a sort of an intimidation by the local representatives of the packing corporation was brought upon me by such assertions as these: "Gray, you are crazy for taking a job like this. You know that you can not get enough cars to ship out 6,000 tons of fruit out of Visalia, and handle it without great loss. And if you are made to take a loss on this thing your reputation will be seriously impaired." Not that my reputation was worth so much, however.

But this delivery was made—to settle the argument about that—this delivery was made, and I afterwards learned from the books of the California Cooperative Canneries, as a member, that there was a clear profit of something like \$6,000, in rough figures, over and above all the expense of this tremendous haul from Visalia to San Jose, \$6,000 as a net profit. And I want to tell you, gentlemen, that there never had been offered a price even up to \$60 per ton for cling peaches previous to that time in the San Joaquin Valley, covering a period of some thirty years, to my knowledge.

My mind is well made up on this matter that there was an attempted collusion among the canning interests of the State of California, the packing corporation included, to crowd the growers down there at some \$32.50 below the price that they could have paid on this product and still make about \$1 per ton profit; or \$6,000 on the 6,000 tons.

Further, the next spring I went to Modesto, about the middle of February, and organized the California Cooperative Canneries' plant there, or, rather, organized the local association of the California Cooperative Canneries, which is designated as the Stanislaus County Fruit Growers' Association.

Mr. SMITH. Do you object to telling us one thing there?

Mr. GRAY. No.

Mr. SMITH. You spoke of that profit. Was that the canning company that made that profit, or simply by the haul?

Mr. GRAY. The haul?

Mr. SMITH. Yes; the distribution of the fruit?

Mr. GRAY. The canning company made the profit.

Mr. SMITH. The canning company made the profit?

Mr. GRAY. Yes.

Mr. SMITH. Have you charged up all overhead of every kind?

Mr. GRAY. Yes; charging up all overhead of every kind.

Mr. SMITH. Interest on their plant and everything else?

Mr. GRAY. Yes; and a very excessive sum set aside for depreciation besides.

Mr. SMITH. What year was that?

Mr. GRAY. 1919, the summer of 1919. And this \$6,000 was distributed to the Santa Clara Growers' Association members or to the members of the cooperative canneries, which was then the only organization in existence—growers' organization.

I went to Modesto in February of 1920 and there organized some 185 growers into the Stanislaus County Growers' Association, which is the local organization that goes to make up with other local organizations the California Cooperative Canneries. A similar plan as has been adopted by the raisin association in its organization.

I spent the first week in getting interests, financial and otherwise, in sympathy with the organization of a cooperative canning association—the newspapers, for instance, and banks, etc., and felt they were with me when I had finished propounding my arguments to them, as there was a very stubborn attempt on the part of the canning interests of the State of California to resist this one more encroachment upon their interests by cooperation.

The fruit packers of California had been driven out of the peach business, the raisin business, the prune and apricot business, the fig business, etc. Most all of our California products are handled to-day by cooperation—some 42 organizations, with a membership of 70,000 growers in California, Oregon, and Washington.

In three to four weeks' time I had brought these growers together, and had raised two hundred forty and some odd thousand dollars for the building of this plant. It was put up and the crop of that district was handled very satisfactorily that year, and even more satisfactorily this past season.

The price that was being offered by the Packing Corporation, Pratt Lowe, L. W. Hume & Co., and other local canning interests was \$37.50 to \$40 per ton for cling peaches. In fact, in conversation with several of these canning interests they said, "Oh, this season is different than last year. It is impossible to pay more than this price for canning cling peaches." As soon as I was discovered, however, by these gentlemen, the price immediately began to rise, and the further I progressed with the organization in getting the growers together the higher the price went, until about two months afterwards the canners were offering from \$80 to \$85 for cling peaches in that district. Or, in other words, the price was doubled in this regard. And before the canning season was over these canning interests of that particular locality, and those who came in from the outside to purchase, were paying as high as \$100 per ton for canning cling peaches.

Now, I am reciting these facts as I know them to be, to show you how stubbornly these gentlemen handling the manufacturing of the growers' product will resist cooperation, and give inducements to the growers that are being organized to stay out of these organizations.

Mr. GRAY. In this connection of the pressures that have been brought to bear by the canning interests, and because I believe that is to be their last stand, so to speak, against cooperative interests of California, I want to read you an

excerpt from the Pacific Banker, to show how far these gentlemen have gone to even effect the financial interests of the State of California and to bring some pressure to bear against them, the same pressure against them that is brought to bear, so to speak, upon cooperative associations in California. In the issue of October 27, 1921, of the Pacific Banker, which is, I take it, the official organ of the banking interests of California, is an item headed "Food Cannery Directors on Bank Boards." That is the caption of the article. The article is as follows:

"The election a few days ago of Leonard E. Wood, vice president of the California Packing Corporation, as a director of the recently organized Liberty Bank, directed attention to the fact that the big foodstuffs packing enterprise is well represented on the directorates of San Francisco banks. Wood is the ninth member of the packing corporation's board of directors to become a bank director. J. K. Armsby, chairman of the packing corporation board, is a director of the Mercantile Trust Co. and of two Marin County banks. Frank B. Anderson, chairman of the packing company's financial committee, is, as everyone knows, president of the Bank of California, N. A. Two other packing company directors, Richard I. Bentley and F. D. Madison, are associated with Anderson on the Bank of California directorate. M. J. Fontana, dean of Pacific Coast fruit canners"—

Which I will comment on, is now affiliated with the new California Packing Corporation—

"is a packing company director and vice president of the Italian-American Bank. Still another packing corporation director, William Fries, is on the board of the Humboldt Savings Bank. The other packing corporation directors who are also on bank directorates are W. J. Hotchkiss, of the Merchants' National Board, and John Lawson, of the Merchantile Trust Co."

I read that, gentlemen, to show you how those interests are encroaching upon the financial associations and financial concerns of California, and I will later refer to some refusals on the part of certain banks to finance this very organization that we are considering here, the California Cooperative Cannery.

I now just briefly want to go over the statistics as to the benefit of cooperative farming to the farmers of the Nation, as I believe is naturally the effect of this packers' consent decree on the farmer and his interests.

I have before me, from the Bureau of Census, Department of Commerce, the statistics, which read as follows in the caption: "Cooperative Marketing and Purchasing by Farmers in the United States." That is the caption, and I want to call your attention to a paragraph in that paper, as follows:

"The largest total sales were reported from the following States: California, \$127,990,981; Minnesota, \$82,760,459; Iowa, \$59,403,626; Illinois, \$47,920,487; New York, \$44,906,247; Nebraska, \$44,755,140; Kansas, \$44,290,957."

Judge HAINER. What is that?

Mr. GRAY. This is the cooperative marketing of the Nation as cited by some few States; not all of them.

Judge HAINER. What commodities does that include?

Mr. GRAY. All farm commodities.

Judge HAINES. All farm commodities?

Mr. GRAY. Yes, sir.

The total number of farms in the United States is 6,448,343; the farms reporting number 511,383; per cent of all farms, 7.9; that is the percentage of the farms reporting. The total amount of these sales through cooperative marketing of farmers is \$721,983,639, or an average per farm of \$1,412.

Next I want to just cite, and we do so with pride, that we have two counties in California that stand the highest in the United States for production. It is very significant, due to the fact that California is the greatest cooperative marketing State in the United States, as I believe will be borne out by these two figures.

The CHAIRMAN. Pardon me, Mr. Gray, but I noticed just a few days ago one of the statements issued by the Census Bureau which showed that Lancaster County, Pa., was then in the fifth class as among the rich counties in the United States. If you have those counties and figures there, I would be glad if you would give them.

Mr. GRAY. I will read the first five in this list.

The CHAIRMAN. Yes; do so.

Mr. GRAY. This is from the Bureau of Census, Department of Commerce, and is released on November 14, 1921. The five leading counties in the United States are as follows: First is Los Angeles County, Calif., with an amount in

value of crops and live-stock products of \$71,579,899; second is Fresno County, Calif., with an aggregate value of crops and live-stock products of \$55,110,101; third is Aroostook County, Me., with a total value of crops and live-stock products of \$54,376,256; next is San Joaquin County, Calif., with a total value of crops and live-stock products of \$41,191,240; fifth is Lancaster County, Pa., with a total value of crops and live-stock products of \$40,776,212.

The CHAIRMAN. That county used to be first.

Mr. GRAY. Yes; very fortunately we have three out of the five leading counties, Mr. Chairman. Still I contend that California is one of the foremost States in cooperative marketing.

From the same Department of Commerce, Bureau of the Census, released on August 15, 1921, I read an excerpt as follows:

"In the census reports a distinction is made between farmers operating their own land only and farmers who hire some land in addition to that which they own. The former are classified as 'full owners' and the latter as 'part owners.' The number of farms operated by full owners in 1920 was 3,366,546, and the number operated by part owners 558,549. In 1910 3,354,897 farms were reported as operated by full owners and 593,825 by part owners. There was therefore an increase of 11,649, or 0.3 per cent, in the number of farms operated by full owners and a decrease of 35,276, or 5.9 per cent, in the number operated by part owners."

The point I want to draw out here, gentlemen, is that due to the fact—I believe I can say it is due to the organization of farm associations in the United States—there has been a tendency among the farmers to operate their own land, rather than being absent landlord farmers. That shows a good tendency.

The CHAIRMAN. Let me ask you a question there: Are farming organizations in existence in those countries that have made so much progress in their production?

Mr. GRAY. Yes, sir.

The CHAIRMAN. That is, in Fresno and Los Angeles Counties, Calif.?

Mr. GRAY. Yes, Mr. Chairman; I think I understood your question.

The CHAIRMAN. I asked, is there a cooperative organization in existence to any extent in those countries?

Mr. GRAY. More than in the other countries, I think. I will say that the success of Los Angeles, that puts it to the head of the list, is due to the California Fruit Exchange, which is the organization of the citrus fruit growers. I have a little data on that which I will use later. And the Fresno County, being next, is the location of the raisin growers, which is the next largest organization in the State. San Joaquin County is very prominent because of its dairy cooperative organizations.

I have some figures from the Department of Commerce, Bureau of the Census, released on January 22, 1921, and desire to read an excerpt or two from that bulletin. [Reading:]

"IMPROVED LAND IN FARMS.

"Improved land in farms includes all land regularly tilled or mowed, land in pasture which has been cleared or tilled, land lying fallow, land in gardens, orchards, and vineyards, and land occupied by farm buildings. Of such land, 506,982,301 acres were reported in 1920, as compared with 478,451,750 acres in 1910. The increase in improved land thus amounted to 28,530,551 acres, or 6 per cent."

Again showing a gradual trend toward the tilling of the soil, and going back to the soil by those who should go back—the true farmer.

And another excerpt, Mr. Chairman, as follows:

"The average size of the farms in the United States in 1920 was 148.2 acres, as compared with 138.1 acres in 1910. The average acreage of improved land per farm in 1920 was 78.6 acres, as compared with 75.2 acres in 1910."

That denotes a prosperity and a further extending out by the farmers to till the soil.

From the same Department of Commerce, Bureau of the Census, in a bulletin released on July 27, 1921, are some figures showing the value of farm land in the United States, as follows:

"The value of farm land alone in the United States in 1920 was \$54,903,453,925, as compared with \$28,475,674,169 in 1910, representing an increase of \$26,427,779,756, or 92.8 per cent."

That was an increase of 92.8 per cent in 10 years, almost a doubling.

"The average value of land alone per farm in 1920 was \$8,514, as compared with \$4,476 in 1910."

Now, I am reciting these facts, because cooperative marketing has made greater progress in the past 10 years than in any 30 or 40 years previously, I believe, as the statistics, I believe, will show that fact.

And again, as of September 8, 1921, is an extract which I will read, as follows:

"The total value of farm crops in 1919, excluding forest products and nursery and greenhouse products, was \$14,755,358,407, according to the Fourteenth Census. The corresponding value of crops in 1909 was \$5,231,850,683, representing an increase of \$9,523,507,724, or 182 per cent, for the decade."

Thus it is conclusively shown that with cooperation comes the success of the farmer, both as to his being able to go out and farm more lands, buy more lands, and have larger ranches, and in the actual increase of the prices brought to the farm, that caused this increase development of the lands of our Nation.

Now, I want to just recite a few facts regarding the increase in production due to these cooperative movements. It has been recited and charged by these honorable gentlemen before the Federal Trade Commission in their prosecution of the California Associated Raisin Co. that there had been set up a monopoly, and we contend that, rightly speaking, there can not be such a thing in existence as a monopoly that would tend to increase to the consumers of this country the purchase price of farm commodities, because the minute that you raise the value of farm products in this country to a standard of where there is an unreasonable profit in farming, then thousands of acres are planted that act as a lever to hold down the farmer from overproduction and from being overpaid in his production.

This is from the Sunsweet Standard, a magazine, the official organ of the California Prune and Apricot Association, as of November, 1921; and I will quote from that magazine an article with reference to increased production.

"PHENOMENAL PLANTINGS OF THOMPSON SEEDLESS GRAPES.

"There is much valuable information contained in the latest bulletin of the viticulture service, of the State department of agriculture, which should be known to every grower in California.

"It is interesting to know that in 1920 the planting of Thompson seedless grapes increased over 80 per cent. The total acreage of Thompson seedless grapes in 1919 was 78,827; planted from 1919 to 1921, inclusive, were 63,200 acres.

"For those contemplating Thompson seedless or other varieties of raisin grapes in the near future this information is certainly worth noting:

"It is estimated that an average crop of Thompson seedless grapes is 1 ton per acre. At this rate, providing no more Thompson seedless are planted, the Thompson raisin crop in 1924 should be 142,027 tons. Compared to the raisin crop of the last two years this would be just 28,000 less than the total tonnage of all varieties of raisins raised in 1920. In other words, if no further plantings of grapes are made, the raisin-grape acreage in 1924 should produce a crop in excess of 350,000 tons, or more than double the 1920 crop."

Since Mr. Breed does not seem to get my point here, I want to show that the cooperative associations have built up the resources of the country, and I do not believe that is disputed, so I will skip over a good deal of this material.

But I do want to read what the California cooperative associations have done in planting in California. In 1914 there were planted of apples, apricots, cherries, peaches, pears, plums, and olives a total of 215,000 acres, and in 1918 a total of 351,893 acres, a very decided increase.

I have a table, Mr. Chairman, which shows this, which I will put in the record, if agreeable.

The CHAIRMAN. It may be inserted in the record.

	Bearing acreage, 1914.	Bearing acreage, 1918.	Nonbear- ing acre- age, 1918.	Total.
Apples.....	29,213	43,647	15,684	59,331
Apricots.....	32,234	40,886	19,444	60,330
Cherries.....	9,981	8,616	5,187	13,803
Peaches.....	101,995	107,575	12,388	119,963
Pears.....	23,351	22,416	23,087	45,503
Plums.....	10,178	17,284	4,656	21,940
Olives.....	9,117	18,801	12,222	31,023

Mr. GRAY. I want to state, for the benefit of the record, that I have before me a directory of the American agricultural organizations of 1920, in which are stated these facts, that there are 1,761 agricultural organizations, co-operative, in the United States.

In California, I might say that we have 42 successful associations, with a membership of 70,000 growers.

From the California Peach and Fig Growers' Association, as of 1920, there is information which I quote from the State market director of California which shows that in 1914 there was a production of 35,000 tons of peaches, and the return to the growers at that time was 3 cents per pound. In 1919 there was a production of 34,000 tons, approximately the same, and the return to the growers at 13 cents per pound instead of 3 cents per pound in 1914.

Now, peaches can not be produced for 3 cents a pound, and then probably not for less than 7 cents or 8 cents per pound, nor can they be produced now at much profit at 13 cents per pound because of the tremendous increase in the price of labor.

The California Prune and Apricot Association in 1919-20 had a gross turnover of \$25,000,000, and handled approximately 270,000,000 pounds of prunes and apricots; it paid an average of some 9½ cents to 16 cents basis on grade of prunes, and paid 19 cents to 32 cents per pound on apricots.

It is interesting to notice that the potato growers of the Minnesota district received, in 1921, 18.4 cents per hundred pounds more under organization than was received before organization.

This might be inferred that these prices which the cooperative organizations have received might increase the prices to the consumers. I want to say that in our dried fruit situation—and having made a considerable study of the subject on my way east this time, and in Chicago, and talked with the consumers—that the consumers are not paying substantially more for peaches, prunes, and apricots than they did before organization. They are paying more for seeded raisins, as they are paying about 31 cents per package, but the seeded raisin was always too cheap to the consumer at that time, because it could not be produced or manufactured at that price by the farmer and his interests.

I have here a speech, Mr. Chairman, as was given by Mr. F. N. Bigelow, secretary of the State market commission at San Francisco, when he talked before the California Bankers' Association at Hayward on October 12, 1920, in which he says some things of interest to the consumer. I will not read all of his remarks, but will read a few excerpts of interest.

"Have they lessened the cost of distribution?"

He is referring to the cooperative associations.

"Have they lessened the cost of distribution? Let us see. The peach growers is only an instance. Last year the California Fruit Growers' Exchange, marketing 74 per cent of the citrus products of California, did a business of \$60,000,000, at the phenomenally low selling cost of 1.3 per cent of the delivered value of the product. It is the lowest known cost for marketing a perishable food product. The exchange lost only \$485 that year from bad accounts."

And a few words further.

"In 1915, before organization, the peach growers received less than 3 cents a pound for their dried peaches. It cost them close to 5 cents a pound to produce. A survey by the State market director revealed that these same dried peaches were retailing in eastern markets at 17½ cents a pound average. Besides suffering a huge loss, a large portion of the dried peach crop was carried over into the next year. Organization was accomplished with the aid of the State market director and in 1916, through the association, the growers netted 6 cents a pound, with even larger crops. In addition, the large carry-over of the year previous was sold at 5 cents a pound. A second survey made in eastern markets found the dried peaches selling at an average of 15 cents a pound. The association had accomplished the seemingly impossible, lifting the price from the bottom and bringing it down from the top."

Wherein he recites that the growers used to receive 3 cents per pound, and it cost them close to 5 cents to produce, and the eastern markets were paying 17½ cents per pound, and that in 1916, through the association the growers netted 6 cents a pound, with even larger crops in addition, and the price to the consumer was about 15 cents per pound.

I have here some data before me showing what cooperative canning has done for the grower. On cherries, in 1919, the price paid by the California Cooperative Canneries, was 13½ cents average per pound; the price paid by outside

commercial packers was from 6 cents to 12 cents per pound. In apricots, this same cooperative organization, the Cooperative Canneries, paid an average of \$116 to \$135 per ton for good quality Blenheims; the outside commercial canner paid from \$50 to \$110 for the same fruit. Freestone peaches, the Cooperative Canneries paid \$55 for Visalia Pool to \$66 for Santa Clara cooperative fruit; while the outside commercial canner paid from \$35 to \$50. Cling peaches, the California Cooperative Canneries paid \$92.50 for Visalia Pool, \$117 average cooperatively to \$137 for good quality Philip clings; the outside canners paid \$65 to \$110. I might cite other instances, but I will not take the time, showing the benefits of cooperation.

Now, I want to just briefly review—as I do not think it is necessary to go into any details of these comparisons, and I believe that your minds are convinced, and I believe that Mr. Breed, as he has said, will admit many of the things I have recited here.

I want briefly to review some of the transcript of some of the testimony that has been given by these gentlemen so ably. Mr. Chase, the gentleman who spoke the first day of the hearing, representing the canning interests of California, on page 127 of the transcript, he says that he represents the Dried Fruit Association of California, by letter and by wire, and that the executive committee of the association, learning that he was going to be in Washington, had endowed him with special powers. And he further recites, on page 128, according to the testimony, that the Dried Fruit Association of California represents over 95 per cent of the dried fruit output of the State, including in that organization the three great growers' associations, the Raisin Growers' Association, with a membership of about 14,000; the Prune and Apricot Growers' Association, with a membership of about 11,000; and the Peach and Fig Growers' Association, with a membership of several thousand, "the number I do not recall as this moment." That is his testimony, under the page cited, on the day as I have related.

I want to read, for your careful consideration, some wires I have before me with reference to this matter. I believe there has been a deliberate attempt on the part of the gentleman to include all cooperation in this request against a modification of this consent decree. And I want to say here that the directors of those organizations, being executives, and handling the business of these cooperative organizations, truly can not represent the membership of those cooperative organizations, but they seem to have in one instance—that of the California Prune and Apricot Association—so taken this stand as representing their membership. I am a member of the California Prune and Apricot Association, and assisted in its organization work. There are several instances of that throughout this transcript, naming these cooperative associations, and the first thing that is mentioned is laying special stress that these organizations—these three particularly—as being against modification of the consent decree.

I have a wire before me which reads like this, addressed to myself and is an answer to my wire asking one of the directors in California whom I know and whose mind I know, I believe, in regard to this matter. This wire is dated December 8, 1921. I will not disclose at this time the name of this director. I do not think it is pertinent to this hearing, but I believe that the committee has a copy of this wire in its files or the contents of this wire.

MR. BREED. This is a confidential communication, is it?

MR. GRAY. Yes, sir.

MR. STEVENS. I believe the Chair ruled some time ago that there should be no confidential or ex parte communications from either side. That was said to be definite and final.

THE CHAIRMAN. We have ruled that there should be no communications inserted in the record in which the name of the sender could not be inserted in the record. That rule will be adhered to, so unless you feel at liberty to divulge the name of the sender, you shall not put it in.

MR. GRAY. Then I will give the name for the benefit of the gentlemen.

THE CHAIRMAN. We can not go back on that ruling and we must adhere to it.

MR. GRAY. I would not ask you to do that, Mr. Chairman. The telegram is as follows:

VISALIA, CALIF., December 8, 1921.

DALLAS S. GRAY,

Powhatan Hotel, Washington, D. C.:

Your wire received; the resolution passed by California Prune and Apricot Growers did not by any means represent the sentiment of all the growers. At

later date Sapiro was given instructions by the management not to appear in any way for the Prune and Apricot Growers at Washington; if he has done so, he has violated his instructions. Do not use my name unless absolutely necessary.

W. J. FULGHAM.

Mr. Fulgham is a director of the California Prune and Apricot Growers' Association. Mr. Fulgham is a director of that association, and is a grower and canner, as I have said.

Now, all through here—and I shall not lay special stress on this—but I have a wire here, inasmuch as there has been an inference made by Mr. Chase laying special stress on the testimony, and all through the testimony they are saying, "We are glad to know that the cooperative organizations of the State of California are against the modification of the consent decree," I wired to Mr. Wylie M. Giffen, whom I know very well.

The CHAIRMAN. What does he do?

Mr. GRAY. He is the president of the California Associated Raisin Co., and is manager. I wired Mr. Giffen on December 1, 1921, as follows:

DECEMBER 1, 1921.

WYLIE M. GIFFEN,

Care of California Associated Raisin Co.,

Forsythe Building, Fresno, Calif.:

Monday's testimony of packer decree Elmer Chase claims he officially represented dried-fruit association controlling 95 per cent of output and lays special strong stress by naming raisin association first and then other dried-fruit associations as its members, which passed a resolution at San Francisco on October 27 signed by Chaddock as secretary, protesting against modification of consent decree. As per our personal conversation you said raisin directors decided to remain neutral. Were you represented at above meeting and did you agree with dried-fruit association on this matter? Wholesalers and fruit packers are using every means to overweigh their argument by trying to pull all cooperative associations into this. Am sending some transcript for your careful perusal. Wire answer. Important.

DALLAS H. GRAY.

You will notice I say, "as per our personal conversation"—and I did have a personal conversation with Mr. Giffen on this very subject before I left California. We sent him a transcript for him to read, proving my contentions.

I received this wire from Mr. Giffen on December 1, 1921, as follows:

FRESNO, CALIF., December 1, 1921—5.50 p. m.

DALLAS H. GRAY, *Washington, D. C.:*

We are members of dried-fruit association, but voted not to take any action in packer decree matter.

CALIFORNIA ASSOCIATED RAISIN CO.
WYLIE M. GIFFEN.

Now, I also have a telegram from Mr. H. G. Coykendall. Inasmuch as this stand was taken so decidedly, according to the records, and as has appeared, the stand taken so decidedly against modification of this consent decree, I wired Mr. Coykendall, the contents of which wire I need not read at this time. In purport it was that I was a member of the Prune and Apricot Association, as he well knew, and I repeated from the transcript, as I have recited here, regarding the representation of these gentlemen here present. I received this wire from Mr. Coykendall:

SAN JOSE, CALIF., December 7, 1921—2.32 a. m.

DALLAS H. GRAY, *Washington, D. C.:*

Relative your wire December 5, our association endeavored to maintain neutral attitude, but was forced into action it took account misrepresentation certain parties in Washington who claimed to represent us and advocated modification packers consent decree. This misrepresentation forced our association into action, substance of which was wired to Washington. We do not intend to go into the matter any further, but wish to very emphatically state that no one has had in the past or has at the present time any authority to represent or speak for our association.

H. G. COYKENDALL,
California Prune and Apricot Growers.

Now, undoubtedly Mr. Coykendall has been led to believe that some one did pretend to represent him in Washington; and, in fact, that very fact was brought out in the original testimony by these gentlemen opposing modification of the decree, and you will recall the fact, Mr. Chairman, that you recited the fact, for the benefit of Mr. Campbell, that he had never pretended to represent the growers of California and their interests.

The CHAIRMAN. Except his own organization.

Mr. GRAY. That is right.

The CHAIRMAN. The California Cooperative Cannery.

Mr. GRAY. That is right, Mr. Chairman.

The CHAIRMAN. That is who he represented to us that he was representing here.

Mr. GRAY. Yes; that is right. And I am bringing out the fact that Mr. Coykendall was a member of the organization, and he is saying that they were practically forced into action—to take this stand.

Further, I want to say that before leaving California conclusive evidence was given to me by certain growers there that they were forced into this position as to the modification of the consent decree. I was told by a very reputable grower, a director of the Prune and Apricot Association, that some four or five men came down from San Francisco and said it is either one side of the fence or the other. Now, I am citing that to show whether there was coercion or not.

Mr. STEVENS. Will you give us the name of the people who told you that?

Mr. GRAY. Mr. W. J. Fulgham.

Mr. STEVENS. And his address?

Mr. GRAY. You can wire him or phone him.

Mr. STEVENS. Is he the only one?

Mr. GRAY. He is the only one that gave me the information, but he cited other ones who were familiar with these facts as I have stated them to you here.

Now, I have further a wire here by other members of the Prune and Apricot Association to the trustees—that of Mr. Frank T. Swett to Mr. R. C. Paulus, care of Oregon Growers' Cooperative Association, Salem, Oreg., dated November 9, 1921. I would infer from this wire, I believe, that Mr. Swett, or rather the Oregon Cooperative Growers' Association, of Salem, Oreg., was probably protesting or trying to get information as to whether the cooperative cannery had actually taken action in this matter. And I received a copy of this wire, which reads as follows:

SAN FRANCISCO, CALIF., November 9, 1921.

R. C. PAULUS,

Care of Oregon Growers' Cooperative Association, Salem, Oreg.:

Although Prune and Apricot Association directors passed resolutions opposing modification packers' decree, Secretary Dunlap informs me they will make no further showing in the matter and will not be represented at hearing directly or indirectly. There are arguments both ways, of course, but Thorpe, of Walnut Growers' Association, is in favor of modification. Cattlemen's Association also in favor. Think increasing production Pacific coast fruits requires all possible avenues of distribution and have confidence Government control packers under supervision Secretary Agriculture will safeguard against monopoly.

FRANK T. SWETT.

And, by the way, Mr. Sweet is a trustee of the Prune and Apricot Growers' Association and president of the Pear Growers' Association.

I want to inject into the records here at this time a wire that I had sent to Mr. Fulgham. I think it only proper that it be read. It is as follows.

Mr. BREED. What is the date?

Mr. GRAY. The date is not on here, but I sent this on the 7th. It is as follows:

W. J. FULGHAM, *Visalia, Calif.:*

Shall start my arguments Thursday noon favoring modification consent decree. Their case practically ended. Feel we have them licked. Their attempts bring all cooperative associations on coast only responded to by Prune and Apricot Association. Expressed cunningly in letter by Aaron Sapiro, read by Senator Shortridge, in which he pretends to speak for Prune and Apricot Association as opposing modification. Feel this letter only serious effect. Will you

allow me use your wire refuting his statement? Will eliminate your name if you insist. Would like to use it, however. Wire Powhatan Hotel immediately.
DALLAS H. GRAY.

I also have a wire on this matter from Mr. W. J. Fulgham, director of the California Prune and Apricot Association, to R. G. Spencer, of Portland, Oreg., dated November 12, 1921, as follows:

VISALIA, CALIF., November 12, 1921.

R. G. SPENCER, *Portland, Oreg.:*

California prune and apricot growers have changed their attitude and ordered their attorney not to appear in opposition to packers' consent decree.

W. J. FULGHAM,
Director Prune and Apricot Association.

That these matters may be cleared up, I am putting these matters in the record.

Now, I have a wire also from E. Y. Foley, as follows:

FRESNO, CALIF., December 3, 1921.

DALLAS H. GRAY,

Care Powhatan Hotel, Washington, D. C.:

Having been the large shipper of deciduous fruits of the State for the past three seasons, our total shipment this year over 4,800 cars, and handling this year 15,000 tons of raisins, we are strongly in favor of allowing meat packers to handle all kinds of foods. Other than meat products, the fruit interests of this State need the packers because of the rapidly increasing production. We need and should have every available means of distribution at its command. I can see no legitimate reason for preventing meat packers from using their most economical facilities for distribution of all food products.

E. Y. FOLEY.

I want to say that Mr. Foley is the largest green-fruit shipper in California, and also one of the largest outside buyers of raisins and fruit. Although he does buy a great many from the California Associated Raisin Co., he bought some 15,000 tons last year at a price that alarmed the outside packers.

Now, I shall hurry on and review some of these arguments. We have on page 132—and I am not going to read into the record all this transcript, but give you the transcript pages and you can read it. This is on page 132, the resolution of the Merchants' Association of San Jose. And I will say right here that there are a great many of these gentlemen who are fruit packers and who belong to the merchants' associations and to the chambers of commerce and to the affiliated lines whose interests can not be and are not the interests of the growers, as has been so wonderfully demonstrated in the past, where chambers of commerce have gone on record as opposing the organization of the growers. They surely can not speak the mind of the growers on those questions.

Mr. BREED. Is that in California?

Mr. GRAY. That is in California.

Mr. BREED. You are speaking of commercial organizations?

Mr. GRAY. Yes; I am speaking of commercial organizations.

Mr. BREED. Are all those associations against organization?

Mr. GRAY. I have said that in the past times, when the growers were attempting to organize their cooperative associations, they have met with the opposition of the merchants' associations and the merchants; not in all instances, but in many instances that was true.

On page 138 Mr. Chase says that the 5 per cent commission to Armour would wipe out his entire profit. And he views with greatest alarm—previously he had also viewed with great alarm—in fact, Mr. Chase seems almost to have become an alarm clock on this situation. He views with alarm the increase in profits and commissions that are paid to the channels of trade. It is necessary, gentlemen, that there should be brokers, and the brokers of this country are so ably represented here by Mr. Daily, and those brokers have been forced to accept lower brokerages. Now, the brokerages are about $1\frac{1}{2}$ or 2 per cent. whereas previously they were 5 per cent. And I want to say of the brokers, many of whom are my friends, that this is not a personal attack against them, but against the system. If the broker is necessary, as he says—and I know from my own experience in selling 10 or 12 cars of raisins direct in the largest

cities, that pressure was brought on me by a broker to accept a certain price of a jobber, and he giving his own conditions at which I should accept them. So the pressure can not be a healthy pressure. And the raisin growers have eliminated them on the commission basis and have put them on a salary, which in many cases facilitated progress.

Now, Mr. Sapiro so wonderfully represented the Prune and Apricot Association—I shall have to take this somewhat disconcerted and jump over portions of it—but he refers here to his position, citing his legal capacity for those associations.

I want to say right here, and for the benefit of the record, that my opinion of Mr. Sapiro, according to his own arguments as presented in San Francisco about one year, when he was called in conference there and when I was called to a conference by Mr. J. M. Henderson, president of the Milk Producers' Association of California, wherein our milk producers were being so terribly attacked and he was asking for the support of some of the other organizations—moral support—and Mr. Sapiro's arguments presented at that meeting, of which I believe there is a record by the State market commissioner, would indicate anything but protecting the interests of a fund other than his financial interests in these organizations.

Now, Mr. Maddox's wire has been brought up as interesting information substantiating these gentlemen's arguments as against a modification. I know Mr. Maddox, and have had several interviews with him. And I am not placing him on record at this particular time, only as to my opinion regarding this particular thing. And his wire, which is said to have such a bearing upon this case as being against modification, does not contain that argument. I know some of the political pressure that has been brought to bear on the case two weeks previous to my coming here, and I want to tell you gentlemen that the pressure certainly was tremendous, and the man that could stand up and resist the pressure was some man.

Mr. STEVENS. Did you resist it?

Mr. GRAY. Yes. Now, we will go on. It seems that none of these gentlemen have taken the pains, with all their array of legal talent here so wonderfully represented, to even find out how much of a monopoly the packers have become.

Mr. BREED. What packers?

Mr. GRAY. The meat packers.

I want to read this one little bit of testimony on this matter, refuting the matter that the packers have become monopolists in this regard, and that is the testimony as presented on page 139 of the book entitled "Meat Packers—Hearings Before the Committee on Agriculture, House of Representatives, Sixty-seventh Congress, First Session, May, 1921, Series D."

Mr. Nash, appearing there and giving testimony, says:

"I am not familiar with the grocery articles that the packers handled, except the assertion that you had here in Washington that the total grocery business of the five big packers combined was less than 5 per cent of the total grocery business of the United States, not over."

Mr. BREED. I don't want to interrupt, Mr. Gray, but that is not the statement of the packers themselves. It was 5 per cent of the total volume of meat business done by the packers.

Mr. GRAY. No; that their business was only 5 per cent of the total grocery business of the United States.

Mr. BREED. All I want is not to get this mixed up. It is the packers' own answers in the equity suit, in which this 5 per cent is mentioned, as I recall. Mr. Chairman, that is the way it got into this record, they themselves making the statement that 5 per cent of their total business was unrelated products.

Mr. GRAY. I know that has been injected into these records, but I have read this book clear through, and it was not so stated. And it was not said that the total business of these unrelated products handled by the packers was greater than 5 per cent of the total grocery food products business of this country.

Mr. BREED. That statement was never made in the record, so far as I recall; it was always 5 per cent of the total business done by the packers.

Mr. THORNE. Can you give that page?

Mr. GRAY. It is page 139.

Mr. BREED. The only reason I interrupted was that we can go on ad libitum on mistaken evidence.

Mr. GRAY. Yes; I don't want to misrepresent.

Mr. BREED. I think that is the man who made the mistake.

The CHAIRMAN. Who is Mr. Nash?

Mr. BARRETT. He is the president of the Cleveland Provision Co.; he is not a representative of one of the big five.

Mr. GRAY. No; he is Mr. S. T. Nash, vice president Institute of American Meat Packers, and president of the Cleveland Provision Co., Cleveland, Ohio.

Now, these gentlemen have further testified in this book that they do not fear any packer monopoly. Some 15 or 20 of these that went before this committee in this hearing, independent packers, in this evidence—

Mr. BREED (interposing). Meat packers?

Mr. GRAY. Independent meat packers, in the United States, testified that they were not afraid of any monopolies of their industries, and why should, Mr. Chairman and gentlemen, these gentlemen who represent the distribution of the unrelated products, come in here and fear a monopoly, when such a small proportion of the food of this country is handled by the packers?

I want to read on page 239 of this same testimony, something that Secretary Wallace says on this matter, particularly. This is Secretary of Agriculture Wallace. Secretary Wallace says [reading]:

"Inasmuch as I said at the time, publicly, I thought that the forbidding of the packers doing retail business destroyed about the last hope of cheapening distribution, I suppose I will have to answer your question in an affirmative way."

Mr. BREED. Retail meat business, is that?

Mr. GRAY. Of the retail business. He does not say retail meat business.

On page 240, at the top of the page, I again quote Secretary Wallace [reading]:

"Of course, we know the old-time objection of the packer going into the retail business. We know how he drove out the local butchers years ago by selling at less than a fair price, and yet if we are ever going to get at the cheapening of distribution, it seems to me, finally, we will work that out with the assistance of the packers, and the same thing is true in this matter of shipping other things into refrigerator cars, which was also a part of that decree."

And a little further down, in the middle of the page, again quoting Secretary Wallace, he says [reading]:

"I am willing to say this, gentlemen, as the business of this country grows, I am not speaking now of the packing business any more than of many other lines of businesses, I think we have got to take a somewhat different attitude as to men building up large enterprises. Where they contribute to efficiencies and to reduced cost of distribution, I think our general policy should be that they shall be permitted under thorough supervision and regulation."

Well, now, I could talk all night, if necessary, on this subject.

Mr. BREED. Could I inject here a thought, to give you a little rest—

Mr. GRAY. Thank you.

Mr. BREED. And the thought is that I hope that the committee will not take these isolated statements of Secretary Wallace as expressing his full view on this subject, because I have a very deep-seated opinion that Secretary Wallace is very broad minded on this whole subject, and that these isolated items that have been read do not express his full views.

The CHAIRMAN. We may get Secretary Wallace's new view on this subject before we get through.

Mr. GRAY. And further read this book.

The CHAIRMAN. I have read it.

Mr. GRAY. I will skip over a good deal of this. I want to say that the meat packers at that time—

Mr. BREED (interposing). And the meat packers at this time also?

Mr. GRAY. At this time also the meat packers, Mr. Chairman.

Mr. BREED. And always will be.

Mr. GRAY. There is testimony by Mr. Mayer, on page 385—this is Mr. Oscar G. Mayer, secretary and general manager of Oscar Mayer & Co., Chicago, Ill., an independent packer, testified as follows [reading]:

"The total number of animals slaughtered in the United States in 1920 was about 100,000,000, of which the large packers only slaughtered 37,000,000, about 37 per cent. The balance were slaughtered by the smaller packers, of which we are one, and by farm slaughterers, and so forth. So as a matter of fact there is no monopoly on the part of the big packers in the business. And I say that in defense of ourselves, because it would certainly be a bad condition if the five big packers could monopolize this business and nobody else in the United States had the acumen to get a little of this business for himself. The smaller packers are in the field, and can take the field at any time against the big pack-

ers. I am willing to do it at any time. Far from our taking a back seat, with only 14 per cent of this business, we are here to say we are doing, outside of what the country slaughterer is doing, all of this work except the 37 per cent that the five big packers do."

The CHAIRMAN. Mr. Gray, we have ruled that we were not going into the questions of the meat packing industry itself here, and you do not need those extracts.

Mr. GRAY. I just wanted to bring in the fact that they kill 37 per cent.

The CHAIRMAN. We are not going into that.

Mr. GRAY. As to a monopoly, as they have claimed, on the encroachment of the food supplies of the country, it may be interesting.

Now, I am going to confine my remaining few remarks to the testimony of Mr. W. R. Roach, and I shall condense this, in substance, that he testified that the growers of this country and his section were not able, in many instances, to buy the seed which they put into the soil for production. I want to say that this further confirms arguments that have been presented regarding the condition of the farmers, that it is a most deplorable condition when the farmer, year after year, in production, can not afford to buy the seed that he plants for his crops. I would have been ashamed to have testified in this record in this regard, as Mr. Roach. But it further confirms the condition under which our own farmers in California have for so many years operated, before the cooperative organizations were in existence.

Now, there has been considerable reference made regarding the California Cooperative Canneries being Armour's plants. I want to say in testimony that such is not the case. I want to say that the growers of California asked Mr. Campbell to come to San Jose for the purpose of protecting them in their price received in production, and that the loan of \$250,000 was not made until some considerable time after the plant was started and was in building; and that the directors and Mr. Campbell went to the banking institutions of San Jose and were refused cooperation in the financing and building of this plant, just as they were refused cooperation in the California Associated Raisin Co. when that company was in organization; and just as they were refused when the California Prune & Apricot Association came into existence, in the organization and building of manufacturing plants for their products. And I want to say that this further encroachment upon the dried-fruit interests of California was stiffly resisted in that matter.

Mr. BREED. Will you mind if I ask you a question now, Mr. Gray, as I shall have to go very soon?

Mr. GRAY. No; that is all right, Mr. Breed.

Mr. BREED. This is asked purely for information. You say that the loan was not made until some time after the plant was started?

Mr. GRAY. Yes.

Mr. BREED. Which plant was this?

Mr. GRAY. The San Jose plant.

Mr. BREED. Now, what I want to get some information on is whether prior to that time the California canneries, or Mr. Campbell, applied to any of these banks out there to enable this enterprise to go on and offered the personal indorsement of Mr. J. Ogden Armour?

Mr. GRAY. I am going to let Mr. Campbell answer that; not that I am trying to hedge the issue but I think he can give you that information to-morrow.

Mr. BREED. I just asked for that statement because I feel that you have nothing to conceal in this matter.

Mr. GRAY. Nothing at all.

Mr. BREED. With respect to the packers' connection—

Mr. GRAY (interposing). Absolutely not.

I want to say that the canning industry, cooperatively considered, is a little different from the other dried-fruit interests. In the raisin and the prune and apricot and fig association, can secure a control a production, because of local climatic conditions that are favorable to the drying of those products. So that it is not necessary to make any arrangements for the control of the distribution of their products. They control the production. But in the canning industry it is a little different. Fruits are canned and grown over the whole Nation; consequently it is necessary for them to make some arrangements for the selling and distributing of their products as will secure them a profit in production. So Mr. Campbell went to Armour & Co., that great distributing agency, and made this sort of an arrangement with them for cooperation.

This question of the distribution of farm products and food products, as has been before related by Mr. Breed, I think is about the biggest subject that has ever been brought up in Washington outside of the disarmament conference. It is a big subject, and I have met more people on the streets here talking to themselves than in any town I have ever been in in the United States. And I have rather felt that Washington is the centralized point of elocution and bombastic remarks, and I met Mr. Breed on the street the other night talking to himself about this great matter of distribution.

And I want to say to you, gentlemen of the committee, that all the aspersions that have been cast against this thing, and the requests for a modification of the decree, further confirm my belief that these gentlemen are eager to Fletcherize these quinine pills that I spoke of in my opening remarks. They do not want a change, because it will mean a change in their marketing conditions.

I am not here to drive out the wholesalers, or the brokers, or any distributors of food products. I am here with the sincere desire and purpose to do what I can to guard against a destruction by their own devices. I am not here to see the packers attacked. I will come to Washington just as freely to attack the person who will seek to eliminate and narrow down our distribution.

I see this from a little different angle, than probably Mr. Campbell, because I have not had time to talk with him about this matter.

And I am going to conclude with this remark, that I feel that this attack by the jobbers and canners and fruit packers on the coast is an attack against the farmer cooperative organizations. It is very evident what is the purpose from the fact that these gentlemen brought charges against the California Associated Raisin Co. before the Federal Trade Commission, setting up unfair charges against that association, attempting to drive the California Associated Raisin Co. out of business. That suit has gone on to where it is now lying dormant in Los Angeles, and I do not believe that it will ever be brought up again.

But I believe, Mr. Chairman and gentlemen of the committee, that these elements who are attacking cooperation, now realizing that in their charges before the Federal Trade Commission against the California Associated Raisin Co. have failed in their charges, and were going to stir up the ire of some 14,000 raisin growers in California, and they realized that there would come to their rescue 20,000 other growers on the coast, and that they could not afford to antagonize that much pressure in accomplishing their end. But if they could attack the distributing of these products by so strenuously opposing the vehicles of distribution of the packer, so limiting him and narrowing him down as to curb him and force him out of business in the distribution of the food products, and seriously crippling him in the meat distribution—I can not but draw this conclusion, by placing my hands in this manner [indicating]; if the packer is eliminated in his distribution, and if the chain store is crippled—and I believe they have attempted that, because the testimony shows that by this chain-store secretary—if they can eliminate these, and if the mail-order house can be handicapped, so to speak, there is nothing left over the jobbers and wholesalers of this country. Then what happens? There can be a compact and collusion between 4,000 wholesalers and jobbers for the purpose of saying to cooperative organizations of this Nation like this, "No, Mr. Raisin Association, chop it right off there. We will not allow you 10 cents a pound for your raisins. We do not think the trade can stand it. We will pay you 4 cents a pound. No, Mr. Prune and Apricot Association, we will not pay you 4 cents a pound for prunes; we will pay you 3½ cents."

And by that compact which is possible to set up—and more possible to set up than there can be a monopoly set up by five packers—there can be a killing of cooperation in this Nation. Then what happens? The growers are restless; their losses are heavy in production. And then always there is the fruit packer offering them more than they can get on the inside of the organization, for financial and other reasons, which I will not mention at this time, and then the organizations are disrupted and disbanded, and we go under the régime of fruit packer control in California.

Gentlemen, I am here to protest against that thing, and I am sincere in my purposes, and I want to tell you if you accomplish this thing of inequity, in refusing to have a modification of this decree, I tell you that the farmers of this Nation will disrupt and tear from top to bottom our marketing system. And we think we do know something about it. You go ahead and try this thing that you are doing. I do not want to see that day come, however. I, as

a producer, do not want to see it come, because when it does come I shall sell my farm and go into other lines of trade, or into other channels of activity.

So I ask you gentlemen to carefully consider this thing, and to consider it from the growers' standpoint.

And I again come back to the premise that I started with in my opening remarks, that upon the farmer rests the economic, social, and commercial foundation of the country, and when you disturb him you disturb the forces of the Nation.

I will not go further in my remarks, Mr. Chairman. I may get excited, sometimes, and vehement in this thing, but I will say, as the Irishman said, as he concluded his remarks, that if I have said anything for which I am sorry, I am glad of it.

I thank you, Mr. Chairman and gentlemen of the committee.

The CHAIRMAN. Mr. Daily wants to put something in the record. You have a short extract that you want to read into the record, I understand, Mr. Daily?

Mr. DAILY. Yes, Mr. Chairman.

FURTHER STATEMENT OF MR. H. A. N. DAILY.

Mr. DAILY. First of all, I was reading over the testimony, and I found that I made a misquotation in one part of my original testimony; I referred to three hundred billion instead of three billion. That needs to be corrected.

But I should have included in my original statement the object of the Brokers' Association, and with your permission I will read article 2 of our constitution.

The CHAIRMAN. You may.

Mr. DAILY (reading):

"Article 2. Object. The object of this association is to promote a feeling of comity, establish closer relations among all reputable canned foods and dried fruit brokers"—

Here it says, "Canned foods and dried fruit brokers;" the title of the association has been changed to "food brokers"—

"a firm confidence among packers, buyers, and brokers, a uniform method of doing business, to correct trade abuses, and to encourage an interchange of ideas and place reputable brokers in the position due them in the business world."

Now, in order to meet the frequent requests of some expression of what might be considered brokerage ethics, the following has been suggested by the advisory committee of the National Canned Foods & Dried Fruits Brokers' Association, as it was at that time, as our code of ethics. Now, I can either read it or leave it to be copied.

The CHAIRMAN. You may do as you wish.

Mr. DAILY. Well, I will read it rather than to take a chance on it. [Reading:]

"1. The broker is the connecting link between buyer and seller and should always maintain the dignity of his position.

"2." And this is the most emphatic one of the whole list. "Absolute fairness and honesty to both buyer and seller is the best capital a broker can have.

"3. A broker should respect the rights of his competitors and never attempt by unfair means to interfere with their business.

"4. The canner and packer, represented by any broker, constitute his stock in trade, and any deliberate attempt on the part of another broker to unfairly interfere with a view to securing such representation is decidedly against good brokerage ethics."

In other words, gentlemen, we consider our business more in the nature of a profession.

"5. Cooperation among brokers is the best way to strengthen their position in the business world, and anything that tends to add strength to the broker's position should be encouraged.

"6. The division of brokerage, on the part of the broker with either buyer or seller, is the poorest way of building up a brokerage business and indicates that the broker puts a low value on his services. Reputable buyers and sellers deprecate such action as being most unfair competition and is an indication of weakness on the part of the broker."

In connection with that I might say that during the Food Administration it was cause for the revocation of a license for a broker to divide his brokerage, it it was to an incident of that kind that I referred the other day in the Roanoke matter.

"7. Brokers should always be careful that all terms and conditions of sale go to both buyer and seller and should exercise due care to see that all sales, contracts, and copies thereof should be exactly alike and state plainly all conditions and terms of said sale and that both buyer and seller are furnished with same promptly.

"8. The broker is a responsible agent between buyer and seller, and should at all times realize that fact and assume fairly that responsibility, standing firmly for a fair deal between buyer and seller."

That applies with equal force to No. 2.

"9. The question of arbitration is a very important one in transactions of the present time, and permanent arbitration boards having been established for the handling of such matters, it is deemed advisable that all contracts between buyer and seller, should contain a clause providing for arbitration, in case of dispute arising in the fulfillment of that contract.

"10. The National Canned Foods & Dried Fruit Brokers' Association is composed of the best brokerage talent in the country; as in union there is strength, all reputable brokers should be members of this association, thus enabling them to present a united front to protect the interests of the brokerage fraternity in any case of need."

It is rather singular that Mr. Kroehle should have adopted the line of thought that he did in his talk the other day, except for the fact that it was an obvious motive. I do not think Mr. Kroehle heard my talk at Atlantic City. I at that time was president of the Food Brokers' Association and following the usual practice they had invited me to speak at the national canners' convention opening.

The CHAIRMAN. What year was that, Mr. Daily?

Mr. DAILY. This year, in January of 1921. Mr. Kroehle at our convention, which was held at the same time, succeeded me. The subject of my talk at that convention was: "Confidence versus hysteria." And I am just going to read a short paragraph here. I had been pleading, urging a better understanding between the different branches of trade. There was a hysteria existing on all sides. Each branch of the trade was blaming the other for its troubles. And, regarding the wholesale grocers, I made this statement. [Reading:]

"The wholesale grocers have passed through a catastrophic experience, the like of which has seldom, if ever, been the fate of any conservative business to suffer. Dependable and secure at all times, they have justified in no uncertain way all the confidence which has been given them. Struggling through the awful crisis precipitated by the collapse of the sugar market, the wholesale grocers of this country are maintaining their normal and rightful position in the chain of food distribution. If, during the period of readjustment, the wholesale grocer had appeared to be lacking in a proper spirit of cooperation toward the canner, such neglect can not be justly attributed to anything but the force of circumstances over which he had no control. Only recently I have seen a strong appeal sent to jobbers by their local association, urging them to resume buying just as quick as possible, explaining the need for resumption of normal activities. The jobber will welcome any normal and constructive suggestions. He is just as anxious to resume normal business as the canner is to have him."

Our secretary has called my attention to the fact that the word "packer" is used frequently in our ethics, and, of course, it means not the meat packer, but the vegetable and fruit and other food packers.

The CHAIRMAN. We will now hear from Mr. Morrill. What is your full name, Mr. Morrill?

STATEMENT OF ROLLAND MORRILL, BENTON HARBOR, MICH.

Mr. MORRILL. Rolland Morrill.

The CHAIRMAN. Where do you live?

Mr. MORRILL. Benton Harbor, Mich.

The CHAIRMAN. And what business are you engaged in now, Mr. Morrill?

Mr. MORRILL. Agriculture and horticulture. Principally horticulture.

The CHAIRMAN. What position, if any, do you occupy now?

Mr. MORRILL. Well, I have quit all my official positions within the year.

The CHAIRMAN. What official positions, if any, did you formerly occupy?

Mr. MORRILL. In connection with this work?

The CHAIRMAN. Yes.

Mr. MORRILL. I have been president of the Michigan State Horticultural Society during 10 years, and president of the Michigan State Farm Bureau, and president of my own local farm bureau in Berrien County.

The CHAIRMAN. Do you know in a general way the question we are considering here—the advisability of permitting the meat packers to handle these unrelated lines; that is, unrelated to slaughtering? Have you any views that you wish to express upon this matter?

Mr. MORRILL. Yes; but I wish to say to you that I was just traveling through here, going to Florida, and did not know that this was on in any way; but I learned of it, and it is a matter in which we are quite deeply interested.

The CHAIRMAN. Just proceed in your own way.

Mr. MORRILL. And by way of introduction of the subject, I will show you that which is going on all over our State and in our county as a referendum, or reminder of what we think after seeing it in operation. I have here a letter from the Berrien County Farm Bureau which will give you an idea of this.

The CHAIRMAN. Will you just read that into the record, if you please? Or I can read it for you, if it will be more convenient.

Mr. MORRILL. Either one.

The CHAIRMAN. This is headed:

"BERRIEN COUNTY FARM BUREAU,

"St. Joseph, Mich., November 28, 1921.

"Mr. ROLLAND MORRILL,

"Benton Harbor, Mich.

"DEAR MR. MORRILL: I am sending you herewith a copy of the resolution passed at the last meeting of the executive committee of the Berrien County Farm Bureau pertaining to the action of the Federal Government in restraining the meat packers from engaging in lines of activity outside of their corporate functions."

Mr. MORRILL. I don't know whether that is correct or not. That is the way it reads; that is all I know about that.

The CHAIRMAN (continuing reading):

"Resolved, That it is the sentiment of the executive committee of the Berrien County Farm Bureau that the so-called packers' law, restraining the packers from operating refrigerator-car lines and otherwise engaging in the distribution of foodstuffs, is detrimental to the best interest of the public in general and of the farmers in particular; and that the said executive committee of Berrien County Farm Bureau ask that said restraining action be repealed.

"The adoption of the above resolution was moved by Mr. Hill, seconded by Mr. Crosby, and carried unanimously.

"Yours truly,

"BERRIEN COUNTY FARM BUREAU,
"F. W. EMERSON, Secretary."

Just proceed now, Mr. Morrill.

Mr. MORRILL. Well, I will say now that I have no data with me. I was not expecting anything of this kind, and was just going through for a winter's rest in Florida, and I discovered that this was going on, and so I came up here. And, therefore, I can not give you any data, but I can give you the history of this work in Michigan, because I have been right close to it all the time in my official capacity, besides being a large grower myself.

And when this act was passed I do not think our people, as a rule, realized what it was going to mean to them, because of the fact that our fruit industry of Michigan, outside of the immediate lake shore, where we have lake ports, is handled entirely, or has been for 21 years almost entirely, by the Armour car lines.

Mr. STEVENS. What act?

Judge HAINER. When you refer to "this act," do you mean the consent decree, commonly known?

Mr. MORRILL. I believe it is called the decree.

Judge HAINER. The consent decree?

Mr. MORRILL. Yes; something of that kind.

Judge HAINES. Against the five big meat packers?

Mr. MORRILL. It is the act or the decree that took the car lines out of our State and left us without service, and that took the packers out of the canning business and left us without market, in many places where the business had grown up around them, and through the fact that we were getting most excellent service for over 20 years. They have more recently gone into the packing

business, and the two items of cherries and strawberries are very large items in our State, and they have been splendid buyers during all of this period of time, and as our inquiry seems to develop, they paid a great deal more than we had been in the habit of receiving for that class of goods during their existence and their opportunity to purchase there, and they did not seem to raise the value of goods to the consumer, as we understand it.

That is a matter which our farm bureau has just fairly awakened to within the last six months, and I don't know that any help can be given us now. I doubt it for this year. And with the prospect of a magnificent crop coming on we feel that our interior counties are going to be absolutely unable to handle it. The railroads are unable to either.

There is only one road in the State that has any supply of freezers—refrigerator cars—and that is the New York Central Lines. They cross the southern part of the State, and their traffic man informed me that they have about 45 per cent of enough cars to handle the business of this large crop. The Pere Marquette and the Grand Rapids & Indiana were served by the Armour car line, the Fruit Growers Express, for 20 years, and farms have been bought and planted and grown up around there because of the fact that we had good transportation, and they could buy their stock all over the State, and take our goods, and distribute them anywhere that the market called for them.

Our lake ports, already, anyway, are tributary to Chicago. We have splendid steamship service. And we do not care so much. Personally, I am not hurt so much, so badly, except that I have one farm in the interior that I have to have refrigerator service on, but I am on the New York Central line, and they are the best equipped of any. But it is going to put us in a position, and our farmers are providing for it now, of buying trucks and everything of that kind to get to the lake ports. It is going to make Chicago a very much greater dumping ground, with no facilities for distribution such as we have had, excepting such as can be hustled in there.

This past season we had about 25 per cent of a fruit crop, taking the tree fruits in particular. We are very largely in berries, a very large acreage of berries, but the tree fruits, on account of the bad weather in the spring, are not so good, and we have only had about a 25 per cent crop, the lightest crop we have had for years.

We have a splendid traffic department, headed by an experienced man, and he had unlimited power—now, I am speaking of the Michigan State Farm Bureau, and we have 100,000 members there, and are thoroughly organized—a thoroughly organized operative force—and we have our traffic department, as I say, and by breaking into the Chicago yards and the Detroit yards, Fort Wayne, and everywhere, and stealing and running cars through by every sort of a means, we got rid of a large portion of the crop.

But we have got another crop coming on that will probably be a normal crop. If it is, there are no car lines visible. I don't know anything that you can do that can help us. I just want you to know where we are hurt. I want you to know that a great business has grown up in certain localities around those lines, and the localities producing fruit and served by other car lines—not packers—are not hurt like we are.

It so happened that the Armour interests were behind our car line.

Now, regarding the fruit-preserving plants and their distribution, it has been something wonderful. It has built up a trade in our country that has meant a great deal to us. They developed the plan of freezing fruit. They have done more to develop the fruit-juice business; that is, put synthetic compounds out, and I think you will all agree with me that the sooner they are out the better if they can be replaced with pure-fruit juices, and the Armours and the Swifts have been engaged in that very extensively, and have got some magnificent plants in our State, which they hardly operated this last year at all. They could not. They just used a little. But, of course, a certain amount of that can be discounted because of the conditions, we understand that, but we don't expect that to last always, and we expect in course of time, and probably in a short time, that we will be back under normal conditions and be left without facilities.

Now, beyond that, I could perhaps answer questions better than anything else, because, as I said, I did not come here prepared for this. I did not come expecting to be here, and I didn't even know that there was such a thing on hand here, excepting that I understood that the California fruit people were in here asking for action along the same line that I have just shown you in this resolution that was read. I understand that some of those people have been here along the same line.

Judge HAINER. That is, making a similar request?

Mr. MORRILL. Making a similar request, feeling that they are being injured in the industry.

Judge HAINER. How large is this association that you represent?

Mr. MORRILL. The Michigan State Farm Bureau?

Judge HAINER. Yes.

Mr. MORRILL. A little over 100,000 farmers.

The CHAIRMAN. What is the approximate acreage?

Mr. MORRILL. As I told you, I have no data with me. But it is tremendous. My own town ships two or three hundred cars in a night, and our steamers carry several hundred packages, bales, and crates of produce daily.

The CHAIRMAN. What are your principal fruit crops?

Mr. MORRILL. Peaches, apples, and the small fruits, and now a great many cantaloupes. Cantaloupes are now coming to be a big business. For instance, I grow several hundred crates.

Judge HAINER. How about berries?

Mr. MORRILL. That is small fruits. Everything in the way of small fruits.

The CHAIRMAN. What vegetables do you can?

Mr. MORRILL. Yes; there are vegetable-canning establishments; it is a vegetable canning country. They can peas and beans and general lines. I never paid so much attention to that, because I have not been much interested in that; but when it comes to fruits, I have been more directly interested in it.

The CHAIRMAN. It has been contended here, Mr. Morrill, that it is feared that if the packers go back into these lines of handling the produce, or the canning of these commodities, that they will obtain and gain a monopoly of the production and of the systems of distribution. Have you any views upon that question?

Mr. MORRILL. Yes, sir.

The CHAIRMAN. Do you entertain any such fears?

Mr. MORRILL. I do not.

The CHAIRMAN. Why?

Mr. MORRILL. Simply because the only way they can obtain a monopoly of it is by making more money than other business makes, because there is plenty of money to go into productive or profitable business. Now, they may become a monopoly in a way, by being more efficient and being satisfied with smaller profits. But the whole public is satisfied with them in the business, and to make a living, because it has worked in this manner, that the farmer has got more for his product, in profit, and the consumer has been able to buy for less on the shelves, and that is what has apparently hurt some organization—well, I will name the organization—the Wholesale Grocers' Association, 4,000 or 5,000 of them, object to that kind of competition. By that rule, if it is established, I might object to others growing wheat. I grow some wheat, and I don't see why I could not object to Mr. Stratton and others connected with him growing large quantities of wheat in Montana, where I understand they had about 30,000 acres in wheat last year. I might object to that. But the farmers have not been accustomed to doing that. The farmers say, if they grow big, let them grow. But it may be that this thing would grow into an injury to the wholesale grocers.

But here is a matter that struck me very forcibly at the time, immediately after this decree went into effect, and the Armour people sold their refrigerator cars to the Central of Georgia or somewhere down in this country.

The CHAIRMAN. It was a company that was formed by the various railroads that took over the cars.

Mr. MORRILL. Since I have been here I have understood there may be an attempt to control the freezer lines as a separate line and move the cars to such territory or territories as they are needed. The Armour people always did that themselves, but we find such an overlap in the fruits of one season—the latitude of the season moves north at the rate of about 15 miles per day. The latitude, as I say, moves north at the rate of about 15 miles per day. Normally, in most of our fruits there is a variance of from 20 to 40 days in the ripening period, and that has to be served from first to last by those interested in it, and that is going to make a difficulty, I imagine, in that scheme, if it is a scheme, which I have heard here.

We do not care who serves us, just so we are served. We are not fighting Armour's battles, nor Swift's battles, nor anybody else's battles, but our own, and we do not know, perhaps, how to do it, and it is entirely an accident that I am here with you now. But we know where we are hurt and how we are hurt, and we are fearful of the future, and the immediate future, and we believe that

some time this will wreck us in some way, because we have lived and seen these things worked out. But we believe we had better let these men who are putting up pure food and are paying us a living profit for our work and our produce and are taking it at a price they can afford to buy it by the elimination of inside profits, and we believe they should have a chance in our scheme of economy, when we are wanting and calling for a lower rate of living. The farmer is getting his now; he is furnishing what he is furnishing low enough, we think. Just whether the consumer is getting his low enough is another question, and whether everybody in the line has met the situation or not that is another matter. I don't know.

The CHAIRMAN. Mr. Morrill, are there independent—and by that I mean canneries not connected with the meat packers in your community?

Mr. MORRILL. Oh, everywhere. There are three or four in my town.

The CHAIRMAN. Have they been hurt to any extent by the meat packers operating canneries?

Mr. MORRILL. I never heard any complaint from them. As a matter of fact, the wholesale grocers like that in our country [pressing thumbs down on table].

Judge HAINER. Like what?

Mr. MORRILL. Thumbs down.

Judge HAINER. The thumbscrews?

Mr. MORRILL. Yes. We sometimes had the orders in our country, and the canners got the cans; but there is only three or four in Michigan that have survived where the fruit is plentiful. There are rules made by the wholesale grocers and brokers that they have to go by.

The CHAIRMAN. And those rules are with reference to selling, or distribution, or what?

Mr. MORRILL. Well, everything. Now, by way of information that I could not give on oath but which I believe is true, and I can give you the name of a man who can say on oath, and I will not hesitate to name men. My information was given me by Mr. Robert Graham, the president of the Grand Rapids Trust Co., and a man who is also interested in agriculture, and who has been a member of the State board of agriculture for 20 years. He gave me this information immediately after he sat in with a bunch of wholesale grocers and heard their talk about their proceedings and about their being in groups. He was in the Grand Rapids group. And they arranged for an arbitrary profit of 25 per cent over producers' prices, and I think he said 10 per cent should go to the wholesaler and 50 per cent to the retailer, and took control of the retail situation, and provided a plan through their institution—there is always an institution—that if they bought direct from the canners they should not get supplies. Mr. Graham informed me that he thought they were regulating this as fast as they could. But that shows the trend, and taking care of certain territories, and doing things underground.

Judge HAINER. When did that take place, Mr. Morrill?

Mr. MORRILL. About six months ago.

Judge HAINER. Where?

Mr. MORRILL. In the president's office of the Grand Rapids Trust Co. He told me. He is a friend of mine and a perfectly reliable gentleman. I have no doubt you can get the same information from him direct. At that time he had just come from the meeting, and he was mad, and he told me about it. I know that is a vital thing when I tell you—I know it is—and I am giving you my authority.

The CHAIRMAN. Mr. Morrill, have you talked with other producers and growers in your section of the country about this situation?

Mr. MORRILL. Oh, it has been a subject matter of discussion in our farm-bureau meetings occasionally, and occasionally when we have a little time we talk to a friend. But that is not much. But in our farm bureau that is our live topic.

The CHAIRMAN. And you believe that this expresses sentiment generally of the people in your community?

Mr. MORRILL. I know it does of the more intelligent and those who keep themselves informed of what is going on around them. You will know, of course, that a good many farmers do not know straight out about what is going on around them. But many of the farmers nowadays are very intelligent and keep themselves very well informed.

Judge HAINER. Are the farmers beginning to appreciate the conditions that exist?

Mr. MORRILL. Oh, yes; they began that when the crop came on and there were no chances to move them. That is when they began to realize it. And in our

traffic bureau—I was at the head of that institution at the time, and we worked every available night and day. We had men that never rested for weeks; and take our cannery, for instance, they could not get cans shipped to them. They were billed and were on the railroads somewhere. And coal—there were 1,300 cars of coal that was not inside of the State, although it was bought, and the crop was coming on and going to be delivered within about five days. And I tell you somebody hustled, and it was our traffic department. And they got their supplies through, so the farmers got their supplies in. They had the bills of lading; they had plenty of bills of lading, but could not get the cars. That is a different thing. And here is another thing—the buyers could not get their goods shipped. For instance, a Cincinnati buyer wanted to get some fruit through to Pittsburgh, and he did not know where to get a car. He had to depend upon our farm bureau traffic department as to whether they could get cars, and when they could get them, and when they could get them to the different yards. And then the matter of checking—we have always had the men to come and check the country up in advance; they knew how many cars approximately there would be, and the ice was provided, and when a load was put on a car it was iced and inspected. And then it was re-iced and followed up and looked after. But now there was nobody to do that. It was an organization which functioned and around which this great fruit business had grown up. The people in California, I think, have had the same experience. I am only talking of fruit; I don't know much of anything else, but that commodity is suffering in our country because the packers have been put out of business.

Now, I have done business in Texas over the A. R. & T.—the American Refrigerator & Transfer Co.—and they are not disturbed. And I have also done business in California with the company that operates over the branch of the Southern Pacific Railroad, and they are not hurt. But in our country it hurts us, and it hits the loading stations. I think the Santa Fe was using the packer cars, and where they used the packer cars they are hurt. It was unfortunate that they should go out, because our efforts to get the railroads to take care of the business has usually resulted in the loss of such a large per cent of the commodity, because they are not able to take care of it and because the cars can not be provided by the railroad company. They have not provided, as a rule, the ice in advance, and they have not got the daily rolling reports; they have not got the things that the fruit grower must know when he puts his fruit on the car in order that his fruit may be marketed in a marketable shape.

And we had the same things before the Armour cars were in use. We had car after car of loss. Peaches, for instance, if you put them in a car, they must be cared for or they will arrive rotten, and you can not collect in advance, because most of these things will bring you the money only after you deliver the goods. That is true unless you sell to local buyers on the ground. And when we had this good transportation, buyers would buy just as freely on the ground, and they knew just how long it would take to load that car with those goods to where they wanted it in this special service. And it affects a great industry now that we haven't got it, and I don't know whether it can be started again. I don't know whether anybody can reinstate it. I don't know whether they want to reinstate it. I have an idea if my name was Armour I would not reinstate it.

The CHAIRMAN. Judge Hainer, do you care to ask anything more?

Judge HAINER. No.

The CHAIRMAN. Mr. Hall, do you?

Mr. HALL. No.

The CHAIRMAN. Mr. Breed?

Mr. BREED. I would like to ask Mr. Morrill if he represents the Michigan Farm Federation, and if they passed any resolution on that subject?

Mr. MORRILL. I have not been up to Lansing in three months. I just offered one here from our county, which is going all over the State, and we are auxiliary to the Michigan State Federation.

Mr. BREED. How many members are there in your county organization?

Mr. MORRILL. Three thousand. I think our county organization is the largest county organization in the United States, and our own county has the largest membership in the United States, and in our township. We are one of the first, anyhow.

The CHAIRMAN. Is there anything, Mr. Daily?

Mr. DAILY. One slight question. In the course of your remarks, Mr. Morrill, you included the word "broker." Will you give me a definition of who you mean by brokers?

Mr. MORRILL. In regard to canned fruits?

Mr. DAILY. Yes.

Mr. MORRILL. Oh, yes; there is a line of brokers that handle canned goods that are not wholesale grocers, that handle nothing but that. And we know them as brokers, and oftentimes in the canning business in my town and surrounding towns they have been the men that advance money and take the goods and store them, and then when the time came to settle they find most of them swells and clean up on the canners. A lot of things happen after you get a little advance on the goods. That is the broker's end of it.

Mr. DAILY. Mr. Morrill, you understand that then as your definition of the term "broker"?

Mr. MORRILL. The broker is separate from the wholesale grocer. We have always considered these men brokers who handle nothing but those goods.

Mr. DAILY. How do they handle them; on commission?

Mr. MORRILL. Sometimes they buy them and sometimes they do any other business.

Mr. DAILY. It has been testified to here by a competent witness that a broker is one who never takes title to the goods, and whose only compensation is a small percentage for bringing the buyer and the seller together.

Mr. MORRILL. I guess that would be a correct definition. But the fellows we call brokers do various things.

Mr. DAILY. You presume the other definition is the correct one for a real broker?

Mr. MORRILL. I assume it is correct for a real broker. So far as his operation is concerned, it is almost anything.

The CHAIRMAN. If that is all, we thank you, Mr. Morrill.

Mr. MORRILL. I am very glad to have had a chance to express myself. We feel it very much up there.

The CHAIRMAN. We will now adjourn until 10 o'clock to-morrow morning.

Cost of raisin production, 1917.

[Taken from actual daily labor reports and conservative estimates of "overhead expense."]

Year, 1917.

Acreage, 78 acres; actual number of vines, 33,193.

Yield, 180 tons.

Trays, 58,812, of 23 pounds each.

Tray basis, 325 trays of raisins, 6 pounds each, make 1 ton.

Picking price, 3 cents per tray.

Labor basis, \$2.50 to \$3 per day without board, 10-hour day.

Property, Dallas H. Gray, Armona, Calif.

JANUARY 1, 1918.

Kind of work.	Total hours.	Total amount.	Cost per thousand.	Cost per ton.	2½-ton yield.		1½-ton yield.		Cost per acre, ½-ton yield.
					Hours per acre.	Cost per acre.	Cost per acre.	Cost per 1 ton.	
Pruning vines.....	1,140	\$200.00	\$6.02	.....	14.6	\$2.56	\$2.56	\$2.56	\$2.56
Raking brush.....	33	9.90	.....	.....	.4	.12	.12	.12	.12
Burn brush.....	223	50.15	.....	.....	2.8	.64	.64	.64	.64
Plowing.....	503	146.70	.....	.....	6.4	1.84	1.88	1.88	1.88
Harrowing.....	375	105.50	.....	.....	4.8	1.35	1.35	1.35	1.35
Single plow.....	141	32.25	.....	.....	1.8	.41	.41	.41	.41
Shovel and succor.....	1,087	232.40	7.00	.....	13.3	2.98	2.98	2.98	2.98
Dig Bemuda-Johnson.....	296	79.15	.....	.....	3.8	1.01	1.01	1.01	1.01
Kill squirrels.....	74	17.80	.....	.....	.9	.22	.22	.22	.22
Sulphur vines.....	125	31.00	.93	.....	1.6	.40	.40	.40	.40
Sulphur, ½ sacks.....	.....	43.48	1.30	.....	.....	.35	.35	.35	.35
Vine cutting.....	33	9.05	.....	.....	.4	.11	.11	.11	.11
Vine tying.....	57	14.25	.....	.....	.7	.18	.18	.18	.18
Vine trimming.....	365	91.25	2.75	.....	4.7	1.17	1.17	1.17	1.17
Haul trays (46,000).....	434	118.05	2.00	.....	5.8	5.51	.97	.97	.97
Pick grapes.....	1,911.30	32.50	\$10.61	.....	24.50	13.76	10.50	10.50	7.88
Turn trays.....	780	228.00	3.87	1.27	9.7	2.32	1.87	1.24	.93
Stack and unstack.....	880	258.00	4.39	1.93	11.2	3.30	2.11	1.40	1.05
Sort and box.....	2,077	676.05	11.49	3.75	26.6	8.66	5.56	3.70	2.78
Haul about ½ mile.....	356	103.97	.....	.58	4.5	1.33	.91	.60	.43
Piling up trays.....	380	113.00	1.92	.....	4.8	1.45	.93	.63	.47
Miscellaneous.....	1,181	297.60	.....	.....	15.2	3.81	3.81	3.61	3.81
Total.....	10,490	4,768.94	.....	.....	.....	61.06	45.50	36.10	31.43

Cost of raisin production, 1917—Continued.

ACTUAL AND ESTIMATED OVERHEAD EXPENSE COVERING 78-ACRE VINEYARD.

	78-acre basis.	1-acre basis.
Taxes.....	\$361.55	\$4.63
Insurance on necessary buildings.....	56.16	.72
Depreciation: Buildings, \$250; trays, \$200; sweat box, \$40; teams and harness, \$175; implements, etc., \$135.....	800.00	10.25
Interest on investment, value, \$600 per acre, at 6 per cent.....	2,808.00	36.00
Depreciation of vineyard, estimated life, 40 years; value, \$400 per acre.....	780.00	10.00
Management.....	1,500.00	19.23
Miscellaneous expense: Auto, \$412; blacksmith, \$29.40; ditch water, \$100; hay and feed, \$600; merchandise, \$427.63; power and lights, \$32.80; phone, \$30.....	1,631.83	20.92
Total.....	7,937.54	101.80

	2½-ton yield.	1½-ton yield.	1-ton yield.	¾-ton yield.
Total cost of labor per acre.....	\$61.06	\$45.50	\$36.10	\$31.43
Total cost of overhead per acre.....	101.80	101.80	101.80	101.80
Total cost per acre.....	162.86	147.30	137.90	133.23
Proceeds for yields, at \$110 per ton.....	256.66	165.00	110.00	82.50
Total cost per acre.....	162.86	147.30	137.90	133.23
Net profit per acre.....	93.80	17.70	1 27.90	1 30.73

¹ Loss.

Cost of raisin production, 1918.

Year, 1918.

Acreage, 78 acres; actual number of vines, 33,198.

Yield, 126 tons from 55 acres, 23 acres shipped green.

Trays, 41,312, of 23 pounds each.

Tray basis, 325 trays of raisins, 6 pounds each, make 1 ton.

Picking price, 3½ cents per tray.

Labor basis, \$2.75 to \$4 per day without board, 10-hour day.

Property, Dallas H. Gray, Armona, Calif.

JANUARY 1, 1919.

[Figured on basis of 55 acres made to raisins.]

Kind of work.	Total hours.	Total amount.	Cost per thousand.	Cost per ton.	Hours per acre.	Cost per acre.			
						2½-ton yield.	1½-ton yield.	1-ton yield.	¾-ton yield.
Pruning vines.....	2,115	\$581.22	\$17.33		27.1	\$7.45	\$7.45	\$7.45	7.45
Rake brush.....	58	10.60			.5	.13	.13	.13	.13
Burn brush.....	133	37.95			1.7	.48	.48	.48	.48
Plowing.....	682	210.90			9	2.70	2.70	2.70	2.70
Harrowing.....	394	125.85			5	1.61	1.61	1.61	1.61
Single plow.....	253	77.60			3.2	1.00	1.00	1.00	1.00
Shovel and succor.....	837	260.20	7.83		10.7	3.33	3.33	3.33	3.33
Weed knife.....	175	58.00			2.2	.74	.74	.74	.74
Dig Bermuda-Johnson.....	86	31.10			1.1	.40	.40	.40	.40
Sulphur vines.....	102	20.80	.92		1.3	.39	.39	.39	.39
Sulphur.....		60.75	1.83			.77	.77	.77	.77
Vine cutting.....	23	6.30			.4	.11	.11	.11	.11
Vine tying.....	40	14.00			.7	.25	.25	.25	.25
Vine trimming.....	126	46.15	1.40		2.3	.84	.84	.84	.84
Haul trays.....	312	117.75	2.85		5.6	2.14	1.39	.93	.69
Pick grapes.....		1,445.92	35.00	\$11.47		26.25	17.11	12.41	8.35
Turn trays.....	360	127.90	3.09	1.11	6.5	2.32	1.50	1.00	.75
Stack and unstack.....	2,012	693.92	16.79	5.50	36.0	12.60	8.22	5.46	4.11
Sorting and boxing.....	1,438	421.51	10.20	3.34	36.1	7.48	4.87	3.35	2.43
Haul ½ mile.....	305	98.35		.78	5.5	1.79	1.17	.78	.38
Piling up trays.....	431	151.70	3.18		7.8	2.39	1.55	1.03	.77
Miscellaneous.....	1,700	509.15			21.7	6.52	6.52	6.52	6.52
Total.....	11,562	5,097.62				81.59	62.53	50.70	44.60

*Cost of raisin production, 1918—Continued.***OVERHEAD ACTUAL AND ESTIMATED EXPENSE COVERING 78-ACRE VINEYARD.**

	78-acre basis.	1-acre basis.
Taxes	\$267.90	\$3.44
Insurance on buildings.....	80.50	1.15
Depreciation: Buildings, fences, etc., \$250; trays, \$400; sweat boxes, \$50; teams and harness, \$200; implements, \$200.....	1,100.00	14.10
Interest on investment, valuation \$800 per acre, at 6 per cent.....	3,744.00	48.00
Depreciation on vineyard, estimated life 40 years, at \$500 per acre.....	975.00	12.50
Management.....	2,000.00	25.64
Miscellaneous expense: Auto, \$225.68; blacksmith, \$50.55; ditch water, \$62.50; hay and feed, \$750; merchandise, \$709.50; power and lights, \$79.90; phone, \$79.83.....	1,958.96	25.11
Total	10,135.36	129.94

	2.3-ton yield.	1½-ton yield.	1-ton yield.	¾-ton yield.
Total cost of labor per acre.....	\$81.50	\$62.53	\$50.70	\$44.60
Total cost of overhead per acre.....	129.94	129.94	129.94	129.94
Total cost per acre	211.53	192.47	180.64	174.54
Proceeds of yields, at \$82.50 per ton.....	189.75	123.75	82.50	61.87
Total cost per acre	211.53	192.47	180.64	174.34
Net loss per acre	21.78	68.72	98.14	112.67

Cost of raisin production, 1919.

Year, 1919.

Acreage, 78 acres; actual number of vines, 33,198.

Yield, 135 tons.

Trays, 43,652 of 23 pounds each.

Tray basis, 325 trays of raisins, 6 pounds each, make 1 ton.

Picking price, 4½ cents per tray.

Labor basis, \$3 to \$4.50 per day, without board; 10-hour day.

Property, Dallas H. Gray, Armona, Calif.

JANUARY 1, 1920.

Kind of work.	Total hours.	Total amount.	Cost per thousand.	Cost per ton.	Hours per acre.	Cost per acre.			
						1½-ton yield.	1½-ton yield.	1-ton yield.	¾-ton yield.
Pruning vines.....	1,040	\$364.66	\$10.98		13.3	\$4.67	\$4.67	\$4.67	\$4.67
Rake brush.....	39	12.95			.5	.16	.16	.16	.16
Burn brush.....	224	67.20			2.8	.86	.86	.86	.86
Plowing.....	761	300.00			9.7	3.84	3.84	3.84	3.84
Harrowing.....	705	245.55			9	3.15	3.15	3.15	3.15
Single plow.....	181	61.25			2.3	.78	.78	.78	.78
Shovel and succor.....	822	284.15	8.56		10.5	3.65	3.65	3.65	3.65
Weed knife.....	99	35.40			1.1	.45	.45	.45	.45
Dig Bemuda, Johnson.....	398	147.55			5.1	1.89	1.89	1.89	1.89
Sulphur vines.....	143	50.05	1.50		1.8	.64	.64	.64	.64
Sulphur.....		53.25	1.60			.68	.68	.68	.68
Vine cutting.....	33	13.40			.3	.17	.17	.17	.17
Vine V-ing.....	57	22.80			.6	.29	.29	.29	.29
Vine trimming.....	300	120.00	3.61		3.1	1.54	1.54	1.54	1.54
Haul trays.....	450	180.00	4.35		4.9	2.30	1.96	1.31	.98
Pick grapes.....		1,964.34	45.00	\$14.55		25.18	21.49	14.33	11.74
Turn trays.....	570	266.50	6.44	1.97	7.2	3.41	2.91	1.94	1.45
Stack and unstack.....	880	396.00	9.58	2.93	11.2	5.07	4.33	2.89	2.16
Sort and box.....	1,558	702.10	16.97	5.11	19.9	8.99	7.69	5.13	3.84
Hauling ¼ mile.....	325	146.25		1.08	4.1	1.87	1.77	1.18	.88
Piling up trays.....	380	171.00	4.14		4.8	2.19	1.87	1.25	.93
Miscellaneous.....	1,424	482.60			18.2	6.18	6.18	6.18	6.18
Total	10,389	6,086.00				77.96	70.94	56.98	49.93

*Cost of raisin production, 1919—Continued.***ACTUAL AND ESTIMATED OVERHEAD EXPENSE COVERING 78-ACRE VINEYARD.**

	78-acre basis.	1-acre basis.
Taxes	\$962.74	\$12.84
Insurance on necessary buildings.....	89.50	1.14
Depreciation: Buildings, fences, etc., \$250; trays, \$500; sweat box, \$50; teams and harness, \$200; implements, \$200.....	1,700.00	15.38
Interest on investment, valuation \$300 per acre, at 6 per cent.....	3,744.00	48.00
Depreciation of vineyard, estimated life, 40 years; valuation, \$500 per acre.....	975.00	12.50
Management.....	2,500.00	32.06
Miscellaneous expense: Auto, \$562; blacksmith, \$44.25; ditch water, \$75; hay and feed, \$1,125; merchandise, \$1,042.75; power and lights, \$96.46; phone, \$123.45.....	3,068.81	39.34
Total	12,540.05	160.75

	1½-ton yield.	1½-ton yield.	1-ton yield.	¾-ton yield.
Total cost of labor per acre.....	\$77.96	\$70.94	\$56.93	\$49.93
Total cost of overhead per acre.....	160.75	160.75	160.75	160.75
Total cost per acre	238.71	231.69	217.73	210.68
Proceeds for yields, at \$207.50 per ton.....	363.12	301.25	207.50	150.62
Total cost per acre	238.71	231.69	217.73	210.68
Net profit per acre	124.41	69.56	10.23	160.06

¹ Loss.*Cost of raisin production, 1920.*

Year, 1920.

Acreage, 78 acres; actual number vines, 33,198.

Yield, 153 tons.

Trays, 51,478 trays of 23 pounds each.

Tray basis, 325 trays of raisins, 6 pounds each, make 1 ton.

Picking price, 6 cents per tray.

Labor basis, \$4 to \$5 per day, without board; 10-hour day.

Property, Dallas H. Gray, Armona, Calif.

JANUARY 1, 1921.

Kind of work.	Total hours.	Total amount.	Cost per thousand.	Cost per ton.	Hours per acre.	Cost per acre.			
						2-ton yield.	1½-ton yield.	1-ton yield.	¾-ton yield.
Pruning vines.....	1,210	\$564.35	\$16.60		15.5	\$7.23	\$7.23	\$7.23	\$7.23
Rake brush.....	41	16.40			.5	.21	.21	.21	.21
Burn brush.....	94	37.80			1.2	.48	.48	.48	.48
Plowing.....	795	361.75			10.2	4.64	4.64	4.64	4.64
Harrowing.....	638	266.40			8.2	3.41	3.41	3.41	3.41
Single plow.....	328	134.50			4.2	1.72	1.72	1.72	1.72
Shovel and sucoor.....	1,111	454.20	13.68		14.2	5.70	5.70	5.70	5.70
Weed knife.....	256	117.70			3.3	1.50	1.50	1.50	1.50
Big Bermuda-Johnson.....	632	272.35			8.0	3.49	3.49	3.49	3.49
Kill squirrels.....	74	29.60			1.0	.38	.38	.38	.38
Sulphur vines.....	222	99.90	3.01		2.8	1.28	1.28	1.28	1.28
Sulphur.....		50.00	1.50			.64	.64	.64	.64
Vine cutting.....	29	14.50			.3	.18	.18	.18	.18
Vine V-ing.....	48	24.00			.6	.30	.30	.30	.30
Vine trimming.....	300	150.00	4.51		3.8	1.92	1.92	1.92	1.92
Haul trays.....	509	254.50	4.94		6.5	3.26	2.45	1.63	1.22
Pick grapes.....		3,088.68	60.00	\$13.21		39.59	29.68	19.78	14.85
Turn trays.....	660	330.00	6.41	2.08	8.4	4.23	3.16	2.11	1.58
Stack and unstack.....	774	387.00	7.51	2.45	9.9	4.96	3.72	2.48	1.87
Sorting and boxing.....	1,817	908.50	17.65	5.75	23.3	11.64	8.73	5.81	4.36
Haul one-half mile.....	316	158.00		1.00	4.0	2.02	1.51	1.00	.75
Piling up trays.....	425	212.50	4.12		5.4	2.72	2.04	1.36	1.02
Miscellaneous.....	1,596	878.15			20.4	8.70	8.70	8.70	8.70
Total	11,875	8,610.78				110.20	93.07	75.95	67.43

*Cost of raisin production, 1920—Continued.***ACTUAL AND ESTIMATED OVERHEAD EXPENSE COVERING 7½-ACRE VINEYARD.**

	7½-acre basis.	1-acre basis.
Taxes	\$819.62	\$10.52
Insurance on necessary buildings.....	110.20	1.30
Depreciation: buildings, fences, etc., \$250; trays, \$500; sweat boxes, \$50; teams and harness, \$200; implements, \$200.....	1,200.00	15.38
Interest on investment, value, \$800 per acre, at 6 per cent.....	3,744.00	48.00
Depreciation of vineyard, estimated life 40 years, value, \$500 per acre.....	975.00	12.50
Management.....	2,500.00	32.05
Miscellaneous expense: Auto, \$75; blacksmith, \$32.95; ditch water, \$125; hay and feed, \$125; merchandise, \$1,314.41; power and lights, \$73.68; phone, \$73.41.....	3,619.45	46.40
Total	12,968.27	166.15

	2-ton yield.	1½-ton yield.	1-ton yield.	¾-ton yield.
Total cost of labor per acre.....	\$110.20	\$93.07	\$75.95	\$67.43
Total cost of overhead per acre.....	166.15	166.15	166.15	166.15
Total cost per acre	276.35	259.22	242.10	233.58
Proceeds for yields, at \$220 per ton.....	440.00	330.00	220.00	135.00
Total cost per acre	276.35	259.22	242.10	233.58
Net profit per acre	163.65	70.78	122.10	68.58

¹ Loss.*Cost of planting and bringing a Thompson vineyard to bearing.*

Years, 1918, 1919, 1920.

Acreage, 16 acres.

Vines planted, 6,136 vines planted, 8 by 12 on square plan.

Price, \$40 per thousand.

Yield, third year 6.4 tons raisins.

Trays, 2,822 trays of 23 pounds each.

Tray basis, 444 trays make 1 ton, 4½ pounds each.

Picking price, 5 cents per tray.

Labor basis, year 1918, \$2.75 to \$4; 1919, \$3 to \$4.50; 1920, \$4 to \$5.

Property, Dallas H. Gray, Armona, Calif.

Kind of work.	Total hours.	Total amount.	Cost per thousand.	Cost per ton.	Hours per acre.	Cost per acre.
1918						
Plow and prepare land.....	123	\$36.90			8.0	\$2.31
Mark off land.....	30	9.00			1.8	.56
Plant vines.....	605	166.55	\$27.14		38.0	10.41
Plow to irrigate.....	25	7.50			1.5	.47
Irrigate.....	40	12.00			2.5	.75
Plow harrow, hoe.....	342	102.60			21.0	6.91
Total, 1918	1,165	334.55				20.91
1919						
Replant 350 vines.....	30	9.00				.56
Plow to irrigate.....	28	8.40			1.7	.52
Irrigate.....	40	12.00			2.5	.75
Pruning.....	45	13.50	2.20		2.8	.84
Drive stakes (6,136).....	402	120.60	19.65		25.1	7.53
Tie vines.....	65	19.60	3.21		4.0	1.22
Rake and burn brush.....	5	1.50			.3	.09
Plowing.....	633	237.30			40.0	14.90
Harrowing.....	227	83.40			14.1	5.21
Shovel vines.....	238	8.55			15.0	5.03
Miscellaneous.....	140	45.65			9.0	2.85
Total, 1919	1,853	631.30				39.50

Cost of planting and bringing a Thompson vineyard to bearing—Continued.

Kind of work.	Total hours.	Total amount.	Cost per thousand.	Cost per ton.	Hours per acre.	Cost per acre.
1920						
Replant vines.....	8	\$3.20			0.5	\$0.20
Pruning.....	283	113.40			18.0	7.09
Wiring vines.....	643	257.40	\$4.19		40.0	16.07
Tying vines.....	265	106.00	17.27		16.5	6.62
Rake brush.....	4	1.40			.2	.09
Burn brush.....	4	1.40			.2	.09
Plow.....	133	55.65			8.0	3.48
Harrow.....	159	69.80			10.0	4.30
Dis-ling.....	25	11.40			1.56	.71
Sulphuring vines.....	50	22.50	3.66		3.1	1.40
Cut vines.....	3	1.50	.24		.2	.09
Tying vines.....	8	3.00			.5	.25
Haul trays (2,822).....	21	10.50	3.72		1.3	.65
Pick grapes, at 5 cents tray.....		141.10	50.00	\$21.26		8.81
Turn trays.....	17	8.50	3.01	1.33	1.0	.53
Stack and unstack.....	93	46.75	16.56	7.30	6.0	2.92
Boxing raisins.....	37	17.55	6.22	2.74	2.3	1.09
Haul to town.....	26	12.80		2.00	1.6	.80
Pile up trays.....	54	16.25	5.75		3.4	1.01
Miscellaneous.....	120	42.00			7.5	2.62
Total, 1920.....	1,953	943.10				58.52
Grand total, all years.....	4,971	1,909.15				119.23

THREE YEARS' ACTUAL AND ESTIMATED OVERHEAD EXPENSE COVERING 16-ACRE THOMPSON VINEYARD BROUGHT TO PRODUCTION.

	16-acre basis.	1-acre basis.
Taxes.....	\$224.00	\$14.00
Insurance on necessary buildings.....	9.92	.82
Teams and harness, \$105; implements, \$90.....	382.50	23.90
Interest on investment:		
1918, value, \$350, at 6 per cent.....	\$21.00	
1919, value, \$450, at 6 per cent.....	27.00	
1920, value, \$600, at 6 per cent.....	36.00	
	84.00	
Employee's industrial insurance, at \$1.95 per \$100.....	1,344.00	84.00
Miscellaneous expense: Merchandise and implements, \$294; blacksmith, \$20; ditch water, \$30; hay and feed, \$300.....	37.22	2.32
	644.00	40.25

Vineyard expense.	Amount.	Cost per thousand.	Cost per acre.
Vine markets (6,136).....	\$18.30	\$3.00	\$1.15
Cost of vines (6,136).....	245.44	40.00	15.34
Cost of vines replant.....	20.40	40.00	1.27
Vine stakes.....	490.88	80.00	30.68
Posts and wire.....	936.29	15.25	58.51
Rope tying, 2 years.....	14.00	2.23	.87
Sulphur, third year.....	15.00	2.44	.95
Tray rent (2,822).....	112.88	40.00	7.05
Total.....	1,853.19		115.82

16-year basis.....	\$4,494.83
1-year basis.....	280.61

Net results.	16-acre basis.	1-acre basis.
Total cost of labor.....	\$1,909.15	\$119.23
Total cost of overhead expense.....	4,494.83	280.61
Total expense.....	6,403.98	399.84
Proceeds from 644 tons of raisins, at \$280 per ton.....	1,792.00	112.00
Net expense.....	4,611.98	287.84

(Thereupon, at 5 o'clock p. m., Friday, December 9, 1921, an adjournment was taken until 9 o'clock a. m. Saturday, December 10, 1921.)

SATURDAY, DECEMBER 10, 1921.

The committee met at 9 o'clock a. m. in room 704, Department of Commerce, pursuant to adjournment on yesterday, Hon. Herman J. Galloway (chairman) presiding.

The CHAIRMAN. Gentlemen, let us proceed with the hearing.

STATEMENT OF MR. DALLAS H. GRAY—Resumed.

Mr. GRAY. Mr. Chairman, for the benefit of yesterday's records, I have one more wire that might go in before the questions are asked me, if you will permit it.

The CHAIRMAN. You may read the telegram.

Mr. GRAY (reading):

GRIDLEY, CALIF., December 10, 1921—2.52 a. m.

DALLAS H. GRAY,

Poehatan Hotel, Washington, D. C.:

Kindly advise Attorney General that I strongly advocate modification packers' consent decree in order they can distribute our California fruits. I am a financier, fruit grower, and member prune and apricot association, also voting trustee of California Canning Peach Association.

C. W. THRASHER.

The CHAIRMAN. Mr. Hall, have you any questions you want to ask?

Mr. HALL. No, sir.

The CHAIRMAN. Mr. Gray, you are a member of the California Cooperative Canneries?

Mr. GRAY. Yes; of the California Cooperative Canneries.

The CHAIRMAN. How long have you been a member of that?

Mr. GRAY. Two years—pretty nearly two years.

The CHAIRMAN. Have you been a member of it since it was organized?

Mr. GRAY. Very shortly after; about six or eight months after its organization.

The CHAIRMAN. Have you taken an active part in the affairs of that organization?

Mr. GRAY. I became a member, I will say, of the California Cooperative Canneries to supply them with muscatel grapes for canning. It is acknowledged among California packers that Kings County produces a very good grape; in fact, the canneries all pack grapes from my locality, and for that reason I joined, to supply them with grapes.

The CHAIRMAN. Have you taken part in the securing of memberships, etc.?

Mr. GRAY. Yes, sir.

The CHAIRMAN. Are you an officer of that organization?

Mr. GRAY. No, sir.

The CHAIRMAN. Just a member?

Mr. GRAY. Just a member. I might state further, because I am a member of their general association, because my district has not been so organized yet as to where we are a local growers' organization, which is the custom of organization for that association.

The CHAIRMAN. Who owns the shares of stock of that association?

Mr. GRAY. Exclusively by the growers and the officials, such as Mr. Campbell, who might not be a grower, of course; he is not a grower.

The CHAIRMAN. And it has a par value, I presume—the stock?

Mr. GRAY. Yes, sir.

The CHAIRMAN. How much a share?

Mr. GRAY. \$1 a share. I get it mixed up with the Raisin Association. The Raisin Association is \$100 per share.

The CHAIRMAN. How is the fruit of that association handled? By this I mean, does the producer turn his fruit into that organization, and when does he receive his money for it?

Mr. GRAY. The producer is, as a member of the local association—

Mr. BREED (interposing). That is the grower?

The CHAIRMAN. That is what I mean.

Mr. GRAY. Yes; the grower, a member of a local association, and to that organization he turns his fruit in. That is the way with the local organizations.

And the grower receives his money—he receives advances from time to time during his delivery, or even advances previous to his delivery, if they are able to finance it, and then receives all his money when the fruit is sold.

The CHAIRMAN. What proportion of the value of his fruit will the company ordinarily advance, if it has the money?

Mr. GRAY. Oh, I would say around 20 or 25 per cent, or 15 per cent of the supposed final value.

The CHAIRMAN. And then he receives the remainder for the fruit after the fruit is sold and paid for?

Mr. GRAY. After the fruit is sold and paid for; yes, sir; after the expenses have been deducted from the gross sales.

Mr. HALL. Mr. Gray, who do you sell to?

Mr. GRAY. We have been selling to the jobbers and wholesalers of the United States, outside of the contract which is open with Armour & Co., which takes in varying amounts—I have seen the contract. The purport of it is that they agree to take their entire requirements from the California Cooperative Canneries, covering a period of 10 years.

Mr. HALL. How do the other cooperative associations distribute?

Mr. GRAY. By that I suppose you mean the California Associated Raisin Co. and the Prune and Apricot Co. and the Peach and Fig Co.?

Mr. HALL. Yes, sir.

Mr. GRAY. They distribute to the wholesalers, and I think to the chain stores and the mail-order houses. I do not think they have recently sold to Armour & Co., although the Prune and Apricot Association has during the past two years that I know of sold large quantities to Armour & Co., one of the big five packers.

The CHAIRMAN. Mr. Breed, do you care to ask anything?

Mr. BREED. I understand Mr. Thorne desires to ask a question.

The CHAIRMAN. Very well, Mr. Thorne, you may proceed.

Mr. THORNE. Are you a member of the California Fruit Growers' Exchange?

Mr. GRAY. No; I am not. That is a citrus organization.

Mr. THORNE. Yes.

Mr. GRAY. No; I produce no citrus fruits.

Mr. THORNE. That is the largest cooperative organization in California, is it?

Mr. GRAY. Oh, yes; and the oldest, I would say.

Mr. THORNE. Have you been authorized by any organization of growers on this occasion?

Mr. GRAY. I have not been authorized. I laid particular stress upon that, at which time you probably were not here.

Mr. THORNE. Have you been authorized to speak for any organization of canners?

Mr. GRAY. No; I have not, except such endowment as Mr. Campbell wishes to place upon me.

Mr. THORNE. And Mr. Campbell's organization has how many members?

Mr. GRAY. About 1,000.

Mr. THORNE. And how many—

Mr. GRAY (interposing). In their three years of organization.

Mr. THORNE. And how many growers in California sell to Mr. Campbell's organization, approximately?

Mr. GRAY. How many growers sell to him?

Mr. THORNE. Yes.

Mr. GRAY. About 1,000.

Mr. THORNE. But I thought that was the canners themselves?

Mr. GRAY. Oh, no; you are mistaken. You asked me how many members there were in Mr. Campbell's organization.

Mr. THORNE. Yes; there are 1,000 growers?

Mr. GRAY. Yes; 1,000 growers are in the membership.

Mr. THORNE. Now, how many members are there in California in the various cooperative organizations, and that is all I want to know?

Mr. GRAY. Seventy thousand that are in 42 organizations.

Mr. THORNE. That is all.

The CHAIRMAN. Now, Mr. Breed.

Mr. BREED. Mr. Chairman, I have only a few questions to ask Mr. Gray, and before doing that, however, as Mr. Gray has spent a good deal of time in connection with his testimony discussing cooperative movements, I would like to say that I have listened with a great deal of interest to all of his testimony, and I would like to put it on record here on behalf of the National Wholesale

Grocers' Association that we believe that the cooperative marketing movement that is now developing in California and other States throughout the country is of value and has a really great future ahead of it. We are not opposed to that movement, and would be glad to see it grow and prosper. We also believe that as the cooperative movement further develops it will be found that the distribution of their products through the wholesale grocers can be done at the lowest possible cost to the grower and the consumer. Further, we do not consider that the meat packer, with what we believe to be his monopolistic tendency, has any part in the development of the cooperative movement, and will eventually prove to be of distinct disadvantage to that movement.

Mr. Gray has also discussed direct sales. That was, I think, largely his first day's testimony; direct sales from the grower to the consumer. We can not see how sales to the canner and the sales from the packer to the consumer is really consistent with Mr. Gray's constant discussion of direct sales from the grower to the consumer. Sales through the packer are not direct sales. It seems to us that this proceeding does, in some respects, concern the packer, inasmuch as it is a movement to open the decree so as to allow the packer to come back into this system of distribution. I understand Mr. Gray favors the packer as a middleman with all his monopolistic tendencies. In this position we do not think that Mr. Gray is seriously considering the future interests of either the grower in cooperative movement or the consumer.

That is all I want to say on those lines of testimony which have occupied quite a bit of what has been offered.

Mr. GRAY. Mr. Chairman, I have to clear up some of those little remarks, and also probably prevent taking time of Mr. Breed asking me questions pertaining to some of those things, and I would like to say this: That we in California as growers are particularly glad at this time, and personally I am glad, to find Mr. Breed here so eminently representing the National Wholesale Grocers' Association, which in a way is speaking for the National Grocers' Association of the United States, because such an attitude here expressed is surely not in keeping with the attitude that they have so opposingly displayed in the past toward cooperative organizations for direct selling and general farm organizations. And I would say, inasmuch as he seems to think that the direct selling is a very proper method for the farmer to carry on, that if other farmers were to meet with such antagonistic opposition on the part of the wholesalers and retailers of this country few or none of them would have attempted such direct methods of sales.

Mr. BREED. Well, of course, you must not attempt, Mr. Gray, to state the position of the wholesale grocer on all subjects. I am telling you now what is our impression.

Mr. GRAY. I am stating my experience with wholesalers and not my impressions. And, further, that I do not advocate direct selling of canned goods, nor do I advocate direct selling of raisins and dried fruits to the consumer from the farmer, but rather related those instances to show that the growers were facing the question of distribution at the time that I started on this campaign.

The CHAIRMAN. Proceed with your questions, Mr. Breed.

Mr. GRAY. And further, that I do not advocating that the packers go into this thing as a middleman, with their so-called monopolistic tendencies, because I do not believe that the packers are monopolistic, and I believe that I can prove and have proven to myself, in fact, that they are not monopolistic even in their own meat interests. That is all.

The CHAIRMAN. You may proceed with your questions, Mr. Breed.

Mr. BREED. We are not so far apart, Mr. Gray, but there is one humorous question I would like to ask you: Certainly we can agree, you are opposed to licensing?

Mr. GRAY. Licensing the farmer; yes, sir.

Mr. BREED. And I suppose from the eminent way in which you have handled yourself you are opposed to licensing attorneys?

Mr. GRAY. So far as the farmer goes, yes; if it is necessary.

Mr. BREED. So far as your experience goes in court, your experiences in selling direct to the consumer your raisins, I want to congratulate you on being able to win out in practically every case and convince the court that you were right in the interpretation of these very statutes which I understand have directly to do with the coming in of itinerant peddlers into small towns and interfering with those who are attempting to make their living in an honest and legitimate way. With that you do not have any issue, do you?

Mr. GRAY. That is one thing, I did not have to pay a license to defend myself. And I would say, regarding the itinerant merchant coming in—

Mr. BREED (Interposing). I did not say "merchant"; I said "peddler."

Mr. GRAY. Well, the itinerant merchant or peddler coming into a town, if he does, that there is a certain respect that should be paid to those who have built up a business in a town; but still if we are going to reduce the high cost of living it is necessary that those itinerant merchants and peddlers be given free access to the consumer, to whom they can sell undoubtedly more reasonably. I do not oppose a reasonable fee, but I do oppose an unreasonable fee, as I recited in one instance, \$250 for one week.

Mr. BREED. I did not intend to get into this discussion, but now that we are in it I would like to ask you one question: Isn't it a fact, Mr. Gray, that many manufacturers and growers and packers who have sought to introduce their products to the consumer have pursued somewhat the same method that you did, namely, to bring to the direct attention of the consumer in the form of a house-to-house canvass with samples and cookbooks, and showing the consumer the value and merit of their product?

Mr. GRAY. That is not a fact. The house-to-house sample and the distribution of literature is not the same thing; it is a far different thing than going into the field and selling direct to the consumer. And every grower that I have heard of in Oregon, Washington, and California who has attempted to go direct to the consumer has not gotten past the first town, as I recited in my testimony.

Mr. BREED. What I mean to say is, there are many packers and manufacturers of food specialty products that sell direct, are there not?

Mr. GRAY. No; there are not.

Mr. BREED. I mean, direct to the retailer?

Mr. GRAY. Oh, direct to the retailer; yes.

Mr. BREED. Now, prior to that time, have not those various men, through direct advertising, sampling, etc., introduced the merit of their product to the consumer?

Mr. GRAY. Yes; that is true, and that is the very reason why I so favor the packer being allowed to enter the distribution of food products, so that he can go direct to the retailer with his tramp-car service.

Mr. BREED. And one further question, and then I am through with that line: When you left these various towns, after advertising your products to the consumer and educating them up to a palatable desire for these luscious raisins, what means did you leave to the poor consumer to obtain that product after you left, in the future?

Mr. GRAY. I left the retail grocers to supply that trade, which they so bountifully did, which I have several concrete examples of.

Mr. BREED. So, as a matter of fact, you eventually relied upon the retail grocer to supply the wants of the consumer whose palate you had tickled?

Mr. GRAY. And, further, thousands that knew my address, as my home address in California was well known, I established a mail-order house in Chicago to supply some 60,000 consumers in Chicago, and otherwise.

Mr. BREED. Now, Mr. Gray, in answer to the chairman's question you have shown your connection with the growers interested in the California Cooperative Canneries.

Mr. GRAY. Yes, sir.

Mr. BREED. How long have you been identified with the California Cooperative Canneries?

Mr. GRAY. About two and a half years, I think I testified, or three years.

Mr. BREED. Did you assist in organizing other growers?

Mr. GRAY. Two of their local associations I assisted in.

Mr. BREED. Which ones?

Mr. GRAY. The one at Modesto, and the organization of the San Anselmo organization, and I also assisted in the organization of the Tulare County Association, by talking to the growers at different times, and in other ways, and I have gone over to San Jose to make talks before the growers there, and assisted in that way.

Mr. BREED. Now, as I understand, the California Cooperative Canneries is a corporation?

Mr. GRAY. It is.

Mr. BREED. And has as stockholders these growers?

Mr. GRAY. Yes, sir.

Mr. BREED. Does the California Cooperative Canneries make a definite future contract with these growers, agreeing to take the entire output of their vineyards?

Mr. GRAY. They agree to take the entire output of their orchards and vineyards for one year, and the grower himself from the organization on or before February 1 of the following year, I think it is. There is a clause in there releasing the grower, which does not tie the grower to the association except for one year.

Mr. BREED. Now, do those contracts between the California Cooperative Canneries and the growers fix the price at which the fruit is to be taken by the California Cooperative Canneries?

Mr. GRAY. You mean the price to the grower?

Mr. BREED. The price to the grower.

Mr. GRAY. No; the price to the grower can not be fixed until there is a final account rendered, or until the goods are all sold.

The CHAIRMAN. Does the price depend on what they get for it?

Mr. GRAY. Absolutely.

The CHAIRMAN. That is, what the canned goods sell for?

Mr. GRAY. What the canned goods sell for.

The CHAIRMAN. After deducting the costs and expenses?

Mr. GRAY. That is right.

Mr. BREED. So the contract only relates to the California Cooperative Canneries taking all the fruit, and the price is determined after the canneries have sold the fruit?

Mr. GRAY. That is right. It is the same as the Raisin Association in that respect. The grower can get a good deal for his fruit or he may not get a nickel for his fruit; he might not come out.

Mr. BREED. If the canneries is not a good salesman, or if the fruit is bad, or something like that?

Mr. GRAY. Yes; that is right. I will admit all that.

Mr. BREED. Do the California Cooperative Canneries process the fruit and pack it into cartons?

Mr. GRAY. Well, they can it, and then put the cans in cartons or boxes.

The CHAIRMAN. You mean all the time, Mr. Breed—the California Cooperative Canneries?

Mr. GRAY. Yes.

Mr. BREED. Yes; the California Cooperative Canneries.

And then, after they have performed this service, they then offer these goods for sale?

Mr. GRAY. They do.

Mr. BREED. Do they then make future sales of these goods?

Mr. GRAY. Yes; they take previous orders, and make future sales to some extent, but the great bulk of their packing so far has been handled by the so-called packers.

Mr. BREED. What packers?

Mr. GRAY. The meat packers, or Armour & Co., rather, exclusively.

Mr. BREED. Well, how do they handle the sale of their product, or did they handle the sale of their product during the past year?

Mr. GRAY. I would really prefer if you would ask Mr. Campbell that question, because I have not been active in the Cooperative Canneries for about a year.

Mr. BREED. Well, do you know how the California Cooperative Canneries finances itself so as to make advances to these growers, as you have testified?

Mr. GRAY. Yes, sir.

Mr. BREED. How is that?

Mr. GRAY. They borrow the money from the banks, if they can. And there is one in Visalia, the Garden City Bank, that has made them advances and loans, although others have not done so. There are some banks in Los Angeles that will loan them money. I was instrumental in borrowing \$250,000 in 1920 from the Bank of Italy.

Mr. BREED. Do they also get some money from Armour & Co., to whom they have made sales?

Mr. GRAY. Not for the fruit. They have borrowed money from Armour & Co. for the building of their first plant.

Mr. BREED. Now, I understand you are in favor of modifying this decree?

Mr. GRAY. I am.

Mr. BREED. How long have you been working on the proposition trying to obtain a modification of this decree?

Mr. GRAY. How long have I been?

Mr. BREED. Yes.

Mr. GRAY. Well, I would say that it has come to my attention during the past six months.

Mr. BREED. And you have been working during that period of time?

Mr. GRAY. No; I have not. I have taken an active part in this matter—I have not taken an active part in it, except for the last two or three weeks before coming here.

Mr. BREED. Except in California you did not take a thoroughly active part?

The CHAIRMAN. He said two or three weeks before coming here.

Mr. GRAY. I did not take any part in California, except for two or three weeks. I took this active part because I thought it was a check on the farmers' outlet and a restraining of the trade.

Mr. BREED. Now, do you favor a modification of the decree so as to allow the packers to go into the retail meat business?

Mr. GRAY. I have not given that a thought, as to their retail meat business, because I am not concerned in that.

Mr. BREED. But you do favor a modification of the terms of the decree so as to allow them to go into the retail grocery business and the handling of grocery products?

Mr. GRAY. I would say that meats and other so-called unrelated products are all foods, and I can not understand this attack or making a discrimination in foods, so therefore I feel that they should be allowed to handle all foods, whether they manufacture them or buy them.

Mr. BREED. By that you mean meats as well?

Mr. GRAY. I mean meats as well.

Mr. BREED. Do you favor a modification of the decree to allow them to continue to own the stockyards?

The CHAIRMAN. Mr. Breed, I don't think that is in issue here. If you will tell me your purpose in asking it, it may be it may be material.

Mr. BREED. Well, I may be straining a bit, but I have a kind of a feeling that if the Government is going to ask for a modification of one part of the decree, the court might say, "Well, why not modify another part of the decree?" There is an indefinite, indirect bearing, in my mind, that if Mr. Gray favors one modification and opposes another, I would like to get his reasons.

Mr. SMITH. And, Mr. Chairman, it all goes to the value of his opinion.

Mr. BREED. But I do not press the question, if the chairman feels it is not proper.

The CHAIRMAN. I am quite willing that he should answer that question, but I do not think that we should go into it any further.

Mr. BREED. I will not go into it further.

Mr. GRAY. In answering that question, I would say that I believe the packer should be equipped with all the vehicles necessary for the sale of his products, the same as I should be equipped with all the vehicles of production. But that these vehicles, if they do become—and I lay special stress on that—if they do become monopolies, there should be regulation set up to curb the monopolistic tendencies, to control and regulate it. Broadly, that is my idea on this thing.

Mr. BREED. Broadly, then, I take it, you favor the packers' control bill?

Mr. GRAY. I do.

Mr. BREED. And legislation looking to the control of any industry that threatens to become a monopoly, or any—

Mr. GRAY (interposing). Any industry, wholesaler or packer. I think our Sherman antitrust law fully covers that also.

Mr. BREED. And in coming to that conclusion, do you favor the extension of the operation of a monopoly with control as against no extension by a monopoly, as is the case if this decree is not modified?

Mr. GRAY. Yes; if the so-called monopoly becomes actually monopolistic to the extent of encroaching upon the legitimate rights of others, I would say it should be regulated.

Mr. BREED. Do you believe that all the growers in California in any one line of fruit should get together and control the sale of that entire fruit?

Mr. GRAY. I do believe so, and I believe that in doing that they actually become a monopoly; they become a trust, and we admit that all of our associations that have control of anything over 80 per cent or 85 per cent,

which is considered necessary for the proper operations and successful operations of these organizations, are trusts, but should be exempted under the laws, as has been provided, I believe, by the Capper-Perkins bill, which has not yet gone before Congress.

Mr. BREED. Exempted how?

Mr. GRAY. Exempted under the law as to trusts.

Mr. BREED. You mean exempt from the antitrust laws?

Mr. GRAY. Exempted from the antitrust laws; yes, sir.

Mr. BREED. Do you believe, then, that the producer or packer should control the price of his product to the consumer?

Mr. GRAY. If it becomes necessary to lower the cost of living in that manner that such drastic action should be taken, I would say yes.

Mr. BREED. Of course, it does not follow that the control of the price by the producer to the consumer and the preventing of the intermediary from making any change in the price makes any change in the price of that product.

Mr. GRAY. Let me picture that, however. I am not for price setting in the main, but if there should be a combination in the channels of trade set up that would so terribly increase the product to the consumer as against the price to the producer, I would be in favor of a law to permit the manufacturer or producer naming the price.

Mr. BREED. I take it you would then also believe in laws regulating the controlling of prices?

Mr. GRAY. If it becomes necessary to take that drastic action; but I would be against it as a general premise. What I want to say is that I would like to see generally a reduction in the cost of living and allow greater production.

Mr. SMITH. May I ask a question right there?

Mr. GRAY. Yes, sir.

Mr. SMITH. Didn't you say yesterday you wanted the Government out of business, and isn't this putting the Government into business?

Mr. GRAY. If it is necessary, I want the Government to go entirely into business.

Mr. SMITH. Then you are not so opposed as you said yesterday—

The CHAIRMAN (interposing). I think that was a letter which he read, from Mr. Daily.

Mr. GRAY. That was a letter.

The CHAIRMAN. That was a letter from some chain stores in California.

Mr. SMITH. You did not express that as your opinion?

Mr. GRAY. I did not.

Mr. SMITH. Then I am mistaken.

Mr. GRAY. I will say, to clear that up, I believe in fair competition by all channels of trade.

Mr. BREED. Just let me go on a moment, and then you can talk. Do I understand that you represent any organized cooperative movement in America, other than this—

Mr. GRAY (interposing). I am not clothed with official authority to represent any cooperative movement, other than probably that of the California Cooperative Canneries, as I have gone into this thing to where it seems I have appeared to represent them. But I do represent the silent vote of the growers of California, with so many of whom I have talked, that they would be opposed to the curbing, narrowing, or restricting of the marketing channels.

Mr. BREED. Well, you know a great many of us thought we were representing the silent vote when we were offering ourselves as a sacrifice to it.

Mr. GRAY. I am very willing to offer myself as a sacrifice.

Mr. BREED. Now, do you really wish to convey to the committee your idea that the packers are friendly to the cooperative movements here in America?

Mr. GRAY. I do. From my own personal knowledge that the big packers have probably changed their views as were originally conveyed to the public some 25 or 30 years ago, when they are said to have created such local conditions as to crowd out individual meat packers. But I believe that their crowding out was but the carrying out of that rule as was so wonderfully portrayed here by one of the witnesses, the Rotary rule—"He gains most who serves best."

Mr. BREED. That is a good rule.

Mr. GRAY. I believe the packers have gained most because they have served the best in distribution.

Mr. BREED. Now, there is a great cooperative movement among the live-stock men, is there not?

Mr. GRAY. There is.

Mr. BREED. Do you think the packers are friendly to that cooperative movement along that line?

Mr. GRAY. I don't know, but I do know that the live-stock men of my country, organized, are for a modification of the consent decree.

Mr. BREED. But they are for a modification of that section of the decree which has to do with putting the packers out of—

Mr. GRAY (interposing). Unrelated lines.

Mr. BREED. No; out of the ownership of the stockyards.

Mr. GRAY. Unrelated lines.

Mr. BREED. That is their only real interest, is it not, the stockyard interest?

Mr. GRAY. I don't know, except a conversation I have had with one of their directors on the coast.

Mr. BREED. Now, there is a large cooperative movement among the producers of grain in America, is there not?

Mr. GRAY. I am not familiar with that to speak authoritatively.

Mr. BREED. There is a very large cooperative movement among the farmers in connection with the ownership of elevators, is there not?

Mr. GRAY. I should judge so; if not, it should be so.

Mr. BREED. There are upward of 400,000 farmers interested in that?

Mr. GRAY. Probably so.

Mr. BREED. And there are as many as probably 4,000 elevators—

Mr. GRAY (interposing). I don't know as to that.

Mr. BREED. Do you think that the meat packers are friendly to that cooperative movement?

Mr. GRAY. I think that they should be.

Mr. BREED. Do you not know that there is a cooperative movement among the farmers with respect to the handling of cheese?

Mr. GRAY. There should be.

Mr. BREED. Do you know whether or not the testimony which has been given, showing that the meat packers control the industry of cheese in the country, is correct?

Mr. GRAY. I don't believe that that is correct, from the data that I have looked over.

Mr. BREED. Do you think that the packers are friendly to the cooperative movement among the farmers and producers of cheese?

Mr. GRAY. I think that they should be.

The CHAIRMAN. Do you know whether they are or not?

Mr. GRAY. I don't know.

Mr. BREED. That is all, Mr. Chairman.

The CHAIRMAN. Senator, have you any questions?

Mr. SMITH. No questions.

The CHAIRMAN. Mr. Stevens, have you?

Mr. STEVENS. I don't think I have any questions to ask Mr. Gray, but I remember during the interesting discussion that he had about breaking down the obstructions that lay about in his path, that he defined the difference between an optimist and a pessimist; and it reminded me of a distinction I heard between an optimist and a pessimist, and it was that a pessimist is one who has lived too long with an optimist, and that an optimist is one who has just buried his friend, the pessimist.

Mr. BREED. May I say, Mr. Chairman, that I do not believe that Mr. Gray had any intention of making any unjust statements with respect to such men as Mr. Juhring, whom I happen to know, but do not represent in any respect; but I do believe, Mr. Chairman, if Mr. Juhring wants to respond to Mr. Gray's testimony in respect to that arbitrary situation, that I should ask you if you would give him an opportunity to file a statement.

Mr. GRAY. In conjunction with that, first, I should like to have the opportunity to file another statement. If these gentlemen want to go into that argument further, I will do so. Mr. Juhring was here the other day, and I told Mr. Juhring I would like to have him stay—I said, "I am going to tell these men about that." He was out here in the hall when I introduced him to Mr. Campbell, and I told Mr. Campbell, "This is the gentleman who made me lose \$4,000 by an arbitration."

Mr. BREED. As an arbitrator?

Mr. GRAY. Yes.

Mr. BREED. What did he say?

Mr. GRAY. He said, "No; I am going home."

Mr. BREED. What else did he say?

Mr. GRAY. He denied that I should be allowed to have my 1½ per cent brokerage from Harry E. Wood, who so kept it for some months, after the first 10 days had expired.

Mr. BREED. Did he still say that he thought his opinion as an arbitrator was correct?

Mr. GRAY. Of course he did, and he would never change that. Some minds are warped on these matters.

The CHAIRMAN. We can not decide on all these matters, gentlemen. If Mr. Juhring wants to come here and wants permission to file a statement, we will allow it, and will allow Mr. Gray to do so.

Mr. DAILY, do you have anything to ask?

Mr. DAILY. Mr. Chairman, I think I tried to make very clear to the committee and those present the position of the brokers in the scheme of things, and the position of the broker in the distribution of food, and also the high plane our association insists upon. There has been, however, in the course of Mr. Gray's testimony an attack against one of our members. I am not here to state anything different concerning this transaction—

The CHAIRMAN (interposing). Is he a member of your association?

Mr. DAILY. Yes. Mr. Wood was notified of the occurrence here, and he has asked permission to appear before you and to straighten out the record in his own defense, inasmuch as this record contains an attack against his character.

The CHAIRMAN. When will he appear?

Mr. DAILY. He will appear, but can not come down here until Monday. He has asked permission to appear on Monday morning.

Mr. GRAY. I would ask that this be discontinued for one week, until I can wire to California for my full data, giving the dates and full details. I do not want to be unprepared upon this subject. It has been some 12 years since—

The CHAIRMAN (interposing). Wait a moment. Mr. DAILY, the committee does not wish to go into the details of this arbitration any further. We will be glad to have Mr. Wood appear here, and we will give him permission to deny any unfair tactics or dealings. However, we do not wish to go into the details of the decision or of the facts involved in the arbitration; and if Mr. Gray has anything to state after Mr. Wood is here with reference to the general situation, we will hear it, but not as to the details of questions involved. I do not think we want to go into that any further, however.

Mr. DAILY. I just want to make it clear that the permission Mr. Woods seeks is to protect himself.

The CHAIRMAN. Yes.

Mr. GRAY. And I want to protect myself, too.

The CHAIRMAN. We are not going into the details of that arbitration.

Senator, is there anything further?

Mr. SMITH. No, sir.

The CHAIRMAN. Mr. Breed, is there anything?

Mr. BREED. Just this: I sat here and listened to Mr. Morrill's statement about some happenings in Grand Rapids, Mich.

The CHAIRMAN. I think Mr. Morrill will go back on the stand again, and then you can take that up.

Mr. BREED. I just wanted to say Grand Rapids is the home of one of the finest men I know, Mr. William Judson, who was one of the first presidents of the National Wholesale Grocers' Association. I do not think Mr. Morrill gave any names.

Mr. MORRILL. I did not have any to give.

Mr. BREED. But it does seem to me as though there was a charge made that somebody up there in Grand Rapids had committed a crime against the laws of the State of Michigan and the laws of the United States, and I feel perhaps that these names should be given, if Mr. Morrill has them, and that these parties should have an opportunity to file a statement.

Mr. MORRILL. I gave you the name of my informant, and told you I had no real knowledge myself. But I was listening to the conversation of a friend who was very much disgusted with a recent action. I think he had just come from a luncheon with those people in which this took place, and he thought it was taking undue advantages of a recently created situation.

The CHAIRMAN. We will not go into that any further. If any of the gentlemen from Grand Rapids want to appear they may do so.

Mr. MORRILL. The name of Mr. Judson stands high. I am not personally acquainted with him.

Mr. BREED. He is a good citizen.

Mr. MORRILL. He stands high.

The CHAIRMAN. Is there anything further?

Mr. GRAY. I want to say that I appreciate this opportunity of coming from California and giving, as I think, some of the personal views of the growers of California, and I want to thank the committee for this opportunity.

The CHAIRMAN. We thank you very much, Mr. Gray.

Mr. MORRILL, do you wish to say anything further as to your views in this matter?

STATEMENT BY MR. ROLLAND MORRILL, BENTON HARBOR, MICH.—Resumed.

Mr. MORRILL. If I might have a little time to go into the farmers' opinion of the situation.

The CHAIRMAN. Go right ahead.

Mr. MORRILL. That is what I would like to do, and what I shall say is based upon years of experience and discussion with members of the farmers' bureau, and from my experience as a member of the executive board of the farm bureau. I know the farmers of Michigan as well as any man in Michigan. And I know when we are hurt. I do not always know when we are going to be hurt. I have just a little memorandum here somewhere of the things that I would like to speak of, in order to shorten the time.

Now, I want to tell you what we think of this, and give you such suggestions as I may. This means to run on the statement which, in itself, is somewhat unfair, the word "unrelated products."

Mr. BREED. May I ask Mr. Morrill, before you begin, you came in here yesterday morning for the first time, didn't you?

Mr. MORRILL. Yes; I didn't even know that this thing was going on.

Mr. BREED. All I want to know is whether you have read or heard the testimony of all of the witnesses in opposition to this modification that has occurred within the last 10 days.

Mr. MORRILL. I heard nothing except a portion of Mr. Gray's talk, and I have read nothing in connection with your deliberations.

Mr. BREED. I just wanted to know whether you had heard the other side.

Mr. MORRILL. Not at all.

The CHAIRMAN. Do you think the testimony of the wholesale grocers would influence your opinion?

Mr. MORRILL. Why, the truth would influence any honest man's judgment. I have not heard it, but facts is what we are dealing with, as I understand the case, or want to deal with.

Now, I have been very familiar with the growth of the packing industry, living near Chicago for 45 years. And the growth of the packers' car lines is what I am particularly interested in. I want to say frankly, you need not ask me anything about the meat end of it, because I don't know anything about it. I suppose they are being regulated, because it is always open season for packers and railroad presidents, and others, if their heads get above the crowd, somebody throws a rock at it.

I have noticed that all my life. So, I suppose, they are regulated all right.

But the term "unrelated," as applied to a food product which they are distributing, is something I want to mention. I was asked whether I could give a better name for it. I don't know any other name for "unrelated," but "unrelated" means not in any way related, if I understand it correctly. Now, I don't understand why, when a packer packs meat in cans and prepared it for the trade and distributes it in one building, and in another building is packing fruit and distributes to to the trade, and the lady serves her first course with Armour's meat and her last course with Armour's fruit, it seems to me it is related. I can not get that from my noodle. I feel it is related. And I feel that the biggest contract the United States has on its hands is to feed its 110,000,000 of people three square meals a day, and I believe every legitimate avenue for putting that stuff from the hands of the producers, of which I am one, to the hands of the consumer, of which I am one, should be a fair, clear, open road, and a clean field of operation.

I believe in competition, and I believe that the people who can not stand competition, perhaps, had better change their methods or do something like that.

Now, the packers have developed a car-line system, which means to me and to my State everything, we think, because we are largely a fruit-growing State. We are not in competition with the stockmen of the West; we can

not do it; conditions are against it. We are not in competition with the grain men of the West; we can not do that; conditions are against it. But we can grow fruit, and when we grow it we must distribute it. The railroads fell down miserably for many years in handling this fruit. In the course of 21 years, to be plain, and use plain language, in our State the Armour car lines loomed up and made contracts with the railroads to handle perishable produce grown in their locality. And the first move that was made was by an auxiliary of the Michigan Horticultural Society; it attempted to put them out of business on the same plan they usually do. They saw somebody blooming out, and they wanted to knock them off the perch, and they introduced a bill in the legislature to prevent the car lines from making contracts with the railroads for special service. My attention was called to it as a member of the legislative committee of our farmers, and we went and presented the case that we believed they were and would be a good thing. It so happened that I was in the largest fruit-growing section of the State, and we had used these cars successfully. We could load a car of fruit and it would go to the destination in their particular car, and it would go successfully, and we did not lose as we formerly had, as we had had the experience of having lost about half of everything we had shipped in car lots.

I am on a lake port, and I am not so deeply interested in this as thousands of my friends in Michigan are, who are not on a lake port. They are the men that I am specially interested in here and am talking for. I will get along some way, but I am talking for the men who are not on a lake port.

But from that day until this they have treated us absolutely on the square, and I will say to you that they are not friends of mine. I don't know them. I know the men that work for them.

Mr. BREED. Who is the "they" that you refer to that have treated you squarely?

Mr. MORRILL. I refer to the Armour car lines.

Mr. BREED. The Armour car lines?

Mr. MORRILL. Yes, sir. I don't know anything about the Armour end of it. We want a car line that will serve us in the fresh-fruit business.

So far as the canning business is concerned, I have a general knowledge of it, but no real personal interest in it. But I know it has worked out in our interest. We know that.

Now, from that day until this they have handled the fresh fruits of the State of Michigan outside of the lake ports. It was taken away from them last year, and they were compelled to sell their car lines, and I believe they went to the Atlantic Coast Line and the Central Railroad of Georgia, or some railroad down here, and we lost them. It became a fight then to get anything that we could get to handle the fruit in. When the railroads handled it themselves they did not handle it to good advantage. They had nobody behind it, and we had bad luck. We had bad luck last year, with a very small crop, only about 25 per cent normal; and if it had been a normal crop and a full year, a good many farmers would have gone broke. A good many did, as it was.

Now, this has benefited ordinary cooperation. Cooperation—if I understand it right, is in everything—can be applied to nearly everything. If there is not cooperation between the husband and the wife, it is bad; and if there was not cooperation, I do not know how we would get capital to run our large enterprises. The savings of the provident citizens of a community are put in the bank, and you can go to the bank and borrow the savings these provident people are putting into the bank in large quantities; and if you go to the bank to deposit your savings, you can go over to the next window and find a note that has been signed by Armour & Co. to use the money in the conduct of his business. That is cooperation all through—cooperation of the small man with the man of more money—and that is what capital is composed of, and that is all.

Now, then, to get more specific, the cooperation among our small growers of fruit in Michigan—and it applies to every State in the Union that fruit is grown in—and the trade now requires not cartloads but carloads of it, and the buyers will go freely to the places where it is handled cooperatively under right specifications, under good care, and they will buy it in carloads for Armour or some of those who are—I use Armour because they have been competent—and around such buying have grown up the prosperous communities. We have lived there, and we have bought our farms, and our land values have improved, and we have built our homes, and right around the Armour car lines are the prosperous communities, because they are able to distribute that fruit to the buyers,

and the buyers would come in and buy with confidence, instead of their men being open to be wolfed at every turn. They now come in and buy carloads, and that is the unit that the trade calls for to-day, as you gentlemen all know. That is the unit that is in demand to-day.

Now, the private car lines have handled that better than it was ever handled by the railroads before, and better than the railroads handled it last year, because it is a special proposition. Sometimes it is expensive and sometimes we lose money.

I remember very well going to Fort Valley, Ga., when they had nearly a failure in crops. The Armour lines had provided large quantities of ice, and had brought it down from the Kennebec River, in Maine, when it looked like they were going to have a crop. At Marshallville, 10 or 12 miles away, they had about 8,000 tons more of ice. You know as business men the business has got to stand that somewhere. But the next year they went along all right. But the railroads will not do that. They can not do it. The industry can not build up around it.

And if there is a lack of production, you all suffer, because you have all become accustomed to using fruit in its fresh or canned state. You want it.

Now, it is up to these gentlemen, perhaps, and the forces in Washington to say whether they should be allowed to handle it. We know it was better for us, and we know by experience the railroads will not handle it in as good a manner. And we know of the losses that we have suffered; and when a man is ready to ship and can not get the cars, it kills him off and discourages him and he quits.

Now, I have heard since I came here that there is a proposition, or might be a proposition, to compel the car-line owners to allow the full use of their cars by grocers and others.

Let me give you some idea about that, because we have had the experience. There are some products, unrelated, and you could handle them in food cars. For instance, if we had a car running out of Washington to Baltimore with a lot of food, like groceries and fruit, and the grocery men and the fruit men were jointly interested in that shipment, and the grocers will put a lot of sack salt in one end and they go through together, and the next day or the next week there is a shipment of potatoes put into that car, and I guarantee that every potato in the vicinity of that salt will rot. You people know that; you could not load vegetables or fruit in a car after it has had salt in it, or salt meat or salt fish. And you can not rid it of that salt and use it safely for a year in that kind of a situation anywhere. You can understand that. The car-line men know that, and there are certain lines of cars that nothing ever goes into that could injure the next shipment, like grocery shipments. Another example: If you should ship some groceries and vegetables and have a couple of sacks of onions in the car, and then put a shipment of butter in the same car, that butter would not be salable in less than six hours. Those are the practical difficulties that would be encountered in a proposition of that kind. Now, the grocers sharing a car of that kind, I do not see how it could be done without injury, just as I have said.

Now, the canning trade has been spoken of here. The canning trade in my State is a small affair compared with California. That is, it is in the hands of small men. There was a period there for 25 years, or 20 years at least, in which nine-tenths of them went broke; they were dependent upon the wholesale grocer or the broker.

I heard a definition of a broker here yesterday, and I suppose it is right, But our people have come to look upon the broker as a band of wolves connected with the wholesale grocer, and that he will store his goods in the warehouses of the wholesale grocer. The broker will advance some money and take the goods and put them in the warehouses and then trouble will begin, and the goods will not measure up in some wholesale grocers' warehouses, and Mr. Canner goes broke. In my town a good many men have started canneries, using money that they had earned in something else, and only one of them lived through. In 40 years one has lived through for 10 years. That is the only one. Of course, the people who could finance themselves and go to the bank and get what they needed without interference have done very well. Now, around these packing industries has grown a very large business in our country, since the Armour people, if you please—I don't know whether the other meat packers are in it or not, but I do know the Armours are in it, and I do know they have gone to packing fruits, particularly strawberries and cherries in our country. They have changed the packing industry in our country; they demanded good

goods. Previous to that time the packers only packed the waste goods. Now, they pack good wholesome goods, and they are handled by both the packers—the meat packers, and the canners and fruit packers—and I have never known of any disagreement between them. And then there are a good many other interested in the canning business, and I have never heard of any complaints of the car lines, the distribution, or anything else. It may have been there, but I have not heard it, and I have been among them all the time; I live there.

Now, so much for the canning trade. So far as the distribution is concerned, we believe that it is a principle that our people here in Washington should stand by; that there should be an open, fair deal to everybody.

And the question of fair may be raised here; but is it fair when a line of work has grown to the proportions that the packers have to say that it is unfair competition because they have eliminated a lot of profits and brought the producer and the consumer closer together? I don't think it is unfair to eliminate all unnecessary expenses in the interest of common economy and take from the producer good, wholesome food, and put it in a proper manner before the consumer; and to handle the food properly they are compelled to own their own cars. I think I have shown you reasons why a packer handling food products has got to have control of his cars. He can not trust them to the railroad company, which will load them with anything they desire. He has got to have control of his cars, so that he can load them with clean, wholesome produce, and not improper produce. And if he can not do that, he knows that he can not succeed, and if he can not succeed he will not put his money into it.

Now, that is the thing, I believe, we have got to look to—to our legislatures and Congress to see that we are fairly treated in these matters.

I know sometimes competition makes us squirm like the dickens and sometimes get out of business, but we farmers have had to take it. In Michigan we had to quit the live-stock business a good deal, and most of us quit the grain business. I still grow a little grain.

Mr. SMITH. Why is it you had to quit the live-stock business?

Mr. MORRILL. Because we can not afford to grow them. It won't pay the wages. Our land in fruit is worth more than in grain and has a higher valuation, not that we farmers expect to get much out of the valuation of the land; farmers never figure much on the return of the land. But if we did that we could not compete with the West.

Mr. GRAY. Was not one of the reasons that you were not organized?

Mr. MORRILL. That is one of the reasons. That is always one of the reasons. We have recently organized and begun to find out about ourselves. And we have begun keeping crop accounts and seeing where we were, and it is a wonderful eye-opener.

Mr. SMITH. I wondered why you quit the live-stock business; I wanted to know why you quit it.

Mr. MORRILL. As lands became higher priced and we got into the better growing business our accounts showed us that it does not pay to keep at it. But we did not complain, but we tried to drift into something else.

Mr. SMITH. Have you not a great deal of land still in Michigan that is not under cultivation?

Mr. MORRILL. Yes; and we have a great deal of property that never will be under cultivation. We have vast tracts of land in Michigan that are like the Allegheny Mountains which I have just driven over. You couldn't give me a deed to them. But the land value is only in the first 2 or 3 feet of the top of the soil; that is God's gift and you can use it all up and throw it away; but the real farmer, if he is a good farmer, he will foster it and assist nature in growing crops and taking care of his land, and he has got something as long as he lives. Of course, a man could ruin his land. We have to figure with that all the time.

Mr. SMITH. That is true everywhere.

Mr. MORRILL. Everywhere.

Mr. SMITH. Every intelligent farmer knows that.

Mr. MORRILL. Yes; but all farmers are not intelligent.

Mr. SMITH. I didn't say they were.

Mr. GRAY. But they are becoming more intelligent.

Mr. MORRILL. Now, I want to ask some questions, and I know they will not be answered, but this committee will answer them some day. And can our Government gain anything for our people by attempting to step into an industry and curtail its operations beyond the legitimate control that requires honorable handling? We tried it in several cases. We tried it in the case of the Standard

Oil. You broke them up and they split into 12 sections; and they naturally fixed up then 12 sets of overhead and charged it back to the people for the goods. And now, when I go to my grocer for a can of kerosene I am paying for it as a consumer. They may have done some dirty work, and I have not a doubt of it, because I think most big things do some little things. But to give a concrete example of what can be done in these matters, take two different sections. I have had considerable experience in Texas. It is a wonderful State, managed in a manner of its own, and they do what they think they want to do, whether it is right or not. They do not really acknowledge that they are an integral part of the United States. They do things in their own way. They legislated against the Standard Oil. They cleaned out the Waters-Pierce, and they made a boast that they had a cell warm for any Standard Oil man that showed his face in the State. They had oil wells shooting up as high as a tree. They produced various grades of oil, one was a nigger oil, and it was of a dark yellow color, and smoked a lamp chimney when you used it, and it went up to 30 cents a gallon down there. In my own State of Michigan they had never legislated against anybody, and we had several companies in business, and I could get oil for 10 cents a gallon at that time, all I wanted—1 gallon or more.

Now, I say the people are interested sometimes against legislatures, or the acts of legislatures. We had open competition there. The people were getting the benefit.

One time I was almost forced onto a program at a trade booster's convention, and they gave me a free hand, and the Houston Post said that I succeeded in antagonizing the entire audience.

Mr. SMITH. Now, Mr. Chairman, is it necessary for us to sit here and listen to all this stuff?

The CHAIRMAN. Not if you don't want to, Senator; I don't think it is necessary.

Mr. SMITH. I understand, but is it necessary for the committee to sit here and listen to this, when it asks us to be here? It seems to me he is wandering far away from the question.

The CHAIRMAN. I think he is coming to a conclusion.

Mr. MORRILL. I am asking what kind of results this will bring to our people. I do not know whether it is legitimate discussion. If it is not desired, and if they do not want to hear it, I can stop any minute.

The CHAIRMAN. Have you anything more along that line?

Mr. MORRILL. If it isn't acceptable, I don't think I have.

Mr. SMITH. It seems to be acceptable to the committee.

Mr. MORRILL. I think I would like to answer questions. I think I could give more information, perhaps, that way.

The CHAIRMAN. Finish your statement first, and after that they will be given permission to ask questions.

Mr. MORRILL. Well, I would just simply refer to our governmental action in regard to such things as that. Take the tobacco trust. I have heard it mentioned that the Government has interfered with those things. And in the Reeding coal combine, they compelled it to disassociate other lines from the coal. But there was a different condition.

The CHAIRMAN. Your position then is that where you interfere with the things that are so necessary to the welfare of the people and the public, that you increase the cost to the consumer rather than do him any benefit?

Mr. MORRILL. Yes; that is what I am trying to say in my humble way; that that has been our experience. I believe that my ground is well taken when I say that that has been the experience and will be the experience wherever it has been permitted.

And if there is one thing that the farmers of the United States are working for now it is to get a less spread between the cost of production, of the sales of goods, and the prices paid by the consumer, and every agency that will work that out is in the interest of all our people. I am not talking for any particular interest, except perhaps agriculture.

Mr. THORNE. Mr. Chairman, I would like the record to show that Mr. Morrill, as former president of the Farm Bureau Federation of the State of Michigan, is, in a sense, a client of mine. But I am not here appearing for the Farm Bureau Federation.

Mr. MORRILL. I know, of course, you, Mr. Thorne, as the representative of other things, too.

Mr. THORNE. I am not here in that capacity.

Mr. MORRILL. No; you are here in the opposite capacity.

Mr. THORNE. Now, in regard to the American Farm Bureau Federation, it has never taken a position, one way or the other, on the particular modification involved here?

Mr. MORRILL. No, sir.

Mr. THORNE. Nor has the Michigan Farm Bureau Federation?

Mr. MORRILL. Yes.

Mr. THORNE. It has taken a position as to the modification of this decree?

Mr. MORRILL. The Michigan Farm Federation has taken it in nearly every county.

Mr. THORNE. On this consent decree?

Mr. MORRILL. Not the modification of this decree.

The CHAIRMAN. He introduced a resolution here yesterday.

Mr. THORNE. I understood it was your own county organization.

Mr. MORRILL. So I have been informed that each one did; we had the matter up.

Mr. BREED. Didn't you testify yesterday that it was one county that passed a resolution?

Mr. MORRILL. You are right; from my own county.

Mr. BREED. And didn't you say, in answer to a question of mine, that you had no other resolutions?

Mr. MORRILL. I had no other in my possession. In fact, our people did not know that I was coming to Washington. I am driving through to Florida. I am an accident here to-day.

Mr. BREED. But you did say that you had sent copies of your resolution to other organizations; I didn't understand any of them had acted.

Mr. MORRILL. I didn't say I had sent anything around.

Mr. BREED. You said the organization had sent it around?

Mr. MORRILL. I don't think I used that expression.

Mr. THORNE. Has any other organization in Michigan adopted resolutions on the consent decree?

Mr. MORRILL. I have heard through our people that the State organization did, which is the parent organization.

Mr. THORNE. The State organization has adopted resolutions?

Mr. MORRILL. I have heard it did. I heard it did.

Mr. THORNE. Mr. Morrill, you have made statements of your own advocating the modification of this decree, but you have not heard the statements or read the testimony of those who are resisting it?

Mr. MORRILL. No, sir.

Mr. THORNE. Therefore I am going to, in my questions, state some of the facts that have been developed; otherwise it is impossible for me to make my question intelligible. Do you realize that the wholesale grocer does not handle fresh fruit?

Mr. MORRILL. Why, certainly; I realize the wholesale grocer would not handle fresh fruit; he can not handle fresh fruits. It is not in his line; he can not handle it. It is a separate business.

Mr. THORNE. Now, I want to say in a general way I am very much in accord with what you have said. The farm bureau members of Michigan are primarily interested in the distribution of fresh fruits, are they not?

Mr. MORRILL. Yes; and in the preservation of them; in the preserving of fruits by canning processes, to take care of the surplus. We are very deeply interested in both those items.

Mr. THORNE. In regard to the dealing in the fresh fruits you feel that there should be free, open competition, and means for their transportation?

Mr. MORRILL. There should be a free and easy way to move such perishable stuff as we produce to the lowest moment and in the safest manner.

Mr. THORNE. Do you believe there should be such things as exclusive contracts, whereby railroads should be tied up exclusively to one company to furnish such means of distribution?

Mr. MORRILL. I don't think it could, but if that follows, they do have assurances they could have control of the situation. Our experience has been that it was particularly necessary.

Mr. THORNE. I am trying to draw this distinction—

Mr. MORRILL (Interposing). Yes; I understand you.

Mr. THORNE. Do you believe in the free and open ability of all parties to furnish those cars, or do you believe there should be exclusive contracts for the furnishing of those cars?

Mr. MORRILL. I believe the only practical way would be exclusive contracts. You know this, you would not invest a million dollars in cars and take your chances on using those cars once a year when those cars must go into the territory to move those goods. Now, if they did not know and did not have the absolute security that they would move it, what object would it be to undertake it and to put that vast amount of capital in it? Do you understand how they handle this thing? Does the committee understand, or do they care to hear how they handle it?

The CHAIRMAN. Yes; we understand.

Mr. THORNE. You speak of the necessity of making the investment. Do you understand that the packers own 90 per cent of the brine tank cars for the moving of beef, and they do not have any exclusive contracts as to those cars?

Mr. MORRILL. I have no knowledge whatever as to their meat lines; that is a meat line.

Mr. THORNE. I am calling your attention that they have seen fit to put an investment of a sufficient amount so as to own approximately 90 per cent of the beef cars, and they have no exclusive contracts for furnishing of beef cars.

Mr. MORRILL. You are making a statement to me, Mr. Thorne, and I am listening to it.

Mr. THORNE. In regard to the distribution and shipping of their products other than fresh-fruit products that do not require refrigeration, have you ever personally investigated the preferential service and rates that have been accorded the packers in that connection?

Mr. MORRILL. I have not.

The CHAIRMAN. You are assuming there is a preferential service there.

Mr. THORNE. Yes.

Mr. MORRILL. I have not understood it so, but it may be true.

Mr. THORNE. If it be true that the refrigerator-car service between Chicago and Cleveland, for example, approximates one day, and a carload shipment of wholesale grocers between the same two points from an analysis shows shipments ranging from 5 to 35 days in length, would it be your judgment that the person who had the 1-day service had any advantage in the distribution of those unrelated items? Now, by unrelated items—

Mr. MORRILL (interposing). Mr. Thorne, may I answer you?

Mr. THORNE. Yes.

Mr. MORRILL. You are making a statement that may exist to-day, but it did not exist up to the time this war broke out, to my knowledge. Because on the New York Central lines—and you are touching on the New York Central lines with which I am familiar, and they carried service to everybody every day over those lines, and nobody was denied that service, and it was refrigerator-car service over the Merchants' Dispatch Line. It was from Chicago to New York, and there was—

Mr. THORNE (interposing). We will file a statement of 2,000 cars showing the actual days in transit; the time in transit between the various points.

Mr. MORRILL. I was interested in getting goods over those lines, and as a matter of fact it was a special Idaho potato, and we went into those trains every day with everybody else and put them through to New York with everybody else.

Mr. THORNE. We will file that statement.

Mr. MORRILL. There was no discrimination then; there may be now.

Mr. THORNE. You will agree that refrigerator cars do and should receive preferential service compared to the ordinary box car?

Mr. MORRILL. Oh, I will concede that; yes. They should, because they are made up of perishable products.

Mr. THORNE. Yes.

Mr. MORRILL. But perishable products means fresh products, you understand; it does not mean canned goods.

Mr. THORNE. And if a person, then, is permitted to put anything else in those cars he is likewise getting that same preferential service on articles that do not require refrigeration, isn't he?

Mr. GRAY. You speak of the cars—

Mr. THORNE (interposing). Pardon, me; will you please—

Mr. GRAY (interposing). No.

Mr. MORRILL. I would have to have a clearer understanding of what you are talking about.

Mr. THORNE. I want to make it as clear as possible.

Mr. MORRILL. It is hypothetical.

Mr. THORNE. If I am confusing you, I do not want to do it. I am honestly and earnestly trying to get your answer. I hope you will tell me, if I confuse you. I am asking you this question: You have stated that it is common knowledge—at least you have conceded it to be true—that refrigerator cars do and should get preferential service because they handle perishable commodities.

Mr. MORRILL. Yes; as a principle I believe it, and I suppose it is true.

Mr. THORNE. Now, I am asking you if the persons having and operating those cars are permitted to put anything else into those cars that does not need refrigeration; aren't they then getting a preferential service in the handling of those other articles that other folks do not get?

Mr. MORRILL. You are referring to private car lines, or railroads who are common carriers?

Mr. THORNE. I am referring to anybody that wants to ship those articles that do not require refrigeration.

Mr. MORRILL. There is a different law, if I understand it correctly, governing common carriers and private car lines. A private car line that undertakes a service in—

The CHAIRMAN (interposing). I believe that question, Mr. Thorne, is a hypothetical question; that it involves a question that the Interstate Commerce Commission has passed upon, and it is hardly competent to ask this witness about it.

Mr. MORRILL. I do not feel competent to answer it.

Mr. THORNE. I understand, then, the committee does not care to have the witness be made to answer that?

The CHAIRMAN. No; we do not.

Mr. STEVENS. May I suggest this, Mr. Chairman, that that is a perfectly clear and understandable question, and apparently this witness has not known anything about this part of it. That has been gone into before very fully with other witnesses. This is a very important question and one that I am sure—

Mr. MORRILL (interposing). I have not been interested in that line.

Mr. THORNE. I want to develop that very thing, Mr. Morrill. I want to ask you this question: You have given your judgment and opinion at great length. If parties interested in the distribution of your perishable commodities which you have discussed, or people interested in the sale and distribution of non-perishable commodities that do not require refrigeration, if they simply take the position that so long as equality of service, so long as freedom of competition on an equal basis is not secured between them, they, these other folks, ought not to handle these other articles until they are forced to handle them on an equality with the other parties. Is there anything unfair or unjust about such position as that, in your judgment?

The CHAIRMAN. That question is so long and involved that I do not understand it. Will you please read it [addressing the reporter]?

(Thereupon the reporter read the question as follows:)

“Mr. THORNE. I want to develop that very thing, Mr. Morrill. I want to ask you this question: You have given your judgment and opinion at great length. If parties interested in the distribution of your perishable commodities which you have discussed, or people interested in the sale and distribution of non-perishable commodities that do not require refrigeration, if they simply take the position that so long as equality of service, so long as freedom of competition on an equal basis is not secured between them, they, these other folks, ought not to handle these other articles until they are forced to handle them on an equality with the other parties. Is there anything unfair or unjust about such position as that, in your judgment?”

Mr. THORNE. May I have the opportunity of restating that question, and I will combine it all in one final question to save time.

The CHAIRMAN. Restate the question. I am frank I am not clear what it means.

Mr. THORNE. If the parties who are interested in the distribution of non-perishable commodities which do not require refrigeration take the position that so long as there is not equality in service in the transportation of their commodities with the transportation of the same commodities by the packers, that the packer ought not to handle those other commodities; in other words, he should not handle those other commodities until he is compelled to handle them upon an equality with the grocer. Do you see anything unfair or unjust in that position?

The CHAIRMAN. The wholesale grocers?

Mr. THORNE. No; because he may handle some perishable commodities there—in it would not be right to make that substitution.

The CHAIRMAN. We will have that question read.

(Thereupon the reporter read the last question, as follows:)

"Mr. THORNE. If the parties who are interested in the distribution of non-perishable commodities which do not require refrigeration take the position that so long as there is not equality in service in the transportation of their commodities with the transportation of the same commodities by the packers, that the packer ought not to handle those other commodities; in other words, he should not handle those other commodities until he is compelled to handle them upon an equality with the grocer. Do you see anything unfair or unjust in that position?"

The CHAIRMAN. Do you understand the question, Mr. Morrill?

Mr. MORRILL. I think I understand what he is getting at, but my answer would be almost as long as the question.

The CHAIRMAN. If you understand it answer it.

Mr. MORRILL. I will try. I do not know that I can answer it. But to go back to the beginning, which you did not start on, is this position: That the packers have, I understand, the right to build their own cars and put them in service, and they have made a contract for their cars to be hauled on the wheelage basis or the mileage basis. They own those cars. To say to them that they can not make a contract for such haulage would be the same as saying to me, as a farmer on an improved highway, that I should not haul to market on my own trucks my own goods when somebody else is doing a public service along that same highway. To say to them that they are compelled to handle other commodities would be—

Mr. THORNE (interposing). I have not asked you any question as to whether they should be compelled to handle other commodities.

Mr. MORRILL. I thought you worked that into the last question.

Mr. THORNE. No; I asked you whether they should be permitted—

Mr. MORRILL (interposing). When you say "they" do you mean the packers or the railroads?

Mr. THORNE. I have not asked you any question whether the packers should be compelled to handle our commodities in other cars. I simply asked you, Is there anything unfair or unjust in the position that they should not handle the commodities which do not require refrigeration unless they are compelled to handle them on an equality with the grocers as to service?

Mr. MORRILL. I see no reason, Mr. Chairman, why I, you, or anybody else, packers, if you please, should be compelled to furnish the service to anybody else through vehicles or means of transportation which I have provided at my own expense, and gives me the best and most advantageous contract that I could for the handling of my goods. I wonder if I am answering that?

The CHAIRMAN. Mr. Morrill, the question, as I see this, is: Should the packers, in view of these circumstances, be prevented from using their own cars for this purpose until the wholesale grocers have equal facilities?

Mr. MORRILL. I perhaps did not make my answer clear. I don't know of any—until the grocers have equal facilities.

The CHAIRMAN. Equal facilities; yes.

Mr. STEVENS. Everybody else, for that matter.

The CHAIRMAN. Until everybody has equal facilities.

Mr. MORRILL. How are they going to get equal facilities if they do not go out and buy them, the same as the others?

The CHAIRMAN. That is the question.

Mr. MORRILL. Now, Mr. Thorne, let me call your attention to some evidence that you may not know and I do, that there is a rapid service, organized before I ever knew anything about the Armour car lines, called the Merchants Dispatch, a rapid service for that class of goods, that took a slightly different classification, and they pay that difference for that service the same as you pay a difference for express service in order to secure something you want, and I never knew of any discrimination in that, as to who paid for it, or who furnished goods. That is a railroad proposition.

Mr. THORNE. Do you understand that refrigerator cars are required to handle these other food articles handled by the wholesale grocers?

Mr. MORRILL. I don't understand that private lines are, but railroad lines are.

Mr. THORNE. Well, refrigerator cars at all, privately owned or not privately owned?

Mr. MORRILL. Railroad refrigerator lines have some rules which they make that they do not handle goods detrimental to the class of goods they are built for, to be handled in refrigerator cars. I know all about that.

Mr. THORNE. My question is: Do you understand that refrigerator cars are necessary to handle the general line of wholesale groceries, nonperishable in character?

Mr. MORRILL. Why, I don't understand that it is necessary; with most of their goods, and canned goods, they don't handle them that way to any great extent that I see.

Mr. THORNE. It is not necessary, is it?

Mr. MORRILL. No; except in freezing weather. In freezing weather they use them.

Mr. THORNE. You would not expect them to have to buy refrigerator cars in order to distribute their commodities, would you, on an equality with the packers?

Mr. MORRILL. I should think that would be up to them. If they found it advantageous they could do it the same as anybody else.

Mr. THORNE. It would not be economical or wise, would it?

Mr. MORRILL. Well, I am not familiar with their business. I don't know whether it would be profitable or not. They would have to determine that themselves.

Mr. THORNE. Isn't it fair to state that you have not investigated and have not here testified as to the wisdom or unwisdom of the distribution of the food products generally handled by the wholesale grocer in refrigerator cars by the packers; that that is something outside of your experience in the past?

Mr. MORRILL. Well, just as you state that question, I will say I agree with you. But, understand, I am not in favor of any act by anybody, or people having authority, that will prevent a free distribution of food products and the quickest and cheapest manner of taking it from the producer to the consumer, because I consider that to be the great economic question to-day.

Mr. THORNE. And you believe with me, I hope—

Mr. MORRILL (interposing). That is a matter of analysis.

Mr. THORNE (continuing). That there should be fair, open opportunity for competition in the distribution of the commodities?

Mr. MORRILL. Yes, sir.

Mr. THORNE. On an equal basis?

Mr. MORRILL. Yes, sir.

Mr. THORNE. That is all.

The CHAIRMAN. Anything, Mr. Breed?

Mr. BREED. No.

The CHAIRMAN. Senator?

Mr. SMITH. No.

The CHAIRMAN. Mr. Dally?

Mr. DALLY. Just a question or two. Mr. Morrill, keeping in mind the definition of a broker as expounded by Doctor Duncan, and that was the definition to which I referred yesterday—a broker being one who for a small percentage compensation brings buyer and seller together—and keeping that definition in mind, can you narrate a single specific instance where a broker acted like a wolf?

Mr. MORRILL. I could only relate the statements of my friends, which I would not be authority for.

Mr. DALLY. You can speak for them, that they have that definition of a broker in their minds?

Mr. MORRILL. It has been the case for a good many years.

The CHAIRMAN. I believe, Mr. Dally, that Mr. Morrill states what his idea of a broker is, or what they have commonly understood a broker in that section of the country to be, and it does not correspond with that definition at all.

Mr. DALLY. Well, he admitted it on the stand yesterday.

The CHAIRMAN. That it did not correspond with that definition?

Mr. DALLY. I presume that that is the correct definition.

The CHAIRMAN. Yes.

Mr. MORRILL. I am satisfied with that definition, so far as I am concerned.

Mr. DALLY. Yes.

Mr. MORRILL. But, understand me, I have a different idea of the different classes of brokers. Now, you have in this city here, and these bankers here have brokers, and there are brokers to do the selling of the notes of different firms, and so on. Now, that is different. Another broker might be handling canned fruits; another broker might be handling fresh fruits. But the methods of the canned-fruit brokers have, according to the statements of my own friends, been responsible generally for breaking our canners, a lot of

them being farmers who put their money together and attempted to do something and went broke.

Mr. DAILY. You can narrate no specific instance, however?

Mr. MORRILL. Oh, as I say, I could relate specific instances of complaints that have been laid down before me, and people with tears in their eyes coming in and telling me how they were skinned and being wolfed by brokers.

Mr. GRAY. As one of the elements of trade.

Mr. DAILY. Now, Mr. Chairman, in order to get the record perfectly clear—

The CHAIRMAN. Let us wait a minute.

Mr. DAILY (continuing). May I ask Mr. Gray to enter his appearance—whom he represents now?

Mr. MORRILL. Of course, that system may all be changed.

The CHAIRMAN. I think he stated whom he represents; he said he represented the California Cooperative Canneries.

Mr. DAILY. Well, he did as a witness, but not as an attorney.

Mr. GRAY. Who ever said you were an attorney?

Mr. DAILY. I do.

Mr. GRAY. You do?

Mr. DAILY. Yes.

Mr. GRAY. You are an attorney?

Mr. DAILY. Yes; I am an attorney.

Mr. GRAY. I am glad to know it.

Mr. DAILY. I am a member of the Supreme Court of Pennsylvania.

Mr. GRAY. One added to the list.

The CHAIRMAN. He has made the statement here. Proceed, Mr. Daily.

Mr. DAILY. Mr. Morrill, please be assured that my only effort in cross-questioning you is to get from you a correct statement of your understandings; that was all. I have no antagonisms.

Mr. MORRILL. Oh, no; I didn't take it that way at all; not at all.

Mr. DAILY. I take this occasion to publicly state that I believe you are a man of the sincerest motives; and that, I am sure, speaks for the rest of the counsel in this room.

Mr. MORRILL. Well, I hope so.

Mr. DAILY. Mr. Morrill, do you know Mr. W. R. Roach?

Mr. MORRILL. Of Hart, Mich.?

Mr. DAILY. Yes.

Mr. MORRILL. A canner. Yes; I know him very well. I know Mr. Roach very well.

Mr. DAILY. He is a man of some reputation?

Mr. MORRILL. Yes.

Mr. DAILY. And of importance?

Mr. MORRILL. Yes.

Mr. DAILY. Well, just for your information, Mr. Morrill, Mr. Roach came here and testified against the modification of this decree. That is all, Mr. Chairman.

Mr. MORRILL. May I just simply make an answer to that? It is common understanding in our country that Mr. Roach, who is situated in the middle of the cherry country, and packing cherries and peas, his two principal crops, has been very much incensed because the Armour people broke in there and canned the principal amount of cherries up there for the last three or four years; and Mr. Roach is a friend of mine, and I know him very well—I know Mrs. Roach, and I know the family, and they are nice people, but Mr. Roach is a very positive sort of a fellow, maybe like I am.

Mr. DAILY. He is; yes. I think his motives are just as good, probably, as yours.

Mr. MORRILL. Yes, sir; and he will state his case with some vigor when he states it; and I think that perhaps he and the Armour agents have had some very vigorous talks, from what I can understand through our people there, in regard to the cherry situation; but our farmers—the cherry business was raised from 3½ to 4 cents a pound to 8 cents a pound to them when the Armour people went in there and bought carloads and trainloads of them, and the price to the consumer was not increased. That we know.

Mr. DAILY. Well, Mr. Morrill, do you change your earlier testimony, then, this morning, in which you stated that you did not undertake to speak from any personal knowledge of the canning trade?

Mr. MORRILL. Oh, I meant I hadn't any idea of the details of how it is being handled to-day. I have a general idea, having been interested in horticultural matters in our State and, as I said, having been at the head of organizations and committees, and all that thing; and, having investigated at one time and another, the canning business has been incidental to it, and we have used every means at our command to foster and improve the canning industry of the State of Michigan; and since the Armour people came in we have a new deal, in this way: They have called for a better grade of fruit; they have raised the grade; and it is a more wholesome product than we have ever had previous to that. Those are just things that we know, as common knowledge, in our State.

Mr. DAILY. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Stevens, do you want to ask any questions?

Mr. STEVENS. No.

Mr. GRAY. Mr. Chairman, for the benefit of the record and Mr. Daily's representation as an attorney in this case, I would understand that the committee does not set up a preferred right to attorneys asking questions over individuals?

The CHAIRMAN. Absolutely not.

Mr. GRAY. That is what I thought, and I knew that.

Mr. DAILY. Now, Mr. Chairman, my question did not indicate that. Mr. Gray was asked early in the proceeding whom he represented. You said that you didn't know whom he represented, but that he would probably appear later.

The CHAIRMAN. He has appeared.

Mr. DAILY. Yes, sir. I was sent here to represent the brokers' association, which, in a feeble way, I have tried to do. Afterwards, on account of certain developments, I asked permission to sit here and ask questions. I got that permission in a formal way from you, and I just wanted to straighten out the record, that is all, with regard to Mr. Gray.

The CHAIRMAN. That is all right, I understand.

Mr. DAILY. Everybody can ask questions, I am sure.

The CHAIRMAN. Mr. Campbell.

STATEMENT OF MR. VERNON CAMPBELL, VICE PRESIDENT AND GENERAL MANAGER, CALIFORNIA COOPERATIVE CANNERIES, SAN JOSE, CALIF.—In rebuttal.

Mr. CAMPBELL. I am afraid, Mr. Chairman, that I will not be able to finish by noon.

The CHAIRMAN. Well, that is all right.

Mr. CAMPBELL. My understanding was that the papers I filed here were to be returned.

The CHAIRMAN. Yes. I want to give you those back. I hand you back the communications which you requested to file confidentially, in accordance with the ruling which we have made that we will not receive anything in this public hearing that can not be open to the public.

Mr. STEVENS. Have those confidential communications been placed on record?

The CHAIRMAN. In what way, Mr. Stevens?

Mr. STEVENS. Did they go into the record?

The CHAIRMAN. He presented them, and we reserved a ruling until later, and decided that we would not receive them or consider them.

Mr. STEVENS. So they won't be considered at all?

The CHAIRMAN. They will not unless they are presented in a public way; that is, open to everyone.

Mr. STEVENS. Well, now, would it be asking too much to ask to have all of those communications put into the record if they have a bearing—

The CHAIRMAN (interposing). What is the purpose of having them confidential if they are put in the record?

Mr. STEVENS. No; I do not mean confidential. I just asked Mr. Campbell.

Mr. CAMPBELL. I will clear that up a little, Mr. Chairman. There are some of those communications that I would like to read into the record; as the committee does not want them to go in otherwise I will read some of them in.

Mr. Chairman, I have a communication here this morning from The Canning Trade, Mr. Arthur I. Judge, editor, and if the committee would like I would like to read a statement which he has made, for the benefit of this committee.

The CHAIRMAN. Proceed.

Mr. CAMPBELL. He has requested me to present it. I will read the letter which accompanies this statement. [Reading:]

[The Canning Trade, the journal of the canning industry.]

BALTIMORE, December 9, 1921.

Mr. VERNON CAMPBELL,
Washington, D. C.

MY DEAR Mr. CAMPBELL: Since leaving the committee yesterday I have thought that, in duty to the canners generally, I should have accepted the chairman's invitation to be heard and made a statement.

It will be impossible for me to get over before the meetings end, and therefore I have set down a brief statement of some of the things I would like to say to them, and I am handing it to you with the request that you see that it gets into their hands and upon the record in time.

If you prefer to read it, do so; and you may state to the committee that I so asked you if you wish.

I wish to take this occasion to thank you for your kindness to me yesterday and on other occasions, and I trust you will convey my regards to your splendid wife.

Sincerely yours,

ARTHUR I. JUDGE.

"DECEMBER 9, 1921.

"To the Honorable Interdepartmental Committee.

"Hearing: Packers' consent decree, Washington, D. C.

"GENTLEMEN: While sitting as an interested listener at your hearing yesterday, December 9, your chairman graciously offered to give me a hearing, but, as I had not come prepared for that nor with that intention, I declined. I have since thought, however, that I owed it to the great body of canners to speak for them, since as individuals I am convinced they are afraid to speak as they really think. And they are not so without good cause.

"Before doing so permit me to say that The Canning Trade was founded by my late father, Edward S. Judge, in 1878, with the distinct object of representing the canners of fruits, vegetables, etc., and has ever steadfastly adhered to this objective. Since my earliest days I have been associated with this business, and about 25 years ago took an active part in the publication of the paper and all things connected therewith, and have been its editor for more than 20 years."

Mr. BREED. Mr. Chairman, this is just merely in the interest of trying to work out some way of facilitating the proceeding. Can we have that copied in the record?

The CHAIRMAN. If Mr. Campbell is quite willing to submit it without reading, it may be copied in the record without reading it now.

Mr. CAMPBELL. I might say, Mr. Chairman, that there are other matters here that will come in my rebuttal that might go in the record in the same way, but my understanding was yesterday—and I was so advised—that everything must be read if it was intended to go into the record; that was my understanding of the ruling that was made.

The CHAIRMAN. No; I think you misunderstood the ruling. The ruling was that everything must be printed in the transcript which any one may have that cares to get it.

Mr. CAMPBELL. Well, I would prefer not to read this. I imagine though it is probably a very forceful argument and statement of the facts as he sees them.

The CHAIRMAN. Well, if you wish to read it you may do so. If you are willing to submit it into the record and have it copied in the record, you may have it copied without reading it.

Mr. CAMPBELL. The only point I am anxious about is this, Mr. Chairman: I am extremely anxious that the committee, including Judge Hainer, do read this record.

The CHAIRMAN. I assure you that the entire record will be read.

Mr. BREED. May we have that to glance over while you are reading something else?

Mr. CAMPBELL. No, sir. I will read it into the record or I will leave it with the reporter.

Mr. BREED. In other words, you don't wish to—

Mr. CAMPBELL (interposing). I don't wish to; no, sir.

Mr. BREED. I only ask that, Mr. Chairman, for the purpose of expediting, inasmuch as one witness had come back here this morning and practically repeated his testimony when we were all hoping to close these sessions to-day, and if Mr. Campbell does not want us to see what is in that why I think possibly he had better go ahead and read it. But I don't quite understand his position, in all fairness, I must say.

The CHAIRMAN. Go ahead and read it, Mr. Campbell, then.

Mr. BREED. But just a moment. Do you mean to say that you object to our glancing over that?

Mr. CAMPBELL. Yes; I may say, Mr. Breed, in all fairness, I do not propose to have any advantage taken of me here in this rebuttal.

Mr. BREED. Why is any advantage taken?

Mr. CAMPBELL. I will not argue with you at all. I am through talking.

Mr. HALL. He has not read the communication himself.

Mr. BREED. Well, there is no advantage going to be taken of him that I can see.

Mr. CAMPBELL. As to advantages, Mr. Breed, I'll reserve that opinion to myself.

Mr. BREED. Don't get mad, Campbell, at the beginning, because a man always loses his case who gets mad. I try not to.

Mr. CAMPBELL. I will begin with the sentence in which I was interrupted in the midst of—

"You will find that our beginning about marks the beginning of commercial canning in America, and thus the paper has grown up with this industry, working constantly with it, and it is not surprising, therefore, that it should be considered the authority on canned foods to-day. When the national food and drugs act of 1906 went into effect I was appointed and served for three years as an inspector in the Bureau of Chemistry under Dr. H. W. Wiley, in the Bureau of Chemistry, which was charged with the enforcement of this law. As an inspector, much of the canned-foods work fell to my lot, and in the pursuit of my duties I visited wholesale groceries, retailers, and others, as well as the canneries, etc., in all sections of the country. This terminated late in 1910, and I resumed my duties on the Canning Trade.

"My object in wishing to present my testimony in this case is that I may present some views as representing the rank and file of the canners, who are so vitally interested in the outcome of this consent decree. Moreover, I should like to appear on behalf of the consumers, who are the ones, after all, mostly concerned.

"All those who have appeared or are appearing have an ax to grind, and I do not attempt to hide the fact that the reentrance of the Big Five meat packers will mean the salvation of the average, medium, and small canner, whom I may be said to represent; but it has been the consumer who has suffered most from the elimination of the big meat packers as distributors.

"Permit me to refer to an editorial which appeared in the Canning Trade of February 2, 1920, entitled 'Have the Bolsheviki gotten loose?' and which appears in pages 44 and 46 of that issue, and a copy of which I beg to file with this. The circular referred to was distributed in the lobby of the Hotel Statler, Cleveland, Ohio, during the national canners convention in that city at that time, and was so radical that I could not believe it possible. Permit me to quote one paragraph from that circular:

"'Nineteen twenty—a perilous year. The jobbers are stronger than ever before. They have driven the packers out of business. They intend to buy from us at the very bottom prices. They have proved in 1919 that they can control our market by a system of hand-to-mouth buying. Let no one fool us into the belief that they will buy futures in 1920 at decent prices. They would be fools to do it, and they are not fools. Their system would have ruined us in 1919 except for an absolute failure of the tomato crop in the East. Everyone knows what they have done and are doing to us on corn prices; if not, let him buy a can in a retail store and then compare our market with the price he pays.

"'We must expect no buying of futures at a living price. We must expect to pay for our pack out of our capital and then fight for our market throughout the whole year. We must each get ready for that and help get our industry ready for it. Whoever does not is an enemy to all the rest of us.'

"As will be seen, I scored this editorially as unfair and unjust, but a year later cheerfully 'eat crow' and admitted, again editorially, that I was wrong—to have so considered the circular, for the prophet was wiser than he knew—the thing he predicted had come to pass almost to the letter; and it is in force to-day, so much so that I am convinced that if the meat packers are kept out of the distributing business, as the entire wholesale grocer force of the country is so anxious to keep them, canned foods will never again sell as futures in any appreciable amounts. And if the canners, barring the very few heavily financed concerns, can not sell futures they will be forced to heavily curtail their operations and many of them be ruined and put out of business. The circular referred to shows how badly this industry was affected in 1919 and again in 1920, and 1921 has been even worse than any of the previous years, for there were practically no futures sold in 1921. It has now become perfectly clear that with no competition to compel them, the wholesale grocers will not buy futures, nor will they ever again so long as they have this advantage.

"This would not be so bad, it might be said, if the consumers had secured the benefit of the far below cost prices which resulted from this practice, and which the canners were obliged to accept for their goods if they wished to sell at all. It is a fact that canned foods have sold during the past year and a half, at from 50 cents to as much as \$4 per case below the cost of production; and, broadly speaking, the entire industry has been facing bankruptcy, is facing it to-day. We could, but will not, mention the names of large canners who have lost from \$250,000 up to as much as \$1,000,000, representing the price they were obliged to accept below the cost of producing this staple food. But the consumer has never had the advantage of such prices; the retailers and the wholesalers have held the prices uniformly high, taking the immense profits as represented between the canners' selling price and the consumers' selling price. It has been the uniformly high prices asked by the retailers that have caused the stagnation in the consumption of canned foods, and this despite the low prices at which the canners sold the goods.

"Canned foods are absolutely essential to the well-being of the inhabitants of our country. Whether or not you may consume canned foods, you are affected by them in so far as they lighten the demand which otherwise would fall upon the foods of your choice; and the selling of futures in fair proportions is absolutely essential to the continuance of the canning industry. This is not a favor or subsidy asked by the canners. There is no line of industry in America in which so much money is put in so short a time as in canning. Take a pack of 100,000 cases of peas, and it is possible for the canner to put up that pack in 10 days to two weeks; and he is therefore called upon to invest \$250,000 in the space of two weeks. It would not be good business for any firm to keep on hand for a whole year liquid assets to such an amount as this; and, considering the importance of this product to the consumers as I have outlined above, it is not just to ask any man to provide food for us at the time when it reaches its perfection, and then hold it until we are ready to take it, unless we at least give him some idea as to the amount of our needs. The canner is therefore compelled to go to his banker for a large share of this investment, and if he can show on his books the orders of reputable buyers for a fair share of his expected pack, the bank willingly lends the money; but if he has no such orders, it can be readily understood he will receive scant attention from his banker. It is in this way the absence of future orders curtails the canners' operations; and a curtailment of the packs means but higher prices for what is put up, all of which the consumer must pay.

"What is needed to correct this condition is a competitor or competitors of the wholesale grocers; the canners want free access to every possible avenue of distribution, and the more numerous these avenues the cheaper the goods will be to the consumers. Since this agitation first began I have been out among the canners extensively, only recently mingling with them at the meeting of the Wisconsin Pea Canners' Association in Milwaukee November 7-10, and later at the meeting of the Western Canners' Association in Chicago on November 11-12, 1921, and I state positively that every canner with whom I spoke expressed himself in favor of having the big meat packers returned as distributors. This was particularly striking when I first arrived in Milwaukee on Monday noon, November 7, and that night at a banquet of the auxiliary (canners of other crops than just peas, which are mainly packed in Wisconsin), where the sentiment was pronouncedly in favor of the packers, with one single exception, who qualified his remarks to the effect that he did not want to do anything that would hurt the wholesale grocers.

I canvassed the sentiment of this assembly of canners carefully, as I did later with the Western Association, and their expressions to me were all in favor of the return of the meat packers. But the trouble is that every single one of them was afraid to put himself on record with the big buyers as opposing their wishes, for there were nasty stories of intimidation going the rounds. Nevertheless, many did openly advocate the return of the packers.

"However, when the big buyers, the committee from the Wholesale Grocers' Association, appeared in Milwaukee and had had time to work with the canners, the ardor in favor of the meat packers perceptibly cooled, and if many did not voice their sentiments directly reverse to what they had said on the first day they kept silent. But the topic of this whole Milwaukee convention was this question of the packers' consent decree, and the officers of the association invited the big buyers to explain their attitude before the meeting, and all of them expected them to do so. Instead, when they appeared, they said nothing whatever about it, speaking merely of what good friends they had always been of the canners. President Voight objected to this side-stepping of the question and called upon one after another of them, but none of them said anything on the question in all canners' minds. This meeting finally left the matter in the hands of a conference committee, which was to meet in Chicago with a like committee from the Western Association, and did so meet, and brought in the resolution favoring the wholesale grocers and opposing the reentrance of the meat packers as distributors.

"I have had many years' experience with canners' conventions and with the canners, and I believe that I can claim to 'know' them, and on that belief and wholly of my own accord, for I wish to cast reflection upon no one, I say that in my opinion the resolution so passed did not represent the true sentiments of the two associations nor of the great body of canners belonging to them. Business with the canners has been too bad for any one of them or a group of them to attempt to fly in the face of the only buyer they have, or think they have a chance to sell futures to, and I very willingly accept the version of one man on the floor, when the resolution was passed, that the whole thing was 'railroaded' through intimidation and the fear I have described. I will never believe that the resolution expressed the real feelings or desires of the canners of the associations. I have said and I believe that 95 per cent of the canners of the country really want the big meat packers back again as distributors, and would very freely say so were they not afraid to oppose the big jobbers.

"It may be objected that the wholesale grocers are not the only source of distribution the canners have; that there are the chain stores and the mail-order houses, the big department stores and the hotels; and I would answer that the chain stores are good buyers of canned foods, but only of 'spot' lots which they turn over in quick sales, and on behalf of the canned foods industry I wish to pay tribute to them as the savior of the business during the past year and more; but they do not buy futures to any great extent. The mail-order houses do buy some futures, despite the urgent protest of the canners against such sales, on the part of the wholesalers. And the same is true regarding the department stores and hotels.

"But with the big meat packers back as distributors we may again expect futures to sell as they did before. The meat packers were big buyers of canned foods, but when they went into the market the wholesalers, in order to protect themselves, had to go in also, else the meat packers would have gathered all the cream and left them the skimmed milk. And it is this competition which I believe the canners are entitled to, and which will best serve the consumers; for the meat packers always showed themselves buyers of quality, salesmen of unquestioned ability, and the widest distributors of canned foods the industry has ever had. These big meat packers did more to increase the consumption of canned foods than any other single factor in the business, and that is why the canners want them back and why, for the sake of the consumers, they should be restored.

"I have, at times, written strongly upon this subject, for I have felt strongly the injustice of placing this great food preserving industry under the control of a single distributor, through the removal of the meat packers and the splendid influence they had upon the whole canning industry, and it might be thought that I have or had more than a passing interest in the matter. Let me hasten to say, as I said in my editorial of November 7, 1921, a copy of which issue of The Canning Trade I am attaching to this as part of this brief, that I

have no interest whatsoever in any factory or operation directly or remotely connected with the canning industry; in a word, that this paper, The Canning Trade, which I own personally and entirely, and in which no member of this or kindred industry nor anyone else has one penny's interest, is my source of livelihood; and, further, that the big meat packers have never been extensive patrons, except as subscribers—and they are not even that now.

"What I have said was and is said wholly with the interest of the canners at heart, and because I believe that the return of the big meat packers as distributors will not only restore fair competition to the canners and permit the proper development of this great food preserving industry, but that the consumer will be best served.

"I pray you, therefore, to restore the big meat packers to their rightful position as distributors of canned foods and other lines, and by this action wipe out the blot that has been put upon the name of fair trading and real Americanism when the packers' consent decree was enacted.

"Sincerely and respectfully,

"ARTHUR I. JUDGE."

Mr. BREED. Our only comment on that is that we regret that the gentleman was not able to be here present, as I suppose that we could offer just as many articles by trade papers, both canning and wholesale grocers, in opposition to this view as this has presented.

The CHAIRMAN. I think, gentlemen, we will adjourn until 1 o'clock p. m.

(Thereupon, at 12 o'clock noon, a recess was taken until 1 o'clock p. m. of the same day, Saturday, December 10, 1921.)

AFTER RECESS.

The committee resumed its session at 1 o'clock p. m., pursuant to the taking of recess.

The CHAIRMAN. You may proceed, Mr. Campbell.

STATEMENT OF MR. VERNON CAMPBELL—Resumed.

Mr. CAMPBELL. Mr. Chairman, if I might request the committee to take advantage of your ruling which was made in the beginning—

Mr. BREED. Mr. Chairman, would there be any chance of your deciding how long we could have to file a little memorandum, or make an argument?

The CHAIRMAN. We are not prepared to do that to-day. Frankly, I would like very much, if I could, to speak with the Attorney General about that before I announce it, and it may not be that I will be able to do that until after the Federal Trade Commission has appeared, but I assure you, gentlemen, that if that is true, and you are not present, that you will each receive notice in ample time to enable you to meet the arrangement.

Mr. McKINNEY. Mr. Chairman, right along that line, I hope you will bear in mind the fact that we are starting back to California now, and we can not wait here to prepare our brief, as we originally planned to, and we will land in California just at the holidays, and we therefore hope that the Chairman can give us 60 days—that would just simply give us a reasonable time after the beginning of the year. At least as much time as you can give us, understanding the situation.

The CHAIRMAN. Well, we will consider that, but we are not stating as to the length of time at all. We will consider your request, Mr. McKinney, and do all we can to meet the convenience of all.

Proceed, Mr. Campbell.

Mr. CAMPBELL. I would like to request the committee to allow me to take advantage of your ruling which was made in the beginning; in presenting this rebuttal I would prefer not to be interrupted during the recital, and if there is any question, of course, in the meantime, that the committee would like to ask me, I would be perfectly willing to make reply.

The CHAIRMAN. If it is your desire you may do so.

Mr. CAMPBELL. In making my opening statement before your committee, I endeavored to outline my position in such form as would enable the wholesale grocers to bring forward in an orderly manner, such evidence as would appeal to this committee as being worthy of consideration. I have carefully gone over the transcript and have given most minute attention to the hearing, with a view to not only serving my own people and those who are interested in modification

of this decree, but, above all, with a view to lending such assistance as I could to this committee in arriving at an intelligent and just decision.

I had no exact knowledge of the strength or the weakness of my opponent, but I had hoped among the large number of wholesale grocers that appeared here there would be at least one who could bring forth some evidence really worthy of my consideration. I was sure that the learned counselors of the wholesale grocers and the several experts who have appeared here would at least produce some argument, or some evidence which would give me the opportunity to make rebuttal of some length.

I will call the attention of the committee to the fact that none of those who are in favor, so far as I know, asked for a public hearing. I know that a very large number of persons and firms have requested modification of the decree, and there have undoubtedly been very many of whom I have no knowledge. All, so far as I know, except the wholesale grocers, were content to allow this matter to be considered and decided upon by the Department of Justice without trouble and expense to the Government.

The Department of Justice undoubtedly notified all those who had asked for modification, giving them opportunity to appear here, but the department at the same time advised them that their wires, letters, and petitions would be considered with equal weight as would their public appearance before this committee.

No attorney has appeared here for the proponents of modification. We have not cross-examined the wholesale grocers' witnesses. We have not objected to the methods of the attorneys of the wholesale grocers, who under ordinary rules of evidence and court procedure would not have been allowed the liberties that this committee has been kind enough to grant them.

Personally, I am so convinced of the justice and right of our position, and that this decree is not only an economic mistake, and is not based upon law and fact, that I felt the wholesale grocers could with safety be allowed every opportunity to be heard and to present their arguments without hindrance and that they might put anything into the record they desired.

It seems to me, Mr. Chairman, that the eminent attorneys representing the grocers have acquitted themselves exceptionally well in presenting the very best side of a very poor case. I notice a favorite expression of the numerous wholesale grocers who were witnesses here is, "I am afraid." As a general proposition I seldom, if ever, use that expression, for by some mistake or other, the element of fear was left out of my nature; but I will be compelled to use the expression in connection with this hearing, for, Mr. Chairman, "I am afraid" that I have been unable to discover in the transcript in this case, facts and arguments by my opponents worthy of your consideration. At no point have they answered my opening statement. They have filled the record full of such statements as "I view with alarm" and "we fear." Throughout my opening statement I carefully avoided all personalities.

The question and the principle involved here are of too great moment to the country at large for me to stoop to mere personalities in presenting my facts to this committee. I stated that we are interested in this decree primarily because of our contract, and secondarily, because of the necessity for better distribution.

Two witnesses from California endeavored to show by intimation at least, that one of the packers was influencing me and my people. I denied this in the beginning of this hearing. I deny it again, and will here introduce a letter from the Federal Trade Commission substantiating the statement I have made before.

Would you like to have me read this into the record, or shall I file it?

The CHAIRMAN. Read it. I would like to hear it.

Mr. CAMPBELL. This is addressed to the California Cooperative Canneries, under date of August 17, 1920. [Reading:]

"APPLICATION 9-1412.

"This will bring to your mind a series of interviews had with you in October, 1919, by Attorney-Examiner Dougherty relative to the charge that the California Cooperative Canneries was engaged in certain unfair methods of competition in interstate commerce—and is written for the purpose of advising you that the application for complaint docketed as a result of this allegation was dismissed some time ago, the commission having reached the conclusion, after investiga-

tion and consideration, that a case calling for the exercise of its corrective powers had not been presented.

"Yours very truly,

"FEDERAL TRADE COMMISSION,
"By MILLARD F. HUDSON,
Chief Examiner."

It does not state the nature of the complaint, but the complaint involved our relations with Armour & Co.

In addition to that, I have here a sworn statement by Loomis, Dow & Co., Black Building, Los Angeles, Calif., under date of December 1, 1921 [reading]:

"To whom it may concern:

We have made a complete examination of the books and records of the California Cooperative Canneries (Inc.) and hereby certify that no portion of said business is owned or controlled by Armour & Co., of Chicago, but that the ownership of said California Cooperative Canneries is vested in sundry fruit growers and other parties interested in the agricultural development of Central California, none of which are, to the best of our knowledge and belief, either directly or indirectly connected with said Armour & Co.

"From our examination, the only relationship which exists between these two companies arises from the sale of canned goods to said Armour & Co., and a mortgage loan for \$250,000 given by said Armour & Co., of which loan \$50,000 has been repaid.

Respectfully submitted.

LOOMIS, DOW & CO.,
By ARTHUR M. LOOMIS,
Certified Public Accountant."

This has the notary public seal attached, etc.

My friend, Mr. McKinney, intimated that Mr. Armour's buyer always sat across the table from him when he visited our cannery at San Jose. I do not remember to have seen Mr. McKinney at our plant at any time. He possibly may have been there. Mr. Armour's buyer might have been seen at many other canneries while purchasing supplies of canned fruit, for only a portion of their supplies were secured from us. Not until this decree was issued did I begin to realize that it was a crime to speak to one of Armour's buyers.

Mr. Chase also intimated that our plant at San Jose was of little value and quoted our assessed valuation as evidence. A letter written by one Aaron Sapiro and filed here in this case states that the value of the plant was around \$500,000. It is my opinion that my friend, Mr. Chase, was not so much interested in showing the value of the plant as in advertising the low tax rate of our native city. Not to inject any local politics in this affair, I am quite sure our people would be willing to increase this assessed valuation if the city council will answer our prayer and pave Taylor Street, between Thirteenth and First, so that we can get our trucks in during muddy weather.

Mr. Chase also stated that there was but one cannery on our property. I do not know what that has to do with the packers' decree, but I would call attention of the committee to the fact that we have a vegetable cannery located on Taylor, between Eighth and Ninth, and a fruit cannery located on Taylor Street, between Ninth and Tenth Streets. We also have a little city of cottages for housing some 400 or 500 workers during the summer time. Our property consists of 15 acres.

In passing I will state to the committee that Aaron Sapiro, whose letter appears heretofore in the record, was the attorney who filed complaint against us with the Federal Trade Commission. Just whom he represented I don't know. I have my suspicions.

Mr. Chase also introduced a wire from a Mr. Mark Grimes, who at that time was very closely associated with Aaron Sapiro in the organization of a tomato growers' association, which eventually failed. I understand, however, that Mr. Sapiro collected his fees of \$16,000, while the tomato growers got very little money. The statements Mr. Grimes is reported to have made in this wire are entirely false and without foundation.

I have a copy of a letter here written by Richmond-Chase Co., which may have been read into the record heretofore. It is addressed to Mr. J. H. McLaurin, of the Southern Wholesale Grocers' Association, Jacksonville, Fla.,

and I would not refer to this letter in this connection if it had not been so widely circulated, and evidently sent to all wholesale grocers, and many others. But in this letter, which is signed by Richmond-Chase Co., per E. N. Richmond, it is stated that "In 1918 Vernon Campbell, who had been operating various cooperative growers' organizations in southern California, came into the Santa Clara Valley. His southern ventures along cooperative marketing were failures, but he, himself, is a promoter 100 per cent efficient."

They did say something good about me anyway. But at least they make the remark that the southern organizations were failures, and I think that rather than to have these matters become public property and be circulated all over the country as derogatory to the cooperative movement in California, we should put something here in the record which would correct such statements.

I have a letter here which gives some history regarding the southern organizations, the California Growers' Association, to which they refer, written by one of the growers and one of the original directors, I believe, of that association, and although it is a matter of history, I will allow it to be filed and written into the record rather than to read it, if it suits the committee.

The CHAIRMAN. That is all right with us.

Mr. CAMPBELL. It is just a statement of the facts there.

(The letter is as follows:)

"CALIFORNIA COOPERATIVE CANNERIES,
San Jose, Calif., November 25, 1921.

"Hon. H. M. DAUGHERTY,
House of Representatives, Washington, D. C.

SIR: A letter signed by the Richmond-Chase Co., per E. N. Richmond, a local cannery and dried fruit concern, addressed to Mr. J. H. McLaurin, Southern Grocers' Association, Jacksonville, Fla., under date of October 8, has been included in a circular and distributed widely throughout the country. This letter contains the following sentences:

In 1918 Vernon Campbell who had been operating various cooperative growers' associations in southern California came into the Santa Clara Valley. His southern ventures along cooperative marketing were failures, but he himself is a promoter 100 per cent efficient.

I particularly call your attention to the statement that the southern cooperative organizations were failures. I wish here to take direct exception to this as a statement of fact and present the following data regarding these southern California cooperative organizations.

The season of 1915 was particularly disastrous to growers of apricots and canning peaches in southern California. The former fruit was purchased by the canneries at from \$8 to \$15 per ton. As the ripening of the canning peaches arrived there failed to be any active demand for the crops. After the first fruit was already ripe and falling to the ground approximately 50 per cent of the crop was purchased at prices ranging from \$6 to \$12 per ton. The balance of the crops were either given away or allowed to rot.

The writer with other growers in the Ontario district began to discuss the problem of avoiding such disastrous marketing conditions, and after a number of meetings we decided that success in marketing our own crops could only be achieved by building our own cannery. About this time an article appeared in the California Cultivator quoting various figures showing the cost of manufacturing, the wide variation between the price received by the growers and the amount paid by the consumer for the canned fruit, and urging the possibility and necessity of the growers undertaking the manufacture and sale of their own canned fruits. This article was written by Mr. Vernon Campbell, a cannery man for 25 years, who had successfully built and operated several canneries in southern California and the San Joaquin Valley.

We invited Mr. Campbell to Ontario and after he had studied our problems and we had made an investigation as to his standing as a cannery man we secured his cooperation and assistance in the organization of the San Antonio Growers' Association, of which the writer was a director and in charge of the actual organization work.

At the same time the apricot, peach, and olive growers of the Hemet district of Riverside County, facing very similar problems as ourselves, had also secured Mr. Campbell's assistance.

By the opening of the following fruit season the growers of the two districts had joined in an organization, known as the California Growers' Association,

and had constructed two modern canning factories at Ontario and Hemet. These results were accomplished solely by the inspiration and assistance given us by Mr. Campbell, particularly in securing the necessary financial support from Los Angeles banking institutions with whom Mr. Campbell had had long continued relations.

Despite the manifest difficulties of a group of fruit growers and farmers entering a complicated technical manufacturing business requiring vast sums of money, the work both in Ontario and Hemet was a success from the start. Fully half of the fruit of these two districts was handled by the growers' organization. Two years later canneries were built at Fallbrook, in San Diego County, Elsinore, Riverside County, and a fifth cannery acquired at Riverside in 1919. At the present time the California Growers' Association owns these five big, modern plants, free of indebtedness, and controls a large number of the best orchards in southern California by means of, long-term cooperative contracts with the growers. Mr. Campbell was the general manager of this concern during the first three difficult years of this organization, and was succeeded by his brother, Joseph A. Campbell, after the work of the organization of the growers in Santa Clara Valley had been started by Mr. Vernon Campbell, making it necessary for him to spend all of his time in this part of the State.

The success of the California Growers' Association is best shown by the attached sheets giving statistics showing the continued growth of the organization and the returns to the growers as compared with the prices paid by the commercial canner in southern California for the same fruits.

In our opinion it requires some imagination to read the word "failure" in the history of the California Growers' Association in southern California. Before its inception the southern California fruit brought very poor prices, and the canned goods were sold at prices which went far to prevent satisfactory values in the fruits of better quality grown in the central and northern parts of the State. After the establishment of the growers' organization the southern peaches and apricots, while of admittedly inferior quality, have brought better values to the growers than the prices received in the north. The writer since leaving southern California has talked many times with various individual growers and they have invariably spoken with the highest terms of their organization and the results obtained by it.

It is true that the early years of many of the cooperative organizations of California have been years of difficulty in the establishment of markets, the obtaining of the necessary finances, and the solving of the new problems of organization which must be met and properly overcome. But when success has been obtained, due credit should be given the men who have had the courage to pioneer these new fields of business. Successful overcoming of difficulties can not be construed as failure.

To-day, under the management of Mr. Joseph A. Campbell, the so-called southern California failures are the largest and strongest organizations in southern California, packing during the past season fully half of the canned fruit produced in the southern portion of the State. The above facts can be verified by communicating with Mr. Benton Ballou, president of the California Growers' Association, Ontario, Calif., or Mr. Joseph A. Campbell, general manager of the California Growers' Association, California Building, Los Angeles, Calif.

Respectfully,

R. G. SPENCER,

Organization Manager, California Cooperative Canneries."

Mr. CAMPBELL. In addition to that, there was a wire by that association, under date of April 14, 1921, giving the results of their operations for three years. It might be interesting to copy this into the record as substantiating the facts set forth in the letter. It shows the average price paid for various fruits to the growers by that organization during the years which this report covers, and it might be written into the record. The report I refer to is on page 4.

Mr. STEVENS. What is that document?

Mr. CAMPBELL. The document, you mean?

Mr. STEVENS. Yes.

Mr. CAMPBELL. It is a bulletin put out by our organization there to the growers.

Mr. STEVENS. Page 4, do you refer to?

Mr. CAMPBELL. Yes.

(The telegram referred to by Mr. Campbell is as follows:)

"LOS ANGELES, CALIF., April 14, 1921.

"CALIFORNIA COOPERATIVE CANNERIES:

San Jose, Calif.:

Average returns ourselves, in order, 1916, 1917, 1918, 1919, follows: Cots, \$41, \$36, \$46, \$105. Frees, \$21, \$29, \$58, \$115. Clings, \$26, \$34, \$84, \$140. Our competitors paid: Cots, \$20, \$30, \$40, \$50. Frees, \$20, \$20, \$30, \$45. Clings, \$25, \$30, \$45, \$60.

CALIFORNIA GROWERS' ASSOCIATION (INC.)."

(The statement appearing in The Cooperative X Ray of April, 1921, is as follows:)

"THE RESULTS OF COOPERATIVE CANNING IN SOUTHERN CALIFORNIA.

"The following table shows the comparative returns of the California Growers' Association and the commercial canneries of southern California for the years 1916 to 1919. These figures need no comment. They prove beyond question that over a period of years the cooperative canneries will far surpass the prices paid by commercial packers.

Product and year.	California Growers' Association.	Commercial average.
Aprioots:		
1916.....	\$41.00	\$20.00
1917.....	36.00	30.00
1918.....	46.00	40.00
1919.....	105.00	50.00
Average.....	57.00	35.00
Freestone peaches:		
1916.....	21.00	20.00
1917.....	21.00	20.00
1918.....	58.00	30.00
1919.....	115.00	45.00
Average.....	55.75	28.75
_____:		
1916.....	26.00	25.00
1917.....	34.00	20.00
1918.....	84.00	45.00
1919.....	140.00	60.00
Average.....	71.00	40.00

"The actual financial results are not the sole benefits, but of greater importance in the stablization of land values, the broadening of markets, and the education of speculative factors which restrict consumption."

Mr. CAMPBELL. I have another bulletin here giving the operation of the cooperative canneries of the State during the years 1914 to 1920, inclusive, showing that in the first year there was 1 cannery packing 65,000 cases, valued at \$190,000, and in 1920 there were 10 cooperative canneries packing very close to \$6,000,000 worth of product. These have increased quite rapidly, and all of these organizations were promoted by me and managed by me.

(Following is the statement referred to, appearing on page 3 of the Cooperative X Ray of December 31, 1920:)

"DO THESE FIGURES PROVE FAILURE OF COOPEERATIVE CANNING?—CONSTANT GROWTH OF BUSINESS BEST PROOF OF GROWERS' SUCCESS.

"We frequently hear from our 'friends' that cooperative canning is a failure. In order to help along this kind of propaganda we have taken pains to tabulate

the figures of cases packed and the gross value of the goods. These figures cover the operations of the various cooperative organizations established under Mr. Campbell's management, beginning with the old Tulare County Growers' Association in 1914, followed by the California Growers' Association in 1915, and including the California Cooperative Canneries operations in 1919 and 1920.

Year.	Plants operated.	Cases packed.	Approximate value.	Year.	Plants operated.	Cases packed.	Approximate value.
1914.....	1	65,000	\$190,000	1918 ¹	5	319,000	\$1,470,000
1915.....	3	72,000	216,350	1919.....	7	673,365	3,870,426
1916.....	3	101,500	329,500	1920 (estimated)...	10	965,633	5,869,424
1917.....	3	313,929	1,569,645				

¹ 1918 peach crop in southern California extremely short.

"It would appear to us that a few years more of this kind of 'failure' would put the growers of canning fruits completely out of business. They would then have become the canners of their own fruits. This is the kind of 'failure' that increased the production of oranges from 5,000 cars to 50,000 cars that made Fresno the most prosperous town in the State, that has made Santa Clara Valley orchards worth \$2,000 per acre, and that will find new world markets to take care of the tremendous increase in our canning fruits."

There has been some statement as to the packers purchasing low quality of goods, and inasmuch as Mr. Roach and Mr. Sears were advertising the quality of their goods in this record, I think I would like to have copied into the record a letter here from Lewis De Groff & Son, of New York City, under date of September 29.

Mr. STEVENS. How do you spell that?

Mr. CAMPBELL. De G-r-o-f-f, a buyer to whom we sell our goods.

Judge HAINER. What year is that?

Mr. CAMPBELL. September 29, 1921. This is written to our brokers, Hogan, Levine Co., 100 Hudson Street, New York City, attention Mr. H. H. Powers—who is one of the salesmen of that brokerage firm:

"DEAR SIR: We are in receipt of the first car of assorted California fruits which we bought of you May last from the California Cooperative Canneries of 1921 fruit.

"We wish to compliment both you and the canner on the delivery, as you stated when we gave you our order that we would receive quality, as well as a full delivery. While our purchase was for extras, extra standard, and standard grades, the extras we can not talk too highly of, as well as all other grades.

"The extra standards are fully equal to some packers are turning out for extras, and the standard Royal Anne cherries we consider equal to any extra standard royal Anne we have seen this season, and we think it is in order to remember these packers when in the market for canned fruits.

"Respectfully,

"LEWIS DE GROFF & SON."

Mr. McKinney has told the committee whom he represents. Our organization is a member of the canners' league, but he did not say that he represented us. I am sorry that he failed to mention that. He also failed to mention those that he does not represent. He rather left the impression that he represented practically all of the canners in California, or rather, something over 80 per cent of them.

To clear up the minds of the committee as to whom my friend Mr. McKinney does represent, I am going to introduce into the record a schedule made up on December 4, by my office, from the data which they had and which they were able to obtain from the records in California:

The total number of canneries shown in the 1921 edition of Thomas' Register for State of California, is as follows:

Fruit canneries -----	118
Vegetable canneries -----	28
Fish canneries -----	35
Total -----	181

Mr. MCKINNEY. What is that vegetable canneries, please?

Mr. CAMPBELL. Twenty-eight.

"The total value of canned products for years 1919 and 1920 follow."

Now it will not be necessary for me, Mr. Chairman, to read this schedule, however?

The CHAIRMAN. You will put it into the record?

Mr. CAMPBELL. I will put it in the record; and this letter will be handed to the reporter and he can copy it in. It is sufficient for me to mention the totals for the purpose of argument.

The total value of canned fruit in 1920 was \$75,364,896.30.

The total value of vegetables the same year was \$19,881,490.30.

The total value of fish, canned—and there are some dried included in that report, as it is separated in the official report, but it is largely canned—\$19,202,318.

A total value of canned fruit, vegetables, and fish of \$114,448,704.60.

We figured the following canneries were represented in canners' league telegram:

California Packing Corporation (that is north of the Tehachapi), 20; other signers, 40; total, 60.

In passing it may be well to note that seven of the other signers are canneries owned by the California Packing Corporation, making a total of 27 canneries owned by the California Packing Corporation, for the Golden State Canneries, with headquarters in Los Angeles, are owned and controlled by the California Packing Corporation.

Of the nonsigners we have Libby, McNeill & Libby, with 7 plants; other nonsigners, 41 plants; a total of 48 plants of fruit and vegetables; and in southern California, nonsigners, 40.

A total of 88 plants, nonsigners, plus the 35 fish canneries, or 123 canneries, nonsigners, as against 60 canneries, signers.

It will be noted that almost half of these canneries who were signers, canneries which have signed, belong to or are controlled by the California Packing Corporation.

I want now to give the estimated pack of the California Packing Corporation, Libby, McNeill & Libby, and other members signing canners' league telegram and nonsigners. They are as follows: In 1920 the California Packing Corporation's output was 3,783,000 cases; other signers, 4,920,000 cases.

Now I am speaking, of course, about the California pack of the California Packing Corporation. You understand that the California Packing Corporation operated in Hawaii and Oregon and Washington and Utah and Idaho—I believe in both those States. They also control the Alaska packers' association of fish packers. They are on the coast what we call a trust. And, of course, we have not considered in this estimate here the packing outside of California. The total value of their pack was \$22,794,000; of the other signers, \$29,708,000; or a total of signers of \$52,497,000 worth of canned products. We have a total in California of \$14,839,000 worth of products.

(The statement presented by Mr. Campbell for the record is as follows:)

"CALIFORNIA COOPERATIVE CANNERIES,

"San Jose, Calif., December 4, 1921.

"DEAR V. C.: This letter is to explain how we arrived at the figures given you in telegram sent last night, and before I begin I want to say that Mr. Pressler did most of the work.

"The total number of canneries shown in the 1921 edition of Thomas's Register for State of California is as follows: Fruit canneries, 118; vegetable canneries, 28; fish canneries, 35; total, 181.

Value of canned products for years 1919 and 1920.

Varieties.	1919			1920		
	Cases.	Price.	Amount.	Cases.	Price.	Amount.
Apples.....	134,245	\$5.50	\$738,347.50	9,041	\$5.50	\$49,725.50
Apricots.....	4,395,204	6.50	28,568,826.00	2,312,020	6.00	13,872,120.00
Blackberries.....	114,349	6.50	743,268.50	161,359	7.00	1,129,443.00
Cherries.....	400,614	7.50	3,002,482.20	647,977	7.80	5,054,220.60
Grapes.....	104,446	4.50	470,007.00	114,886	5.50	631,473.00
Loganberries.....	11,708	7.00	81,956.00	14,267	8.30	118,416.10
Pears.....	1,071,687	7.50	8,037,652.50	1,184,288	8.30	9,229,590.40
YF peaches.....	1,962,700	6.00	11,776,200.00	1,647,687	5.70	9,321,815.90
YC peaches.....	5,096,249	6.50	33,125,618.50	5,205,511	6.80	35,397,474.80
Plums.....	280,261	5.50	1,541,435.50	164,740	5.50	906,070.00
Raspberries.....	283	7.50	1,747.50			
Strawberries.....	22,123	10.00	221,230.00	5,525	11.00	60,775.00
Other fruits.....	42,584	6.00	255,516.00	15,562	6.00	93,372.00
Total fruit.....	13,696,408		88,924,287.20	11,382,863		75,864,896.30
Asparagus.....	1,031,269	6.20	6,393,867.80	1,024,813	8.00	8,198,504.00
Beans.....	154,278	2.40	370,267.20	99,269	2.50	248,172.50
Peas.....	191,564	2.80	536,379.20	366,679	3.20	1,173,372.80
Tomatoes.....	3,809,979	2.20	8,381,953.80	1,858,822	2.60	4,832,337.20
Tomato products.....	886,906	2.60	2,303,555.60	833,019	2.60	2,165,549.40
Spinach.....	476,866	3.20	1,525,971.20	685,228	3.20	2,192,729.60
Other vegetables.....	501,657	2.80	1,404,639.60	392,116	2.80	1,098,924.80
Total.....	7,051,519		20,916,634.40	5,249,946		19,881,490.30
Fish, all species, including dried.....	2,071,641		21,417,743.00	1,942,322		19,202,318.00
Grand total.....						114,448,704.60

"Estimated pack of California Packing Corporation, Libby, McNeill & Libby, other members signing canners' league telegram, and nonsigners are as follows:

	1919		1920	
	Cases.	Amount.	Cases.	Amount.
California Packing Corporation.....	4,795,000	\$26,045,000	3,783,000	\$22,794,000
Other signers.....	6,150,000	33,481,500	4,920,000	29,703,000
Total.....	10,945,000	59,526,500	8,703,000	52,497,000
Libby, McNeill & Libby.....	1,550,000	7,569,000	1,790,000	9,922,000
Other nonsigners.....	4,115,000	21,142,000	3,292,000	19,044,000
Total.....	5,665,000	28,711,000	5,082,000	28,966,000
Southern California.....	3,020,000	17,410,000	2,378,000	14,839,000
Total nonsigners.....	8,685,000	46,121,000	7,460,000	43,805,000
Grand total.....	19,730,000	105,647,500	16,163,000	96,302,000

"Libby, McNeill & Libby, and California Packing Corporation figures are exclusive of these companies' pineapple packs, which will run between a million and a million and a half cases each year.

"It will be noted the above grand total will not check very closely with the totals given in the first part of this letter as the totals for the State. This may be due in a measure to the method of figuring the values of the pack of the 'Other Signers, the Non-Signers, and Southern California' packs; we used an arbitrary price of \$6.50 a case for fruits and \$2.80 for vegetables for the year of 1919. In 1920 we used \$6.60 for fruits and \$2.80 for vegetables. We arrived at these prices by taking the total number of cases packed during the respective years and dividing them into the total value of pack as figured in the statement shown in the first part of this letter. In that statement (total pack of State)

we figured the prices on the basis of opening price of standard grade in each variety of fruits and vegetables using staple sizes.

"We figured the following canneries were represented in Canners' League telegram:

California Packing Corporation (North Tehachapi)-----	20
Other signers (North Tehachapi)-----	40

60

Nonsigners:

Libby, McNeill & Libby (North Tehachapi)-----	7
Other nonsigners-----	41

48

Southern California nonsigners-----	40
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88

"Your attention is called to fact that Canners' League telegram carries signature of two canned-foods brokers (Griffith-Durney and Walter M. Field), also the Workman Packing Co., who advise us they do not pack vegetables nor fruits. The Pacific Coast Syrup Co. packs sirup and a small quantity of preserves.

"Following is an estimate of the dues paid to the Canners' League, based on estimated packs, and the last schedule of dues as provided for by the league:

"This schedule provides minimum dues of \$100 for packs of less than 25,000 cases and maximum of \$4,000 for packs exceeding 5,000,000 cases:

	1919	1920
California Packing Corporation (on pack shown above, plus pineapples).....	\$3, 200	\$4, 000
Libby, McNeill & Libby.....	2, 000	3, 000
Total.....	5, 200	7, 000
Other signers (telegram).....	8, 550	7, 725
Nonsigners (telegram).....	6, 600	6, 125
Estimated total contributions to expenses.....	20, 350	20, 850
Estimated proportion contributed by California Packing Corporation and Libby (per cent).....	25. 6	33. 6

"The above figures are all carefully estimated where no information considered more reliable was obtainable. Of course, there is but one bureau that would have figures which could be a check against the general statistics, and they (Canners' League) could only prove that their figures represent reports made to them by individual members and could not prove their accuracy. Of course, in the case of the figures of individual corporations, where they are in error this could be easily proven by them.

"We hope this information was of value to you and that the estimates were sufficiently close to make the figures available for use.

"Sincerely,

"Rob."

Mr. CAMPBELL. Now, the peculiar situation about this thing is that Mr. Chase is president of the Canners' League of California, and Mr. McKinney is vice president and secretary.

I want to introduce here a schedule of dues, and how these dues are made up, and who pays these dues. This is Bulletin No. 97-A Special, from the Canners' League of California, signed by Preston McKinney, and I will read it into the record. [Reading:]

"SAN FRANCISCO, CALIF., December 13, 1919.

"To members:

"New schedule of dues: We are attaching hereto new schedule of Canners' League dues, which was approved Wednesday, December 3, by the executive committee. Attached for comparison is the old schedule of dues marked 'canceled.'

"It will be noted that no change is made in the first 11 classes, while some increases occur in the larger classes.

"In 1919 our disbursements practically equaled our receipts and our expenses were held to this point only by rather close figuring. The reclassification of our members, based on their actual rather than their estimated 1919 pack will, we believe, give us a little working fund to be used in 1920. There is every reason to believe that our activities can be expanded in the new year and the league made more useful to its members.

"Thus, if under the old schedule you are in class 4, for example, and paying \$200 per year, and your 1919 pack places you in class 6, which calls for \$300 a year, you should remit the difference.

"The annual meeting and election of directors will be held January 8, and we are particularly desirous of getting our new financing completed before the close of the year. We trust, therefore, that you will remit before January 1.

"Yours very truly,

"(Signed)

"CANNERS' LEAGUE OF CALIFORNIA."
PRESTON MCKINNEY, *Secretary.*"

I have here the old schedule of dues, canceled December 12, 1919. There are 21 items in this schedule.

Those below 25,000 cases pay \$100 a year.

Those of 4,000,000 to 5,000,000 cases pay \$2,800 a year.

Those of 5,000,000 cases a year and over, \$3,250.

Now, the new schedule, effective December 12, 1919, made little or no change in the smaller packs, but increased the amounts paid in by those of 4,000,000 to 5,000,000, from \$2,800 to \$3,500, and 5,000,000 and over, from \$3,250 to \$4,000.

I will hand these schedules to the reporter for the record.

(The schedules are as follows:)

Schedule of dues canceled December 12, 1919.

Cases.	Per year.	Cases.	Per year.
1. Below 25,000.....	\$100	12. 600,000 to 700,000.....	\$725
2. 25,000 to 50,000.....	125	13. 700,000 to 800,000.....	800
3. 50,000 to 75,000.....	150	14. 800,000 to 1,000,000.....	900
4. 75,000 to 100,000.....	200	15. 1,000,000 to 1,500,000.....	1,000
5. 100,000 to 150,000.....	250	16. 1,500,000 to 2,000,000.....	1,350
6. 150,000 to 200,000.....	300	17. 2,000,000 to 2,500,000.....	1,700
7. 200,000 to 250,000.....	350	18. 2,500,000 to 3,000,000.....	2,000
8. 250,000 to 300,000.....	400	19. 3,000,000 to 4,000,000.....	2,250
9. 300,000 to 400,000.....	450	20. 4,000,000 to 5,000,000.....	2,800
10. 400,000 to 500,000.....	550	21. 5,000,000 and over.....	3,250
11. 500,000 to 600,000.....	650		

New rate of dues effective December 12, 1919.

Cases.	Per year.	Cases.	Per year.
1. Below 25,000.....	\$100	11. 500,000 to 600,000.....	\$650
2. 25,000 to 50,000.....	125	12. 600,000 to 800,000.....	800
3. 50,000 to 75,000.....	150	13. 800,000 to 1,000,000.....	1,000
4. 75,000 to 100,000.....	200	14. 1,000,000 to 1,500,000.....	1,300
5. 100,000 to 150,000.....	250	15. 1,500,000 to 2,000,000.....	1,700
6. 150,000 to 200,000.....	300	16. 2,000,000 to 2,500,000.....	2,100
7. 200,000 to 250,000.....	350	17. 2,500,000 to 3,000,000.....	2,500
8. 250,000 to 300,000.....	400	18. 3,000,000 to 4,000,000.....	3,000
9. 300,000 to 400,000.....	450	19. 4,000,000 to 5,000,000.....	3,500
10. 400,000 to 500,000.....	550	20. 5,000,000 and over.....	4,000

Now, the reason that this is significant, though probably just, is the fact that the California Packing Corporation and Libby, McNeill & Libby are the two largest packers in California.

Mr. STEVENS. Fruit packers?

Mr. CAMPBELL. The two largest fruit and vegetable packers in California, and therefore must bear a relatively larger portion of the expense in the conduct of this organization.

The California Packing Corporation, on the pack shown above, would, in 1919, pay \$3,200. In 1920, \$4,000.

Libby, McNeill & Libby would pay, in 1919, \$2,000; and in 1920, \$3,000.

Making a total of \$7,000.

Other signers to this telegram would pay \$7,725.

Nonsigners would pay \$6,125.

Estimated total, \$20,850.

"The above figures are all carefully estimated where no information considered more reliable was obtainable. Of course, there is but one bureau that would have figures which could be checked against the general statistics, and they (the Canners' League) could only prove that their figures represent reports made to them by individual members and could not prove their accuracy. Of course, on the case of the figures of individual corporations, where they are in error this could be easily proven by them."

The point I wish to make is this, that we have, of course, no means of getting accurate information from the Canners' League as to these, but generally our conclusions will be found fairly correct, at least.

I want to make this point right here, that Mr. McKinney and Mr. Chase, the president and secretary of the Canners' League, if their expenses are being paid by the organization they represent, it is shown that at least half of this money, or a third of this money, if all of these are to pay a part of these expenses, will be paid by the California Packing Corporation, and Libby, McNeill & Libby, which is Swift, in other words, although Mr. McKinney has endeavored to show that I was in some way connected with Armour, I think that I can show here that at least a part of his expenses are being paid by Mr. Louis Swift.

I think Mr. McKinney likes that. I will give him some more.

I am going to try to place before this committee the situation as it actually exists in the canning trade on the coast. The California Packing Corporation and Libby, McNeill & Libby absolutely dominate the whole Pacific coast, in so far as the canned goods business is concerned. As was testified to here by Witnesses Roach and Sears, the larger canneries often handle their business by direct sales in connection with the jobbers. They furnish specialty men who call on the trade, and orders are placed which are turned in to the jobbers for filling and distribution. Libby, McNeill & Libby, which is a Swift concern, works in close harmony with the jobbing trade; 80 per cent, as has been testified here before. And their goods are delivered and distributed by the jobber.

Louis Swift himself personally is entirely in sympathy with the jobbers in this consent decree, to my way of thinking—in fact, I have felt his opposition very keenly. In other words, Swift follows the same method of distribution as does Mr. Roach and Mr. Sears, and as does the California Packing Corporation, so the interests of these men who have witnessed here for the canners is identical with that of the wholesale grocery jobber.

On the other hand, the smaller canneries who do not have the facilities for distribution in the same manner are dependent upon selling the wholesale grocers through brokers, and largely in supplying the wholesale grocers with their private brands, who are not in the same position to meet in competition the larger packers, such as the California Packing Corporation and Libby, McNeill & Libby, through the channel of the wholesale grocer.

It is of course very plain to me to understand the attitude of a few members of the Canners' League, especially the California Packing Corporation and Libby, McNeill & Libby, for their interests are identical with those of the wholesale grocers in trying to restrain Armour & Co. or Wilson in the distribution of canned goods of the smaller packers.

I make no charges against my California friends. I will allow the committee to draw their own conclusions as to who they represent and why they are here.

Mr. BREED. Will you ask him if Swift & Co. are opposed to this modification?

Mr. CAMPBELL. One more statement made by Mr. McKinney, which I wish to correct. Mr. McKinney said he was first notified of this action here, contemplated action by the Attorney General, through one of his members. At the same time he puts out bulletin No. 274-A, marked "Important" and "Rush." The bulletin reads as follows:

[Bulletin No. 274-A.]

CANNERS' LEAGUE OF CALIFORNIA,
San Francisco, Calif., September 14, 1921.

To members:

We are advised by the National Wholesale Grocers' Association that the Attorney General of the United States contemplates applying to the courts for the reopening of the consent decree against the meat packers, which decree prohibits them from engaging in the canned-fruit business and other businesses not directly allied with meat packing.

It is the opinion of the majority of the members of your executive committee that the removal of restrictions on the meat packers would be against the best interests of the California canning industry, and that as individual canners we should register our protest by wire. Therefore the writer has drawn the following telegram:

"H. M. DAUGHERTY,

Attorney General of the United States, Washington, D. C.:

"Representing (x) per cent of the commercial pack of California fruits and vegetables, we respectfully urge that no action be taken toward removing present restrictions on meat packers, at least until you shall have held a formal hearing and enabled us to present our position. If Vernon Campbell has made the statement that he reflects opinion of industry here he is in error. Alleged statement that canners here unable purchase and distribute fresh fruit crop this season should not be credited as witnessed by the fact that all available crop was bought from growers at steadily increasing prices. Request reply to Preston McKinney, 112 Market Street, San Francisco.

"(Signed) ————."

If you favor the above telegram and desire that your name be attached thereto as a joint sender of same, request that you immediately telephone or telegraph the undersigned to reach him by noon to-morrow, September 15.

Prompt action is essential in this matter, for I am definitely informed that the Attorney General plans to act immediately.

Yours very truly,

PRESTON MCKINNEY.

I will fill in the percentage to-morrow morning as soon as authorities to sign are all in.

Mr. CHASE. Please give the date of that, Mr. Campbell.

Mr. CAMPBELL. September 14, 1921.

The matter of coercion by wholesale grocers, which I charged in my opening statement, I am compelled to go into further for the reason that a few of the wholesale grocers have endeavored to deny my statement of coercion by grocers. I regret they did this, as it necessitates my introducing some additional evidence, and I dislike in any way to hurt my grocery friends.

The first letter I have here is from the Logan Grocery Co., wholesale grocers, Logan, W. Va., under date of November 9, 1921. I will allow this to be written into the record. I do not think it will be necessary to read it. It hasn't enough kick in it to interest me.

(The letter is as follows:)

LOGAN GROCERY CO., WHOLESALE GROCERS,
Logan, W. Va., November 9, 1921.

CALIFORNIA COOPERATIVE CANNERIES,
San Jose, Calif.

GENTLEMEN: You are, no doubt, familiar with the efforts of the meat packers, commonly known as the Big Five, to secure modification of the consent decree, which was rendered by the Supreme Court of the District of Columbia on February 27, 1920.

Hearings on this case begin November 28, and a decision favorable to the Big Five would restore them to the position they occupied prior to the decree, when by extraordinary transportation service and privileges they were enabled to limit distribution by the jobbers of various foods, including your products.

Unrestricted distribution by the jobber means a wider and better market for your products and obviates the possibility of monopoly, which would be as detrimental to you as to ourselves.

Our mutual interests are now seriously threatened and immediate action by you is necessary if the ruinous purpose of the Big Five is to be circumvented.

Kindly write immediately to your Congressman and the Senators from your State and vigorously protest against any modification of the consent decree. Please do not delay. If you will send us copies of these letters, it will be convincing proof of your alertness, and it will also afford us great pleasure to read them.

Yours very truly,

LOGAN GROCERY Co.

Mr. CAMPBELL. The next one, though, I think I will read. Under date of October 31, 1921, the Goddard Grocer Co., of St. Louis, Mo., puts out what I suppose is a circular letter; it is written in circular form.

The CHAIRMAN. Pardon me, Mr. Breed wants to see that last letter. It has gone into the record and he may do so.

(The letter of Logan Grocery Co. was handed to Mr. Breed.)

The CHAIRMAN. Go ahead, Mr. Campbell.

Mr. CAMPBELL. The letter is as follows:

THE GODDARD GROCER Co.,
WHOLESALE GROCERS AND IMPORTERS,
St. Louis, Mo., October 31, 1921.

Subject: Packers' decree should stand.

EMPIRE STATE CANNING Co.,
Phelps, N. Y.

DEAR SIRs: It is unbelievable that any canner can be so shortsighted that he can blame the recent depression in trade to the fact that the packers were out of the market as canned-goods buyers. During the depression the packers were out of the market as live-stock buyers until they squeezed the growers of cattle to such a place that many of them are bankrupt. This would be exactly their game in the canning industry and they would repeat just what they have done with Vernon Campbell and his California growers; with the cheese industry; with the salmon industry; with the asparagus industry; and it seems to us that every independent canner would be in a fair way to losing his business should the Big Five, with their enormous financial backing, go into competition with them as cannerymen.

As consumers, we feel that the United States Government would be sold to the packers if this decree is modified. We also believe that there is no food producing, growing, or food manufacturing business in the United States that would not be in danger of elimination should this decree be modified.

We feel that the resolution passed by the Western Cannerymen's Association did not represent the majority of the cannerymen in that association. We also feel that it is a time when business makes for cooperation all down the line of distribution. We are willing to do our part as a necessary distributor at the very lowest margin. In fact, we will have to do that when in competition with 4,000 other wholesalers in the same line.

We know perfectly well the unfair advantage which the railroads offered the packer as opposed to all other food industries. We also know that it would be impossible for us to compete with the packers if they have that exceptional privilege. Therefore, we believe it is time for us to choose the men with whom we do business, and it will be only common sense for us to choose the people who operate with us and do not cooperate by resolution or in any other way with forces that are trying to create a monopoly in food.

Yours truly,

THE GODDARD GROCER Co.,
Per SAMUEL P. GODDARD.

Mr. CAMPBELL. Here is one that is more personal and strikes us directly. This is written by Charles Ilfeld Co., wholesalers of everything, Las Vegas, N. Mex., dated November 15, 1921. They have offices in New York, as also in Las Vegas, Albuquerque, Santa Rosa, Magdalena, Gallup, and Santa Fe. It is a very old concern, established in 1865. The letter is as follows:

CALIFORNIA COOPERATIVE CANNERIES,
San Jose, Calif.

GENTLEMEN: Due to the stand you have taken in connection with the consent-decree case, opened up by the packers, we respectfully request that you refrain

from mailing us any further quotations or addressing us in any way pertaining to the distribution of your products.

We feel that you are an enemy of the wholesaler, and in justice to ourselves, as well as those associated with us in the wholesale grocery business, we do not desire to have any connection whatsoever with the California Cooperative Canneries.

Yours truly,

CHARLES ILFIELD Co.,
Per A. C. I.

Mr. CAMPBELL. Here is another one that makes me feel very sad. Written by Mr. Lockett Co. of Chicago, Ill., under date of November 14, 1921.

The CHAIRMAN. What are they? What is their business?

Mr. CAMPBELL. Mr. Lockett has in the past been our broker. And a very good personal friend of mine. I might explain before reading this letter that when I attended the convention of the Western Cannery Association I met Mr. Lockett in Mr. Davison's office, of Armour & Co. I was there closing up some old accounts, and I found this man there when I arrived at Mr. Davison's office. He was trying to sell Mr. Davison something—I don't know what. But at any rate, I think the jobbers here ought to know the fact, that Mr. Lockett was seen in company with Mr. Davison.

Judge HAINER. Who is Davidson?

The CHAIRMAN. The vice president of Armour & Co.

Mr. CAMPBELL. He is the buyer for Armour & Co. The letter is as follows:

CALIFORNIA COOPERATIVE CANNERIES,
San Francisco, Calif.

GENTLEMEN: We do not know whether Mr. Campbell returned to California from here, or whether he bothered to go into detail with Mr. Williams as to the conversation that he had with the writer. At any rate, in the course of that conversation the writer made the statement to Mr. Campbell that we were very much afraid that the feeling on the part of the jobbers would run so high that it would be impossible to do any business to amount to anything for you here.

We are very sorry to say that condititon is very rapidly approaching. The jobbers feel very strongly about this, and some of them have gone so far as to say that they did not care to buy goods from your concern.

Under the circumstances we think it would be better for all concerned if we resigned our connection with you here simply because there is no hope for us to get business in any volume as against concerns who have come out openly and positively on the side opposite to the one which you have taken.

Furthermore, Mr. Campbell intimated in pretty plain language that in case the stockyards went back into the business, your sales would be made to the stockyards without any regard to us, and that we would get nothing on it, which puts us in the very peculiar position of having an account which the jobbers won't buy and on which we make nothing on sales to the buyers who will buy.

When the writer saw Mr. Campbell in Mr. Davidson's office at the stockyards, the question was raised (by Mr. Davidson, as we recall it) about the sides which the broker should take, and after a good deal of joshing back and forth Mr. Campbell made the statement that our idea was correct, and our idea was that we would be extremely silly to cut our own throats by coming out for the yards, showing that he had a very clear grasp of the situation as it exists, from the broker's standpoint.

This is very unfortunate, because we were going along pretty nicely, and it looked as though there was some future to it. We have felt, from Mr. Williams's letters, that he was the kind of man with whom we could do business indefinitely in a very pleasant sort of way. The writer also felt just that way about Mr. Campbell, personally, and it is with very deep and genuine regret that we write you in this way.

We will, of course, handle all consigned stock as long as you want us to, or until it is cleaned up, and will go through with any deals that we have started until they are completed or killed in some way. We do not want to leave you with any ragged ends hanging loose.

The writer sincerely hopes that he will have the pleasure of meeting Mr. Williams either in Chicago or on the coast, and is in hopes that our personal

relations may continue pleasant even though it may be impossible for us to do business together.

Yours very truly,

(Signed) THE LOCKETT Co.,
LOCKETT.

Mr. BREED. May I ask who Mr. Williams is?

The CHAIRMAN. Yes; who is Mr. Williams?

Mr. CAMPBELL. My sales manager.

Judge HAINER. The sales manager of the California Cooperative Canneries?

Mr. CAMPBELL. Yes; he is the sales manager of the California Cooperative Canneries.

Here is a letter written from the offices of the Oregon Wholesale Grocers' Association. Portland, Oreg., October 22, 1921. I have been unfortunate enough to receive two of these. This one came in an envelope directed to the California Cooperative Canneries, San Jose, Calif., and reads as follows:

OCTOBER 22, 1921.

GENTLEMEN: When we had, a couple of months ago, our first intimation that the packers—the Big Five—had plans not only under way but fully matured, whereby the bonds which restrain them from crushing within their gradually extended tentacles the independent food interests of the country, were to be relaxed, we confess we were disposed to regard the situation with equanimity.

The victory had been won after so important and prolonged a battle and the terms of the decree were so critical in their significance that we felt that the packers would run against a stone wall in the shape of the united opposition of every handler of unrelated food products and an adamant attitude on the part of the Department of Justice representing the country at large. It gradually developed that the move had been shrewdly planned and was more dangerous than seemed possible at first. It transpired that for some inexplicable reason the Attorney General of the United States, on whose office the independent interests have had reason in the past to rely for an uncompromising enforcement of the principle at stake, was not only complacent with reference to the proposed relaxation of the decree but apparently actually active in support of the move. Our confidence in the Department of Justice was such that we felt convinced that some serious basic misunderstanding was responsible for this curious change of front.

It now transpires, to the profound amazement of every distributor with whom we have talked, that the Attorney General's office has been led to believe that it is the desire of the great independent food interests represented by the canners to have the bonds relaxed. Naturally you will conduct your business as you may decide is best for your own interests, and you probably do not even welcome a suggestion from us on the subject, but such an alliance as this supposed fact betokens is all but unthinkable. We can understand the temporary advantage which might be involved because of the abnormal conditions obtaining, but that in order to obviate these ephemeral considerations a permanent principle should be deliberately sacrificed is, we repeat, unthinkable to us. Yet the fact is confirmed from the office of the Attorney General, and constitutes apparently the Attorney General's only justification for his anomalous position.

Surely it must be apparent to you upon a moment's reflection that you are losing a whirlwind. Courts are not enamored of a fast and loose policy. A stern decree is written. The independents, whom it protects, come into court and back the plea that it be modified to a milk-and-water consistency. Now, then, if in the future it be found that these concessions to the packers, animated by selfish considerations, result in rendering it possible for the operations of the packers to reach such an extent that you, as well as others, find your existence threatened by an octopus of monstrous proportions, you will, we predict, ascertain that the courts are extremely reluctant to entertain a plea for retightening of the decree. Litigants, we are advised, are required under sound public policy to select their position in court and to maintain it consistently. You will have to be on one side or the other of the fence and "stay put." It is for you to choose now as to whether you are with us or against us. You can not be both.

All of us make mistakes. It is our belief that you will be big enough to realize that you have made one if you have permitted your name and influence to be either actively or passively used in this connection. We call upon you, if you have without mature consideration permitted yourself to be thus aligned.

to take prompt steps to let the Department of Justice know that you can not sanction the deliberate sacrifice involved in the contemplated surrender. We await with interest—even anxiety—information as to what conclusion you have reached with regard to the subject matter of this letter.

Respectfully submitted.

MASON, EHRMAN & Co. (INC.).
WADHAMS & Co. (INC.)
ALLEN & LEWIS.
LANG & Co.
T. W. JENKINS & Co.
WADHAMS & KERR BROS.
HUDSON & GRAM Co.

And countersigned by their secretaries or other officials.

Now, in connection with those Northwest jobbers, I want to place before the committee some evidence as to what class of men those jobbers are. There is a trade magazine published in that district called Duncan's Trade Register, and this register is supported largely by the jobbers of that district. It is published in Portland, Oreg.; and I find in this register the advertisements of these very jobbers who signed this letter. Here is Hudson & Gram Co. Here is Matchett-Macklem Co., of Seattle, jobbers. Here is Lang & Co., Portland, Oreg., wholesalers. And here is the West Coast Grocery Co., of Tacoma, Wash. And here is the National Grocery Co., blenders, roasters, and packers, Seattle, Wash. And I might go through here and pick out a lot more. They are supported by the wholesale grocers, evidently.

The CHAIRMAN. What issue is that?

Mr. CAMPBELL. That issue is of June, 1921.

The CHAIRMAN. Well, I have a later one here, I guess.

Mr. CAMPBELL. Now, in that issue I find a vitriolic article, an editorial called "The Big Five Packer Hogs." And what interested me most, about half-way down this article I find the following sentiments expressed. The editor goes on to say:

"I find Louis Swift's son-in-law in the Senate, Armour's lobbyist keeping the records of the American house of lords, a telephone attorney and a partner of Louis Swift wearing Oregon's senatorial togas, a wretched trust shyster Attorney General of the United States."

Now, that is the kind of trade magazine some of these wholesale grocers support.

Mr. BREED. Doctor Duncan wants it noted on the record that he does not publish the trade paper.

The CHAIRMAN. I think that correction may go in. You are not connected in any way with it, are you, Doctor?

Doctor DUNCAN. No, sir.

Judge HAINER. Well, this November issue here is the same magazine, is it?

The CHAIRMAN. Yes.

Judge HAINER. On page 7, Mr. Campbell, it contains this statement:

"Do you know the wholesale grocers are at this present moment fighting modification of the consent decree, whereby canners and producers may ship their goods in packers' refrigerator cars at lower rates?"

Then follows this statement:

"Later on in the evening Mr. Connolly discovered that Congressman Free is attorney for the California Cooperative Canneries, which is owned by Armour & Co."

Is that statement true, that it is owned by Armour & Co.?

Mr. CAMPBELL. Well, Judge, I have tried my best to—

Judge HAINER (interposing). Well, just answer directly yes or no.

Mr. CAMPBELL. No. This afternoon I introduced sworn statements to the effect that it was not.

Judge HAINER. Well, is that statement true?

Mr. CAMPBELL. It is absolutely untrue.

Judge HAINER. That answers it.

The CHAIRMAN. Go ahead, Mr. Campbell, with your statement.

Mr. CAMPBELL. I have another letter here from our broker in Oklahoma City, the Frank M. Wilson Co., under date of November 4, 1921, addressed to the California Cooperative Canneries, attention of our sales manager, Mr. R. F. Williams.

The letter is as follows:

GENTLEMEN: Having in mind that we are getting quite a little "back fire" by the reason of the fact that your Mr. Campbell has figured very conspicuously in the reopening of the packers' case and with the further thought that all the information we get is from the trade papers and our jobbing friends it occurs to us it would be most consistent and advisable for you to write us, giving us what information you can along this line, and if you have a suggestion whereby we could offset or counteract the unfavorable impressions made on our jobbing friends by reason of the foregoing statements it will certainly be appreciated.

Trusting that you will give us your cooperation in this we beg to remain,

Yours very truly,

THE FRANK M. WILSON Co.
FRANK M. WILSON.

Now there is a letter in reply to this which might go into the record without my taking up the time to read it, if you desire it.

The CHAIRMAN. Very well.

(The reply letter is as follows:)

NOVEMBER 9, 1921.

Mr. FRANK M. WILSON,

607 Continental Building, Oklahoma City, Okla.

DEAR MR. WILSON: I am glad you afford us the opportunity to tell you where we stand in connection with the decree prohibiting the meat packers from handling canned fruits.

For some period prior to the time this decree was entered we had term contracts for furnishing the packers with canned fruits at very fair prices. Naturally you can see the position the Government put us in when they refused the packers the privilege of distributing our product. We had a legal right to intervene, but we rather took the view that it would be better to await the result of this decree.

It has been found that taking these large distributors out of the field was the means of destroying the stronghold we were gaining upon the foreign markets of the world right at a time when this strength is most needed, as Australia has had representatives in California in the past few years studying the American method of preserving fruits and vegetables, and with our best facilities gone we will not be able to compete in markets where credits are practically subsidized through the wisdom of the British banking and governmental policies. Their foreign distribution is by far the most potent factors in packer distribution.

The domestic distribution, we are sure, never reach proportions where it was a menace to the jobbers. Nineteen hundred and nineteen was the first year they distributed any appreciable quantity of goods, and any of your jobber friends will tell you they could have sold any quantity of goods in this season that was available.

We would not countenance the packers having the field to the exclusion of the jobbers. We are assured that the machinery of the Government just placed in operation under the jurisdiction of the Department of Agriculture will effectually control the competition offered by the packers.

Our treatment of the packers has never been preferential in any respect. Their deliveries were on exactly the same ratio as deliveries to jobbers who purchased futures. Prices given to all our buyers are the same, based upon the market.

We believe all the jobbers to be the highest type of business men who have reached the place of influence they occupy in their communities through their keenness and integrity, and we believe they will see our view when it is pointed out that foreign distributive organizations are needed now as never before. Further, that export demand stabilizes markets as does no other factor, and certainly a stable market redounds to the benefit of each one of us.

Yours very truly,

CALIFORNIA COOPERATIVE CANNERIES.

Now, in that connection I have got a letter here from one of the wholesale grocers in Oklahoma City, the Scrivner-Stevens Co., under date of October 26, 1921, addressed to the California Cooperative Canneries, as follows:

GENTLEMEN: We are advised by a seemingly responsible source that you are very much interested in the so-called packers' case that is now being handled by

the Attorney General's office of the United States for the purpose of placing the five big meat packers into the wholesale canned goods game. We are advised that you have made complaint to the Attorney General's office that without the packers are put into the game the canners will be unable to place their merchandise on the market as they should. We have in the past been purchasing considerable canned goods from you through your local representative, and since this question is of vital importance, we did not want to be unfair by drawing conclusions that would be unjust to you until we received direct from you your own statement concerning your attitude in this matter.

Trusting we shall have the favor of a prompt response in this, we are,

Very truly yours,

SCRIVNER-STEVENS Co.
Per ENOCH SCRIVNER.

Mr. CAMPBELL. Here is a letter from George R. Newell & Co., importers and wholesale grocers, Minneapolis, Minn., under date of October 31, 1921.

Mr. BREED. Addressed to whom?

Mr. CAMPBELL. A general letter.

"Aggressive action on the part of officials of the Indiana Canners' Association prompts us to ask you how you stand in the matter of the packers' consent decree.

"Our position is set forth on the attached circular addressed to the packers with whom we are doing business.

"We would appreciate an expression from you.

"Yours very truly,

"GEO. R. NEWELL & Co.,
"By _____, Secretary."

This letter which is attached to the letter I just read from George R. Newell & Co. was, I don't think, very complimentary to me, that is it sort of put me in a small light. They state here: "It is generally admitted that the California canneries (consisting of about 30 per cent of California's canning plants) were influenced to take this action by a certain Vernon Campbell, an Armour hireling."

I don't care whether this thing is written into the record or not.

The CHAIRMAN. Well, as you please.

Mr. CAMPBELL. Well, I will not read it. It can be copied in.

(The letter is as follows:)

"THE BIG FIVE WANT IT ALL—DO YOU WANT THEM TO HAVE IT?

"Two years ago the Big Five—the five largest meat packers in the United States—as a result of several conferences with Attorney General Palmer, agreed to abide by a decree restraining them from handling canned foods, dried fruits, rice, and other lines bearing no relation to the meat-packing business.

"The meat packers, up to that time, were rapidly gaining control of not only the food supply of the country but the sources of supply as well. They were contracting for the entire output of some canneries, and in many instances purchasing the plants outright. In 1919 jobbers awakened to the fact that the Big Five had acquired the ownership of many plants which had supplied them (the jobbers) for a great many years. Perhaps the packers overplayed their hand; anyway the public suddenly became aware of what was going on and a united protest against the monopolistic tendencies of the Big Five forced Washington to take action. The Big Five were told that unless they voluntarily agreed to submit to a decree restraining them from engaging in the grocery business, they would be legislated out of it. They agreed."

This was the packers' consent decree.

"Just about the time that the packers' consent decree was issued, market conditions became demoralized and jobbers and retailers in all lines commenced to retrench. The result was that for the first time in years canners were compelled to carry surplus stocks from one season to another. The Big Five, with their ambition unabated, seized on this economic depression as a means to their end. Canners were given to understand that had the meat packers been in the game they would have taken over the canners' stocks at a profit to the latter. The first step in the campaign was a petition from the California Cooperative Canneries, addressed to the Attorney General, requesting a modification of the packers' consent decree.

"It is generally admitted that the California canneries (consisting of about 30 per cent of California's canning plants) were influenced to take this action by a certain Vernon Campbell, an Armour hireling.

"Despite the questionable source of the petition, we have learned that the Attorney General is giving serious consideration to the request, and we understand that there is a very great possibility that the decree will be scrapped unless concerted action is taken to prevent it.

"Why the Attorney General and his associates are disposed to favor the ambition of two or three meat packers (we understand that Cudahy and Swift are not interested) as against the welfare of 4,000 wholesale grocers and as many manufacturers, we can not understand; but we do know that your interests as manufacturers and ours as distributors are decidedly at stake.

"Of course, you realize that the consumer will consume so much and no more. The wholesale grocer is ever on the job ready to supply the retailer with the things that the consumer requires. To keep stocks of all lines constantly on hand and to do everything possible to maintain a steady flow of those goods into consumption is all that you as a manufacturer can ask of a jobber. Surely you do not look to the jobber to buy in excess of his requirements when market conditions are such that it would mean a loss for him to do so; and surely it is not going to help general conditions if three or four more distributors are added to the 4,000 now on the job.

"And how about the other side of it? The packer, with his huge purchasing power, will buy immense quantities when the markets are favorable. He does not buy as the jobber buys—to supply the requirements of a certain number of customers; he buys as a speculator buys—when there is a chance of higher prices. By the size of his purchase in a favorable season he will encourage the canner to overproduction and will naturally throw the canner down when overproduction becomes a fact, and prices depressed as a result.

"Another thing: Does anyone think for a moment that the meat packer with his millions of resources is going to be satisfied to act as a distributor of grocery lines? Mark our words, he will go into the canning business on a large scale and will become a direct competitor of hundreds of independent canners who are now marketing their products through the wholesale grocer.

"We would not ask you to oppose the proposed modification of the packers consent decree if only our welfare were at stake. We sincerely believe that if the packers consent decree is modified—in other words, scrapped—by the Attorney General's office, control of the manufacture and distribution of foods will eventually come into the hands of the meat packers of Chicago.

"Yours very truly,

"GEO. R. NEWELL & Co."

Mr. CAMPBELL. Here is one from Ridenour-Baker Grocery Co., written to Louis McMurray Packing Co., Pontiac, Ill., under date of November 3, 1921:

GENTLEMEN: Please let us know if you are in favor of the Attorney General modifying the so-called packers' consent decree.

We are asking simply for information.

Kindly return this letter with your reply on the bottom.

We thank you for your attention.

Yours truly,

RIDENOUR-BAKER GROCERY Co.

Judge HAINER. Nothing improper about that, is there?

Mr. CAMPBELL. No. I simply want to show that they have been circularizing these canners here trying to get their views and their assistance. There are a number of letters of that some form, and not all of them are so vitriolic as a few I have read. I don't think it is necessary to read all of them into the record. The rest of them are of the same form.

Judge HAINER. That was from Oklahoma City, wasn't it?

Mr. CAMPBELL. Yes.

Here is a fellow that has evidently named a company after his wife and called it the Esmeralda Canning Co., and he is from Circleville, Ohio; a man by the name of Smith is the president of it. These jobbers have got him running in circles, because he writes me a letter, under date of November 25, 1921:

"Mr. VERNON CAMPBELL,

"Care of Powhatan Hotel, Washington, D. C."

Now, I don't know how he found my name or where I was, but I suppose from the letters and circulars from wholesale grocers, etc.

"DEAR SIR: We have had some letters from wholesale grocers, brokers, etc., in reference to the meat packers' decree, and in answering them we seem to have

gotten into some controversy, but we are glad to say that up to this time it has not been heated.

"We have endeavored to view the matter unselfishly, and we feel that the meat packers should not be denied any right that we demand for ourselves—in this instance to work unhampered. Some people—mostly wholesale grocers, but some legislators—believe that the meat packers were a menace and if they succeed in getting back into business as they were before that they will soon control not only the canning business but many other lines. This, of course, might be; but our gospel is 'Sufficient unto the day is the evil thereof,' and when they do become a menace they could be as easily controlled as they are now.

"You have studied this question from A to Z, and we would ask if you will tell us the greatest argument that is made against the packers and wherein you consider it faulty.

"Any information you can give us will be appreciated.

"Very truly,

"THE ESMERALDA CANNING Co.,
"J. I. SMITH, *President*.

"Understand the Western Canners' Association backed up on their resolution in favor of the meat packers."

That goes to show that these wholesale grocers—here is an argument that the poor Mr. Smith has been sending out to the jobbers. He has got it duplicated and he has been trying to convince them that his position is correct, I suppose:

[Copy of answer to a wholesale grocer.]

NOVEMBER 25, 1921.

GENTLEMEN: We note with interest your favor 23d.

If we interpret the letter properly you hold that the meat packers were a menace to the majority of the citizenship, and would be again were they permitted to handle canned goods as they did before. If this is the case we would be against their coming back into the business, but we have not been able to see it that way, therefore would ask you to tell us why they were and why they would be.

That you might know it is not a selfish motive that creates thoughts in our minds, will say that we never did any business with the meat packers, that we do not belong to the National Canners' Association nor the Western Canners' Association and are not prejudiced by what any of these people or associations have done or will do. We know, and you know, that the canning industry now is in a deplorable condition, and unless a change comes soon many will be forced to give up. You may believe in the survival of the fittest, but we do not. We believe in the prosperity of all, through the demonstrations of the fit; therefore we are not in sympathy with any body of men that endeavored to crush any other body of men or any individual.

We are quality packers, and since our advent into the business in 1904 have consistently packed quality. To do this it is necessary to throw away inferior corn, and this we have done. It goes without saying that we can not sell in competition with inferior or questionable quality, and we question the policy of buying inferior goods regardless of price.

We think that in the agitation of the meat-packers' decree animus has been manifest, and we assure you that we have no feeling whatever. And we are not going to say harsh things just, because the other fellow does not agree with us. He has the same right to his opinion that we have to ours, and we admire a man that will freely and frankly express his opinion whenever called upon to do so.

With best wishes we are, very truly,

THE ESMERALDA CANNING Co.,
_____, *President*.

Mr. BREED. He wrote to the wrong fellow to get the arguments against the packers, though, didn't he?

Mr. CAMPBELL. The Atlantic Canning Co., Atlantic, Iowa, writes to us, the California Cooperative Canneries. They simply say they have received a flood of letters from jobbers requesting that "we do what we can to have the decree stand as it is, but we feel that it is to our interests that the packers should be allowed again to handle canned goods as they did a few years ago."

Mr. SMITH. What was the date of that letter?

Mr. CAMPBELL. October 25, 1921.

I might introduce many, many letters of that sort, but I think they are simply a duplication of the same thing, showing the agitation by the wholesale grocers of this country.

I might speak at some further length as to the method of opposition of the wholesale grocers to this modification. But I think I should a little further clear up the matter of the Western Cannery Association. It seems to me that the witnesses who have appeared here to try to explain away that action have gotten themselves into considerable difficulty in trying to get out of a bad mess.

But I will introduce here an original copy of the resolution of the Western Cannery Association, that was handed to me the evening of Monday, October 3, when it was passed, the names written in with a pen by one of the committee there present. I don't know whose handwriting it is, but it was given to me.

Mr. SMITH. Well, does that resolution conform to the resolution introduced by the gentleman from California who represented the cannery, or does it purport to be a different resolution?

Mr. CAMPBELL. Well, I will answer these questions later.

The CHAIRMAN. Senator, he asks that he be permitted to complete his statement without interruption for the present, and we have granted that privilege to all of them.

Mr. SMITH. I was going to ask that it be read unless it was the same thing, so that we will know.

The CHAIRMAN. Well, if you request that it be read, then——

Mr. SMITH. I do request that it be read.

The CHAIRMAN. Proceed, Mr. Campbell, and read it.

Mr. CAMPBELL. [Reading:]

"CHICAGO, ILL., Monday, October 3, 1921.

"The Western Cannery Association in special session to-day unanimously adopted the following resolution:

"Whereas the course of canned-food distribution has been radically disturbed and serious loss has accrued to the growers of canning crops to the cannery and to the entire consuming public as a result of the so-called consent decree restraining the meat packers from handling food products other than meat products; and

"Whereas the effect of said decree is seemingly to forever limit and restrict distributive processes and create monopoly rather than allow free play of competition; and

"Whereas the rationing of the people with the maximum of economy is now and will ever be a dominant need; and

"Whereas sound public economy should require and enforce rather than restrict the use of any agency or facility for economic distribution of foods: Be it

"Resolved, That this association indorse the action which it is understood the Department of Justice contemplates taking looking to the modification or withdrawal of said decree to the end that canned foods distribution may again proceed with unrestricted competition and in conformity with American ideals of business and progress; and be it further

"Resolved, That a copy of this resolution be transmitted by wire to the Attorney General and that request be made that if hearings are held, a committee of this association be permitted to be heard."

Mr. BREED. What is the date?

Mr. CAMPBELL. That, Mr. President, is the resolution passed by the western cannery at a special session of October 3, 1921, at which I was not present. I was called in by this committee after this resolution had been read, and I will say for the benefit of the committee here that there were, I believe, but two men there that I actually knew—or three. I think I knew Lon Sears. The rest of the men I had not been acquainted with. They asked me in because they found out where I was staying, and they wanted my advice as to this resolution, and I told them that I thought the resolution was in good form, so far as I know. I think that Frank Gerber wrote the resolution in his own handwriting, as he had the paper in his hand when I came into the committee room.

And I will read into the record a letter of October 29, 1921, written to me by this same Frank Gerber, of the Fremont Canning Co., Fremont, Mich.

Mr. SMITH. Is he an officer of the National Cannery Association?

Mr. CAMPBELL. He is, and was formerly a director of the National Cannery Association. Now, this is almost four weeks later than the date of this resolution. [Reading:]

OCTOBER 29, 1921.

VERNON CAMPBELL,

Pohatan Hotel, Washington, D. C.

DEAR MR. CAMPBELL: I have your letter of the 25th, and in reply have to advise that some recent developments have very materially affected my views. and pending further enlightenment I feel that I can interest myself only from an associational standpoint.

So much pressure is being brought to bear that I shall not be surprised if the matter of the recent resolution adopted at Chicago would come up for reconsideration at the forthcoming annual meeting at Chicago.

Yours respectfully,

FRANK GERBER.

Just at this time I think I should read into the record a letter and resolution in support of Mr. Morrill's statement. I was not acquainted with that gentleman. But I have a letter here under date of November 14, 1921, from the Michigan State Farm Bureau. [Reading:]

"Mr. VERNON CAMPBELL,

"Pohatan Hotel, Washington, D. C.

"DEAR MR. CAMPBELL: Your letter of November 3d, with inclosed papers, duly noted.

"The Michigan State Farm Bureau stands firmly on the proposition that there should be no discrimination allowed whatever in the distribution of canned goods or any other products."

I wish Mr. Thorne was here. He promised to come back this afternoon. The CHAIRMAN. We have no way of requiring his attendance.

Mr. CAMPBELL (reading):

"We can not see how it can be legal to prohibit any legitimate organization of packers, jobbers, or wholesalers to be excluded from any particular class of business.

"We inclose you a resolution passed by our executive committee which covers this point.

"Very truly yours,

"MICHIGAN STATE FARM BUREAU.

"JAMES NICOL, *President.*"

The resolution reads as follows, under date of October 11, 1921:

[Resolution adopted by the executive committee of the Michigan State Farm Bureau Oct. 11, 1921.]

Whereas the Michigan State Farm Bureau executive committee in meeting assembled at Lansing, Mich., October 11, 1921, is agreed that free and unhindered distribution of food products is of economical importance to the farmers of Michigan: Therefore be it

Resolved, That the executive committee of the Michigan State Farm Bureau go on record as approving Attorney General Daugherty's stand that the most free and unhampered distribution of food products shall be permitted to all recognized, interested concerns.

And while we have the farm bureau matter up, I want to read a letter written to me by J. R. Howard, president of the American Farm Bureau Federation, under date of Chicago, Ill., November 5, 1921:

Mr. VERNON CAMPBELL,

Pohatan Hotel, Washington, D. C.

MY DEAR MR. CAMPBELL: I have noted very carefully your letter of November 2 with its inclosures, and have given careful thought from time to time in the past to the packers' consent decree. At various times I have voiced objection to the decree as having overshot the mark. What we need is not a limitation of business agencies, but the widest possible extension of the functions of all agencies in the freest possible manner, and I have always considered the decree prevented this.

Recently, however, I have said several times that since the packer-control bill vesting authority in the Secretary of Agriculture is so soon to become oper-

ative that the packers' consent decree should not be interfered with until such time as the Secretary of Agriculture completes his regulatory machinery. As soon as this is done the decree should be entirely set aside, in my opinion. My understanding is that Secretary Wallace will have his machinery in operation in the very near future. It is for these reasons that I have discouraged taking any active part in having the decree modified. If, however, the Department of Agriculture is to be materially delayed in its work, I would be very glad to reconsider.

Most sincerely yours,

AMERICAN FARM BUREAU FEDERATION,
J. R. HOWARD, *President*.

I feel that President Howard, of the American Farm Bureau Federation, has very definitely stated his views as to the necessities for the modification of the decree at the earliest possible moment after the Secretary of Agriculture has completed his machinery.

In this connection I want to say that, so far as I have been able to ascertain, the wholesale grocers—our opponents—have not been able to show that they represent the farming interests of this country nor the producers. If they do so represent these elements, why is it that none of these great organizations have appeared here in opposition to a modification of this decree? We have about 40 big cooperative organizations in California, and none of them have appeared here. Mr. Chase rather inferred that he represented the dried-fruit interests of California. As a matter of fact, he represents the California Dried Fruit Association, which is an organization consisting of packers, the very element of which we, as farm leaders, have fought for years.

The CHAIRMAN. Fruit packers?

Mr. CAMPBELL. Fruit packers, yes; dried-fruit packers. That organization is similar in its purposes to the Cannerymen's League, organized for the purpose of standardizing, for a better railroad service, and for other purposes which are of mutual interest to both the cooperative and the independent packing interests. I can state without fear of contradiction that neither Mr. McKinney nor Mr. Chase represents those great farm organizations of California. They do, however, and admit that they do, represent the fruit-packing interests of California, which have always been opposed and have joined hands with the wholesale grocers in an attempt to destroy the cooperative movement in California.

Going back to the attitude of the Western Cannerymen's Association in this matter of the modification of the consent decree, I want to read you an extract from the address of President E. W. Virden, of the Western Cannerymen's Association, at their meeting last spring. I have a copy here of the Canner, a representative organ of the canning business, under date of April 30, 1921. I will explain that Mr. Virden is one of the largest corn canners in Iowa, one of the most influential, and one of the best known canners in that district.

Among other things in his address, President Virden said:

"One other item in the cost of distribution that has claimed my attention is the practice of some brokers—and it is getting to be a common request—in asking for an increase of commission on account of handling the business on a split brokerage. This, in my judgment, is not warranted. I have nothing to say as to the percentage of brokerage to be paid, as I consider that a matter to be determined between the seller and his agent. But the theory that because it takes two men or two concerns to do the work of one they should be entitled to extra compensation is entirely wrong. During times like these, when we are all anxious to sell, we are apt to establish practices that are unwarranted and that are hard to eliminate when once established.

"Another feature of distribution which has had a very marked and detrimental effect on the canned-foods market is the elimination of the meat packers from the handling of canned goods. I have no quarrel with the grocery jobber and recognize in them a true, proper, and legitimate source of distribution of all food products. By every fair and legitimate means I wish to encourage the most cordial and loyal trade relations between them and the members of our industry; but, on the other hand, I think we are producers of large lines of human food; should be entitled to every facility of economic distribution of them to the consuming public; and that the public should be entitled to procure them through every available channel that can make proper distribution of them.

"In the present situation we, as an industry, are cut off from one of the large lines of distribution entirely and are faced with indifference by the jobber, who,

through these times of deflation and contraction, says plainly we are not going to carry stocks, but will only buy goods as we need them, thus forcing the canner to not only produce the goods but carry them until the time they are actually needed by the retail trade. I submit to you that is not legitimate jobbing and, if continued, will, I fear, force the canning industry, much against their will and desire, to so restrict its production that it will only aim to produce the approximate quantity sold as futures, which would tend toward short food supplies with relative higher prices, or to try to develop some other means of distribution that would relieve the industry of carrying the jobbers' share of the load.

"I made the statement in November, and I believe it and repeat it now, that the canning industry as a whole is more ably capitalized for the business they are organized to do than most lines of business. If it were not true, we would have seen many failures in the business this past year. But they should not be expected to have to carry the entire production of the year for months and months after the packing season has closed, as many of them have had to do this year.

"Can there be any doubt in your minds that if the meat packers were now handling canned foods the jobbers would be so indifferent to the purchase of their requirements? My opinion is that they would have bought the usual quantities they buy every year to be sure to have the quality and quantity of the goods they are used to buying and that that their trade requires."

To further show the attitude of the cannery on this subject, I will refer you to the Indiana Cannery Convention. That was held on November 3 last. They adopted this resolution after a thorough discussion of all the points involved:

"Resolved, That the Indiana Cannery Association is taking no part in the present fight between the meat packers and the wholesale grocers, except that we do go on record as favoring American freedom to the extent that any person, firm, or corporation shall be allowed perfect freedom to produce, manufacture, or distribute food products freely.

At this point, Mr. Chairman, I would like to introduce some letters from cannerys who have not gone on record here, if it is agreeable to you.

The CHAIRMAN. You submit them for publication in the record, do you?

Mr. CAMPBELL. Yes, sir.

The CHAIRMAN. Proceed.

Mr. CAMPBELL. If it is not necessary I will not read all of these letters.

The CHAIRMAN. You need not read them unless you want to or some of the counsel here insist. If they insist you shall read them, of course.

Mr. HERSCHER. If Mr. Campbell will read the names, that will be sufficient.

Mr. CAMPBELL. Here is a copy of a letter that was sent to me, written by the Colorado Packing Corporation under date of November 10, 1921. They are cannerys.

Mr. BREED. To whom?

Mr. CAMPBELL. It is a copy to me, but it is addressed to Hon. Harry M. Daugherty, United States Attorney General, Washington, D. C.

Judge HAINER. For or against?

Mr. CAMPBELL. They are for modification—five pages of it.

(The letter referred to is here printed in full, as follows:)

NOVEMBER 10, 1921.

HON. HARRY M. DAUGHERTY,
Attorney General, Washington, D. C.

SIR: Pursuant to your notice of October 12 advising you would receive and carefully consider written statements on the proposed modification of the so-called packers' consent decree, to be mailed on or before November 18, we desire to submit our views in favor of the modification of the decree.

We have no connection whatsoever with any meat packer, and the views expressed herein represent our own opinion, which has not been influenced by anyone interested in the meat-packing business, nor have we ever been solicited by any meat packer requesting our support or influence.

We make this statement at the outset of our agreements because we know that the interests among the wholesale grocers opposing the modification of the decree are using every possible pressure upon the cannerys of the country to force the cannerys to support them in their fight against the meat packers. Many cannerys are owned, controlled, and operated by wholesale grocers. While there are some honest cannerys conscientiously opposing the modification of the decree, careful investigation will prove that a large proportion of the

members of the canning industry taking this position are doing so because of their connection, directly or indirectly, with the jobbing trade.

We are opposed to the present decree and desire it modified for the following reasons:

First. Because the canners and producers need the widest possible distribution.

For many years the one outlet for canned foods was through the retail grocery stores. Less than 1 per cent of the meat packers ever handled canned foods. During recent years, through the distribution of the meat packers, the number of meat markets selling canned foods increased until over half of the meat packers were distributing our products, affording an outlet never before accessible. The wholesale grocery salesmen seldom, if ever, call upon the meat markets, and the argument that these markets will still distribute canned foods without the packers' distribution is not well founded and is proved by the almost total curtailment of sales of canned foods by meat markets since the packers' decree was entered.

The argument that the present distribution of canned fruit and vegetables is efficient is disproved by the recent canvass of the National Canners' Association showing that 19 per cent of the American people do not use canned food, 43 per cent of the people only use canned food occasionally, while but 38 per cent use canned food freely. It is a well-known and undisputed fact that the more an article is advertised and the broader its distribution, the greater its consumption. The statement, therefore, that the distribution through the meat packers does not increase consumption and merely switches the means of distribution from the wholesale grocers to the packers is without foundation in fact.

The statement that the meat packers distribute their own product and not that of the general canner is also erroneous. The meat packers bought a very large percentage of their requirements from independent canners. It is true a big percentage of canned foods sold by the meat packers was sold under their private label, but this is also true of 90 per cent of the goods handled by the larger wholesale grocers. Our own sales, for example, to one of the packers, Armour & Co., often aggregated 25 per cent of our total output, and in addition we sold considerable quantities to the other packers. What was true in our individual case was just as true of scores of other independent concerns.

Through a custom long established, the canners of the country have always sold a large proportion of their entire output as futures, through which means they financed their business, the banks loaning them the necessary money for the operation of their plants by the assigning of such future contracts. The industry has never been sufficiently financed for the individual canners to pack and carry their season's output. The buying of these futures was one of the principal functions of the wholesale grocer.

During the war the canners of the country came to the front gladly with the most essential contribution to the winning of the war. Through this period the profits of the canners were limited by governmental control, while the wholesale and retail grocers had no such limit put upon them. As a result, the canner during these war years had no opportunity of accumulating any surplus.

Immediately after the war the Government, in spite of its promises to the contrary, dumped millions of cases of canned food on the market, in many instances at half of the original cost, and at the best far below the cost of replacement, with the result that the markets of the country were flooded. On top of this came the depression in business a year ago, with the accompanying deflation in all values.

During this depression the wholesale grocers, whether wilfully or otherwise, failed to function in the purchasing of canned foods, and the canning industry was thrown onto the rocks, on the verge of bankruptcy. It will take years for the industry to recover from this condition, and in the meantime the wholesale grocers are showing an utter lack of willingness to assist. They have refused to buy future goods and are buying from hand to mouth, in many cases trading backward and forward among themselves, to avoid the necessity of purchasing new goods from the producers.

This hand-to-mouth policy is killing the consumption of canned foods. We know in some cases the wholesale grocers have gone so far as to decline business tendered them by the retail trade rather than to purchase the needed supplies.

The farmer and the consumer are vitally interested in this situation. The canners can not finance themselves without a sale for their products, with the

result that the 1921 pack of canned fruits and vegetables is greatly curtailed and less than one-half normal. The quantity of canned tomatoes is not over 25 per cent and no fruit or vegetable item will exceed the 50 per cent mark.

This condition has a double result: First, the farmer is selling much less produce to the canner, thus cutting down his income and consequently his purchasing power; second, with the curtailment in production the canner's fixed charges per case are doubled, thus increasing the cost of canned goods. This, coupled with the inevitable shortage that is bound to occur, will result in the consumers paying a much higher price for canned food than would be the case were conditions normal.

Never in the history of the country was economic distribution so important, nor has there ever been a time when the independent canners so needed increased and improved channels for distributing the canned food of the country. We believe the Government should render all assistance possible, and instead of throttling competition should encourage every possible method of distribution.

Second. We are opposed to the consent decree because if the distribution through the meat packers is eliminated the one predominating source of distribution of canned foods will be through the wholesale grocers. The wholesale grocers' associations are very powerful organizations, whose members unquestionably work in close harmony for the control of prices and markets. We have seen circulars sent from the headquarters of both the national and southern associations proving this beyond a doubt. If we are correctly informed, the officers of the southern association were brought before the Department of Justice several years ago for the violation of the Sherman Act.

We enumerate below a few of the results of the unwarranted activities of the grocers' associations:

Through united action the two associations have attempted to force a guaranty contract upon the canners whereby the canners must guarantee the delivery under future contracts notwithstanding the possibility of crop failures.

Through the same methods they have succeeded in preventing the passage in Congress of a bill desired by the Bureau of Chemistry and the independent canners providing for the printing of the name of the packers on all labels, whether the labels are those of the packer or the distributor.

They have also succeeded in preventing the successful maintenance by the National Canners' Association of the sanitary inspection of canned foods; their opposition being based on the Seal of Inspection which was to be placed on each can passing inspection, as such a seal limited the control the jobbers have of the trade through their private and advertised labels.

The only possible way to stop further inroads and prevent a monopoly of the distribution of canned foods by the wholesale grocers is to permit competitive organizations, such as the chain stores and the meat packers, to continue the distribution of our products.

The wholesale grocer is fighting the chain store system as hard, though not as openly, as they are the meat packers, their one idea being to crush opposition.

If a business can not stand legitimate competition, then there is no warrant for its existence, and if the wholesale grocers can not maintain their business in face of the competition of the meat packers, then this method of distribution is doomed whether the packers' decree stands or falls.

Those opposing the modification of the consent decree base their arguments on the statement that if the meat packers are permitted to handle canned food, they will eventually control the distribution of food in the United States. They overlook entirely the fact that by the elimination of the competition of the meat packers there is danger of the same sort of monopoly through the control of the distribution of food by the wholesale grocers. We contend and insist that there is ample room in this country for both sources of distribution and that both are essential and vital to the economic welfare of the American people.

Third. We are opposed to the consent decree because it limits the scope of business into which an individual, partnership, or corporation may engage. We believe such a doctrine is un-American. If the meat packers are forbidden to sell canned foods, or to produce them, then why should the wholesale grocers be permitted to own, control, or operate canning factories? Why should a canner be permitted to conduct a brokerage business? Then, one step further, why should a farmer be allowed to operate a canning plant?

Those opposing the modification of the consent decree argue that the return of the packers into the manufacturing end of the food business will in time eliminate the independent canners. We deny this charge. We have had ex-

perience with the competition of the meat packers in the canning business. We have always found them fair and square in their methods; in fact, their competition is much less serious than the scores of small under-financed canners, who, on account of financial pressure, often sell their product for less than the cost of production. This was never true of the meat packers.

We believe the consent decree is in constraint of trade; it plays directly into the hands of a special class, the wholesale grocer, at the expense of the farmer, the consumer, and the manufacturer.

We favor the control of big business, not the destruction of big business. With the new law the meat packers are under Government control, which we believe is an ample safeguard against unfair practices.

With the splendid facilities for distribution, both at home and abroad, the meat packers are in position to render a great service in distribution. Their policy is to handle a big volume on a narrow margin, and such a policy must and does work advantageously to the gain of either or both the producer and the consumer, the claims of the wholesale grocers notwithstanding.

We earnestly ask your favorable consideration of the proposed recommendation to the court for a modification of the decree, whereby the meat packers may again be permitted to handle unrelated lines.

Yours respectfully,

THE COLORADO PACKING CORPORATION.

Mr. CAMPBELL. Here is a resolution by the American National Live Stock Association which probably some of you have seen, but it was sent to me under date of August 26, 1921. They are for modification. [Reading:]

"AMERICAN NATIONAL LIVE STOCK ASSOCIATION MEETING IN SALT LAKE CITY, AUGUST 26, 1921.

"RESOLUTION NO. 2.—PACKERS AND RETAIL MEAT TRADE.

"Whereas the consent decree entered February 27, 1920, in the Supreme Court of the District of Columbia, in the case of the United States of America, petitioner, v. Swift & Co. and others, defendants, the Chicago packing companies known as the Big Five, together with their owners and all affiliated corporations, were 'perpetually enjoined and restrained from * * * owning or operating * * * any retail markets in the United States,' except such as may be located at their several plants and maintained primarily for the accommodation of their employees; and

"Whereas we believe the present system of distribution of meats and meat products at retail to be inefficient and uneconomical, and that it results in the exaction from the public of such excessive prices as to reduce materially the volume of consumption: Now, therefore be it

"Resolved, By the American National Live Stock Association, at its midyear meeting at Salt Lake City, Utah, August 26-27, 1921, that we place ourselves on record as favoring the entrance into the retail meat trade of the Big Five in order that the present system be placed on a more economical basis, and that we urge all packers not affected by the said decree to engage in the retail trade, and pledge them our moral support; and, be it further

"Resolved, That a committee of three members be appointed at an early date by the president of this association for the purpose of conferring with the packing companies, parties to the above-mentioned suit, with the object of obtaining their consent to the reopening of the case and the rescission of that portion of the decree by which they are prohibited from engaging in the retail meat trade."

Mr. CAMPBELL. I have two letters here from sardine packers of Eastport, Me. The CHAIRMAN. Well, if they are repetitions, only put one in.

Mr. CAMPBELL. They are not repetitions.

Mr. BREED. Mr. Campbell, is the live-stock resolution on the subject of modification?

Mr. CAMPBELL. Yes; the live-stock resolution is on the subject of modification.

Mr. BREED. On the stockyards provision or the unrelated products?

Mr. CAMPBELL. I think he can read that out of the record without asking me these questions.

The CHAIRMAN. If you introduce it, let Mr. Breed look at it.

(Resolution handed to Mr. Breed.)

Mr. BREED. This relates to allowing the packers to go into the retail meat trade. I just want to call that to your attention.

Mr. CAMPBELL. I might say in passing, on this question, to this committee that, so far as we are concerned, we are lined up with anybody that wants to knock the decree out entirely, and we don't care whether they want to amend it one way or the other, so we can get a wedge into the thing and bust it.

Here is a wire for the Denair Fruit Exchange, under date of November 16, 1921, from Modesto, Calif. I am not acquainted with these people at all, but the wire was sent to me. It was addressed to Hon. H. M. Daugherty, Attorney General. [Reading:]

"This organization of fruit growers respectfully asks modification of packers' decree permitting them to purchase and distribute fruits for domestic and foreign trade. Injustice of packers' decree adding to grave problems distribution faced by producers, this State, who are now dependent upon extortionate system of wholesalers, whose inefficiency very apparent during past year, retarding distribution seriously. Fostering of cooperative organizations by Republican Party leads us to hope you will modify packers' decree, which is of benefit only to wholesalers' food trust, at expense of all producers and consumers.

"DENAIR FRUIT EXCHANGE,
"W. F. COMMONS, *Secretary*."

Here is one from a bank down in that district addressed to Hon. H. M. Daugherty.

The CHAIRMAN. Was that one of the banks that you quoted, Mr. Gray?

Mr. GRAY. No.

Mr. CAMPBELL. But I will just put it in. I do not care to read it. I could, of course, introduce hundreds of that sort of thing, but I don't want to fill the records up like my wholesale-grocery friends.

(The telegram is as follows:)

"Active participation of packers in purchase and domestic distribution of California fruits only salvation of growers of this State in disposing of increasing tonnage during years of normal production, besides creating competition necessary to maintain conservative uniform prices, thereby increasing consumption and avoiding speculative and monopolistic features of wholesalers' system distribution, benefiting both producer and consumer. Delay in permitting packers to market fruits and by-products causing heavy financial loss to California fruit growers.

"PEOPLES STATE BANK, Turlock, Cal.,
"By ROY C. WEAVER, *Cashier*."

Mr. CAMPBELL. Here is a letter from L. D. Clark & Son, Eastport, Me., under date of December 3, 1921. These people are large sardine packers, probably the largest in that district. They are for modification. I don't think it is necessary to read that whole letter, but I will put it in the record.

(The letter reads as follows:)

VERNON CAMPBELL,
Washington, D. C.

DEAR SIR: As we are one of the largest independent packers of American sardines, we are deeply interested in the hearing now going on in Washington in regard to what is known as the packers' decree, for same to be set aside or entirely modified. At the time this decree was issued, the packers had increased their purchase of American sardines to around 500,000 cases per year. Also at that time was arranging to do a large export business but was dropped along with their domestic trade, which was a sad blow for the American trade, another factor which meant a lot to us while they were selling sardines. In this way the packers were in the market every day in the year; the wholesale grocer only from time to time, and then if the prices did not suit them, would say, "not interested." You will probably have the Seacoast Canning Co. represented at the hearing and in favor of keeping the decree in force, as their president, Mr. Whitmarsh, is also president of the Francis H. Legget Co., New York, and connected with one of the wholesale grocers' associations. Their selling agent, U. H. Dudley & Co., New York, is also a large stockholder in the Seacoast Canning Co. and we are told is a member of the grocers' association. Therefore the Seacoast Canning Co. in a way is a subsidiary company, the same as the Marshalltown Canning Co., of Marshalltown, Iowa, owned by one of the grocers' associations, and a lot more that will be in favor of the decree. Therefore, Mr. Campbell, we pray that the Government will

set aside this decree entirely or modify same so as to give us all a chance as well as the subsidiary companies to sell our goods to any one that cares to deal in our products, as you know competition is the life of trade. The biggest howl put up by the grocers was that the packers sold at lowest, and God knows with the prices the people have been paying for the last five years, they should not be deprived of any source that tends to reduce the cost of living. Knowing you will weigh the evidence at this hearing and all personal letters and give your unbiased decision, we await the verdict with interest.

With best wishes, we remain,

Yours very truly,

L. D. CLARK & SON,
Per ANDREW CLARK.

Mr. CAMPBELL. Here is a letter under date of October 31, from Eastport, Me., written to me by a man by the name of George H. Godfrey, a statement of the effect of the packers' decree upon that industry up there, and I think it should go into the record.

(The letter reads as follows:)

EASTPORT, ME., October 31, 1921.

Mr. VERNON CAMPBELL,
Washington, D. C.

DEAR SIR: Your letter of the 20th instant to Holmes Co., Robbinston, was mailed to me by Mr. Holmes to read and to write you any information I had to offer regarding the "packers' decree," and will say I am selling sardine supplies, such as cottonseed oil, olive oil, salt, coal, etc., also during 1916, 1917, 1918, 1919, and 1920 was resident buyer of sardines, etc., for the Central Brokerage Co., Chicago, under their old management (have no connection with the new managers) and bought thousands of cases each year for the packers, and when they (the packers) dropped out entirely the latter part of 1920 it was a sad blow to the sardine business, as they all must have bought yearly around 500,000 cases, some of the sardine packers say more, and the wholesale grocers never can make up this loss. They don't distribute the way the packers do and never will, as the packers cover every town in a county and talk sardines along with their other lines. The grocer don't so much for the simple reason they have five times the line to offer, and with the majority of them sardines are a second consideration. They talk teas, coffee, etc., that show a large profit. Sardines as a rule are sold close.

I know every packer in the sardine business for the last 25 years, and during this year when talking shop with them they always bring up the packers' decree and say it was a knock-out blow to sardines, and well do I know it. I don't see how they pulled off this stunt. It is nothing but class legislation and would not stand law, but with other laws they have pulled off in the last three years we should not be surprised at anything.

The Maine delegation are for the packers solid, as you know through Senator Fernald, but just as well to have letters from the sardine packers.

I met R. T. Peacock, of Lubec, this morning and he had not received any letter from you, but would write Daugherty to-day, and also see the other packers. He said he would also write Senator Hale, but not necessary to write Fernald, as he was in Washington the day Fernald addressed the Senate in favor of the packers.

Am inclosing you a list of the sardine packers that would have weight in this matter (as they are in politics) in case you overlooked some. We have the Maine Sardine Association (office in Eastport) and Peacock told me they took up this matter three weeks ago and wrote in as a body, but letters direct much better.

Central Brokerage Co. would not be any help, as the new management don't do very much in sardines, only a few carloads per year. The old régime was some hustlers.

Anything I can do for you down this section let me know and will gladly do it. Trusting you will succeed in setting aside this decree entirely, I remain,

Yours truly,

GEO. H. GODFREY.

Mr. CAMPBELL. I have an editorial here, which I will not read into the record, by this man Judge. I had intended to read it into the record, but he wrote such a good letter, which I read this morning, that I think it is not worth while reading his article into the record.

I want to state to the committee that there are two journals in the United States that are practically exclusively devoted to the cannery of this country: One is the Canning Trade, of Baltimore, and the other is the Canner, published at Chicago. These two trade papers have both been voicing the sentiment of the cannery. Both are very strong in the matter of modification of this decree. They have a nation-wide circulation, and these magazines are subscribed for by practically all the cannery in this country.

Mr. BREED. What are the names of the journals?

Mr. CAMPBELL. The Canner, of Chicago, and the Canning Trade, of Baltimore. And in support of my statement of this fact I will read a short editorial written by James J. Mulligan, editor of the Canner, of Chicago. The date of this is October 6.

Mr. BREED. Is that the Judge paper, Mr. Campbell?

Mr. CAMPBELL. No; the Canning Trade is the Judge paper. [Reading:]

"Cannery favor the wiping out of the consent decree, by which the Chicago meat packers quit buying and distributing canned foods, because they are convinced that the elimination of this big buying power and its extensive machinery for economical distribution narrowed the outlet for canned foods, thereby widening the gap between the packer and the people who consume the packers' products.

"Cannery feel that the industry would not have experienced such acute depression had the meat packers been actively buying and as actively distributing canned foods, and advertising them in the domestic market and exporting them to foreign countries.

"They feel that with more competition at both the buying and wholesaling ends of the business canned foods would cost the retailer and likewise the consumer less, and therefore that consumption would increase.

"The cannery wants larger demand for canned foods, and believes that more economical methods of distribution would bring it about.

"And he does not take much stock in the idea that the meat packers are going to monopolize either the canning of foods or their distribution. He doesn't believe at all that the reentry of the Big Five in the canned goods business will put the jobbers out of business. He does not want anything of the kind to happen."

I could quote you articles at greater length written by the editors of The Canner in Chicago, much more emphatic than that one, but I will not fill the record up with those matters. I think that brings me down to the question of monopoly.

As I predicted in my statement at the start of this hearing, the committee would again and again hear assertions and assumptions and presumptions of monopoly, but, as I also predicted, any statement of actual facts in support of such charges would be sadly lacking. Many of those who testified assumed at the outset that the so-called Big Five meat packers are in a combination or monopoly in the handling of meats. If they are, the Government should prosecute them criminally, as was done in 1912 at Chicago, when after a trial of several months involving all the claims, lately renovated by the Federal Trade Commission, a jury found them not guilty. I understand that trial involved the buying of live stock and the selling of meats and the making of prices in combination or agreement. If the Government had the facts then as they claim, why were they found not guilty? If the Government has the facts now showing monopoly, why do they not prosecute them and not injure the entire public by putting them out of business? There are laws which forbid contracts and agreements in restraint of trade (Sherman Act), unfair methods of competition (Federal Trade Commission act), discriminatory price making and tying contracts (Clayton Act). Surely these laws are ample to control monopoly or monopolistic tendencies, and I submit that is the American method of handling these matters, rather than by grant of monopoly to one class and denial to others of the right to pursue a lawful business.

PROOF OF MONOPOLY.

Those who have opposed modification of this decree have not presented one single instance or one fact proving or tending to prove that an agreement, combination, contract, or understanding in restraint of trade exists between the defendant packers. There is not one fact here from which it could be inferred that they were not in keen and active competition with one another as well as with every wholesale grocer in both buying and selling wholesale

grocery items. Such being true, let us stop talking about the Big Five and the packers and their control and what they do. Let us look at each one separately as we do each wholesale grocer in spite of the wholesale grocers national and southern associations and State associations and local informal associations and regional secretaries. If this committee would ask them for data as to the amount of rice, coffee, prunes, flour, or tomatoes handled by the five largest wholesale grocers in the country a tendency toward monopoly might likewise be established. But they say the five largest wholesale grocers are in competition with one another. So are the five packers in competition. Where is one lot of legal proof they are not? The Government in its petition in this case did not charge otherwise.

All that the claims of the wholesale grocers amount to is a claim of fear of monopoly, the possibility of monopoly, and the tendency toward monopoly. If this committee will take the Yearbooks of the Department of Agriculture and consider the production of food crops of this country they will see how absurd any such argument is when the totals are considered.

Now, I have here a copy of a final report on meat, prepared by a subcommittee appointed by the standing committee on trusts, presented to the Parliament by command of His Majesty. This is from London, 1921.

The CHAIRMAN. Just how is that material, Mr. Campbell?

Mr. CAMPBELL. On the question of monopoly. You are talking about monopoly. They are arguing monopoly, and I want to show there is no monopoly.

The CHAIRMAN. Well, is that of meats?

Mr. CAMPBELL. It doesn't say so.

Judge HAINER. Bearing on that?

Mr. CAMPBELL. It doesn't say so; it doesn't say anything about meats.

The CHAIRMAN. We don't care to go into the consideration of the question of monopolies on meats.

Mr. CAMPBELL. Well, this does not refer to meats evidently. It says nothing about meats in here. That which I would like to read is not very much.

The CHAIRMAN. How much?

Mr. CAMPBELL. About four lines.

The CHAIRMAN. Very well, read it. Let it go in.

Mr. BREED. Is it the English Parliament?

Mr. CAMPBELL. Yes. They made an investigation of the packers, it says.

The CHAIRMAN. I think it bears on the Big Five, though.

Mr. CAMPBELL (reading):

"We are not concerned as to whether there is or is not a trust among the packers in the United States as regards their home trade, but the evidence given to us tends to show that free competition for the export trade to this country rules both between the Big Five and the independents, and between the firms composing the Big Five; there was no sign of any common action between the agents of the American packers in the United Kingdom.

Judge HAINER. The decree prohibits the exportation of unrelated products.

Mr. CAMPBELL. My understanding of this, in reading this thing over, is that on account of the investigations had in this country, that the Government of England was desirous of finding out whether there was any combination in fact as between those Big Five, and they say there is none.

Mr. BARRETT (of the Federal Trade Commission). I suppose if that has been admitted, Mr. Chairman, the commission's representatives will be permitted to comment on it?

The CHAIRMAN. On that British document?

Mr. BARRETT. Yes.

The CHAIRMAN. Surely.

Judge HAINER. Yes; and if you have any speeches made over in London we would like to hear them—as promoting trade between foreign nations.

Mr. CAMPBELL. Mr. Herscher made a statement in regard to sugar handled by Armour & Co. in an effort to show that there was coercion used by Armour & Co. in the sale of products. Now, this looked to me like it might be a serious offense and one worth examining into, so on December 6 I wired Armour & Co. of Chicago, a night letter, as follows:

"Mr. Herscher stated to interdepartmental committee investigating modification consent decree, 'Armour & Co. owned the Llewellyn Bean Co., of Michigan, and during the season of 1920 we all know that in the first five or six months the transportation from New York west was exceedingly difficult; it is well understood in the trade that Armour & Co., through their people, came to New York and purchased, so it is stated here, 100 carloads of sugar from one of the

refiners, a respectable firm, and delivery was made to this bean company in Michigan; it was stored with them. The salesmen for Armour & Co., who were selling Armour's products, would say to a prospective customer, "I have got some sugar stored at such and such a place, and you can have some provided you buy from me such and such commodities." Further stated, in substance, no legitimate wholesaler could have secured such quantity of sugar during shortage in spring of 1920, taken it West, and stored it and sold their commodities in that way. That a suit against the Llewellyn Bean by sugar refiner for \$120,000 now pending Michigan courts. Feel committee should have definite and positive information regarding this transaction. Would you object to wiring me full facts?"

"VERNON CAMPBELL,
"Pouchatan Hotel."

Well, that was on the 6th. On the 8th Armour & Co. wired me—I am not trying to protect Armour & Co., but I am trying to carry out my part of the program in defending this thing on the monopolistic grounds. This was addressed to me:

VERNON CAMPBELL,
Pouchatan Hotel, Washington, D. C.:

Answering your wire of December 6, Armour & Co.'s ownership in Llewellyn Bean Co. never exceeded 51 per cent, and the buying and selling operations of the Llewellyn Bean Co. were at all times under the sole direction and supervision of F. E. Llewellyn, president and general manager, who owned 49 per cent. Armour & Co. did not at any time purchase sugar in any amount in New York or elsewhere for or on account of the Llewellyn Bean Co., nor did the Llewellyn Bean Co. at any time buy or receive sugar from or through Armour & Co., nor did Armour & Co. at any time purchase sugar and store it at or with the Llewellyn Bean Co. from January 1, 1920, to June 30, 1920, on which latter date the Llewellyn Bean Co. discontinued handling sugar. The Llewellyn Bean Co. sold 35 cars of sugar, principally in carload lots, to canning factories and others, delivery being promptly on arrival of car, and at no time were more than one or two cars carried in warehouse. All purchases of sugar by Llewellyn Bean Co. were made on contract or in the open market from various brokers or refiners, and there is no record of their buying at any one time hundred cars of sugar in New York or elsewhere. Armour & Co.'s salesmen did not at any time or place sell or offer to sell sugar of their own or of others conditioned upon the buyer purchasing simultaneously or otherwise Armour or packing-house products. All sugar purchased by Armour & Co. was and is used by it for manufacturing purposes. The Llewellyn Bean Co. did not at any time handle or sell packing-house products, but did sell a limited quantity of canned pork and beans put up by their subsidiary, the Grant Canning Co., of Grant, Mich. The officers of the Llewellyn Bean Co. state they know of no suit for hundred twenty thousand dollars pending against that company in Michigan courts, and, furthermore, know of no reason for such a suit.

ARMOUR & Co.

Now, I have here gone over carefully the testimony of about 10 or 12 of the wholesale grocers, and it will take me some time to read these answers. I really do not think that there was sufficient argument in any of that testimony to be worthy of the consideration of myself or the committee, but if the committee would like I will read this; otherwise I will allow it to be introduced into the evidence in rebuttal to the statements made by these parties.

Judge HAINER. You don't want to act on that assumption; you don't want to act on the assumption that we are going to disregard this testimony.

Mr. CAMPBELL. Well, then, if the committee please, I will read these answers.

Judge HAINER. Well, you can proceed as you see fit.

Mr. CAMPBELL. There were two points in this grocers' testimony which seemed to be of moment. One was investigation of the rice monopoly and the other was the matter of sugar. Those two seemed to be worthy of answer.

Walter J. Tancill, page 349: Mr. Tancill, without stating any facts or figures whatsoever, joins his fellow wholesale grocers with "viewing with alarm" the possibility of monopoly. He does, however, make this significant statement: "Our Government itself, long taken as an example of excellence and followed by those that cherish freedom and opportunity, is founded on the doctrines of

equality of opportunity, equality of treatment, equality of the right to pursue vocations untrammelled and unhampered."

We are thoroughly in accord with Mr. Tancell in this statement and those who are asking modification of this decree are merely asking for equality or opportunity and equality of treatment. I submit it is wholly contrary to the principles upon which the Constitution and laws of this country are based to pick out any man or group of men and say to them: "You can not have the opportunities and you shall not be given the same treatment given to others"; to prohibit any man or group of men to engage in any line of business which is lawful and free and open to every other citizen in the United States. I highly indorse Mr. Tancell's statement of principles and ask this committee to give them most careful consideration.

Edward W. Hoffman, page 353, said: "We realize that on any public question it is an easy matter to have resolutions drawn and passed by bodies which are not thoroughly informed and to have statements presented by individuals who are influenced by personal selfish motives." We agree with this thoroughly and entertain no doubt that a great number of the resolutions presented by those who are opposed to modification were never submitted to the members of the various organizations for their consideration.

This witness further states (p. 355): "We do not need any governmental protection against honest competition." I can not understand a statement of this nature, since it is very evident that those who are opposed to modification of this decree are asking for nothing other than governmental protection which will aid them by eliminating competitors.

This witness further states (p. 358), quoting from a letter of the Marshall Canning Co. "for every case of canned goods the packers would sell to the retail trade the jobber would sell one case less." A clearer statement of the position of the wholesale grocers to show their selfish attitude in this matter could not be given by anyone. They are simply opposed to anyone selling something which they would sell. I do not agree, however, with the statement that for every case of canned goods the packer would sell to the retail trade the jobber would sell one case less.

This might be true at the outset, but competition between the wholesale grocers and the packers in my judgment would develop demand in that prices would be lower to the consumer by that keen competition, and take fruit and canned goods out of the luxury class. Both of them would seek to increase their business and work into new fields and increase their trade to the benefit of the entire public, including the growers.

This witness (Hoffman) further states (p. 364): "The wholesale grocers of this country do not oppose the packers dealing in foodstuffs simply because it brought competition into the field. We objected, and rightfully do, to the fact that they were favored as to freight rates and preferential service."

The complete and final answer to this is the decision of the Interstate Commerce Commission, whose 11 members unanimously rendered their decision on this question after hearings extending over months. That decision takes up every phase of the claims of the wholesale grocers on preferential service, and the decision was against them. Where freight rates were thought to be unfavorable to the wholesale grocers such rates were corrected, and I wish to file with this committee, although I presume it need not be set out in the record, a copy of the decision of the Interstate Commerce Commission, in order that they may see how thoroughly this question of preferential service was covered and how each of the claims advanced here in this connection were taken up and fully disposed of by the commission, which has been authorized by Congress and which has been engaged for years in handling thousands of cases of similar nature. Since this body gave a unanimous decision, judicially decided against these claims of preferential service, I do not believe this committee will feel it incumbent on them to hold a post mortem hearing on such questions.

Statement of Mr. Thorne, who is chief counsel for the National Wholesale Grocers' Association, and that of Mr. William F. Bode, consist almost wholly of quotations from statements made in that case and which were before the Interstate Commerce Commission. Nothing new in this matter has been presented to this committee and they do not even attempt to say that anything new is presented. As I said in my opening statement, the wholesale grocers should not be permitted a retrial of those issues here.

In this connection, Mr. Chairman, I think you probably know that this case has been reopened by the wholesale grocers.

The CHAIRMAN. Well, not in the record. Mr. Thorne stated that it would be.

Mr. THORNE. Reopened by the packers.

The CHAIRMAN. By the packers?

Mr. THORNE. Yes, sir.

Judge HAINER. Has been reopened?

Mr. THORNE. Yes, sir.

Judge HAINER. When?

Mr. THORNE. Oh, a month ago.

The CHAIRMAN. Well, you stated you would file a petition to reopen the entire proceeding within 48 hours; has that been filed?

Mr. THORNE. Yes; that has been filed.

Judge HAINER. With the Interstate Commerce Commission?

Mr. THORNE. Yes, sir.

Judge HAINER. Well, has the order been entered by the commission to reopen it?

Mr. THORNE. No, sir. It was argued yesterday.

The CHAIRMAN. And have they ruled upon it?

Mr. THORNE. No, sir.

Judge HAINER. Well, how has it been reopened then? What do you mean by that?

Mr. THORNE. You do not quite follow me. You ask if the order to reopen has been entered by the commission. It has as to lard substitutes and compounds on application of the packers. That proposition was argued yesterday. Not the reopening of it, but whether lard compounds and lard substitutes should be exempted from their order.

Judge HAINER. Has that been ruled upon?

Mr. THORNE. No, sir. It was argued yesterday.

Judge HAINER. Well, now, you are a lawyer, aren't you?

Mr. THORNE. Yes, sir.

Judge HAINER. When we say a decree is entered that means that the court or tribunal entered that decree opening it. You mean an application has merely been made.

Mr. THORNE. I have not yet made myself clear. I said that a month ago the order reopening was entered, and the case was reopened and tried again on that issue, and was argued yesterday and submitted yesterday, and the order on the reopening issue has not been passed upon.

Judge HAINER. I get it now, thank you.

The CHAIRMAN. Proceed, Mr. Campbell.

Mr. CAMPBELL. Egbert Hawk, page 386. Mr. Hawk continues to "view with alarm"—

The CHAIRMAN. Pardon me. The judge wants to ask another question. I think, perhaps, I can clear the record on this. Correct me, Mr. Thorne, if I am in error on this. The meat packers filed an application for reopening of the Interstate Commerce Commission decision as to lard compounds and substitutes, which application was granted, and the hearing was had recently upon that, and arguments have taken place. The wholesale grocers, following that, filed an application for a reopening of the entire case, especially.

Mr. THORNE. No.

The CHAIRMAN (continuing). Especially for a reopening of the case as to preferential service, as to peddler car service. That application has not been passed upon, has it?

Mr. THORNE. No.

Judge HAINER. By peddler cars do you mean refrigerator cars?

The CHAIRMAN. Yes. Is that what you wanted?

Judge HAINER. Yes.

The CHAIRMAN. Proceed, Mr. Campbell.

Mr. CAMPBELL. "My information was that this whole matter was reopened, or was about to be reopened. I do not know whether it has been reopened yet or not. (Egbert Hawk, p. 386.)

Judge HAINER. Just another question. Is that in the case of 66—

The CHAIRMAN. Sixty-two I. C. C.

Mr. THORNE. No; 10745.

The CHAIRMAN. Well, that is the number, but the original decision is reported in 62 Interstate Commerce Commission reports?

Mr. THORNE. Oh, I beg your pardon; yes.

Judge HAINER. The one referred to here?

The CHAIRMAN. The one referred to here, yes. Proceed, Mr. Campbell.

Mr. CAMPBELL. Egbert Hawk. Mr. Hawk continues to "view with alarm," but, like some of the other gentlemen appearing in opposition to modification, states his belief (p. 386) "Equal opportunity to all and with privilege to none, so that the most efficient may prosper. This, I take it, means human progress." I agree thoroughly with Mr. Hawk's statement, but can not believe that he thoroughly believes in equal opportunity to all and special privilege to none. If he does, why is he here asking that citizens and corporations be barred from entering into a lawful business? His fears as to monopoly are based upon transportation services, which question has been disposed of by the Interstate Commerce Commission decision mentioned, and further voices his fear of capital. As I pointed out, the courts of this country, including the Supreme Court of the United States, have stated that mere size is no offense against the laws of this country, and there is no limit in America to which a business may not independently grow. The fact that one concern has more capital than another does not, as I understand the American Constitution, subject that company to any different application of the laws. Such idea is wholly contrary to the spirit and principles underlying the Constitution of the United States.

The CHAIRMAN. Mr. Campbell, will you be willing to submit that for the record without reading it?

Mr. CAMPBELL. Absolutely.

The CHAIRMAN. Is that satisfactory to everybody? [After a pause.] If it is, it may be submitted for the record and inserted in the record without reading.

Mr. THORNE. I want to call attention to one correction—rather, I want one correction made on the record. He referred to me as the chief counsel for the National Wholesale Grocers' Association; I am not their chief counsel.

Judge HAINER. Mr. Breed is the chief counsel?

Mr. THORNE. That happens to be true.

Judge HAINER. Were you one of the counsel?

Mr. THORNE. I was one of the counsel before the Interstate Commerce Commission.

Judge HAINER. Are you willing to correct that, Mr. Campbell?

Mr. CAMPBELL. I will correct it. He seemed to be the most eminent attorney here.

Now, there is one thing that I wanted to call to your attention particularly, and that was with reference to this rice monopoly matter. I have, I think, covered that pretty well here in answer to Mr. Lichty. Of course, that will go into the record along with this other matter. But I have since come across this bulletin, and there is one paragraph in there that I think might well be written into the record.

The CHAIRMAN. What is the name and number of that bulletin?

Mr. CAMPBELL. It is "Prices of oats, rice, buckwheat, and their products, by Harley R. Willard." It is a bulletin of the War Industries Board, Bernard M. Baruch, chairman, 1919, Price Bulletin No. 11.

There is one paragraph here that covers the period that we are discussing in regard to this cost, which I desire to read into the record in connection with my comments with reference to Mr. George E. Lichty, because it has reference to this argument.

(The matter submitted by Mr. Campbell for the record is as follows:)

Page 398:

S. M. JANNEY,
Fredericksburg, Va.:

This witness states that "this country is built and has grown great on the bedrock principle of equal opportunity to all."

As I have stated, I believe in this doctrine thoroughly, and further believe that no aggregation of wealth will ever reach the point where the laws of our country will be insufficient to protect the public against any unfair or improper use of wealth to the detriment of the people.

H. A. N. DAILY,
National Fruit Brokers' Association, Philadelphia.

Like others opposed to the modification of the decree, Mr. Daily is largely content with stating that his opposition is based upon the ground that such modification would be contrary to public policy and would be encouraging monopolistic tendencies which might eventually throttle the food industry. He fails to present any facts or figures which show that this eventuality is anything other than a remote possibility. Mr. Daily's real interest in the matter is

disclosed in the wire which he reads into this record (p. 481), wherein it is stated:

"Replying your letter 26th, in connection permitting meat packers to reenter wholesale grocery business, would most certainly result in largely curtailing jobbers' volume of business, also in severe competition of canners, as meat packers would undoubtedly enter canning business on large scale; therefore eventually available business for brokers would be greatly reduced."

This phase of the matter is made even more apparent in a letter which Mr. Daily presents (p. 487) [reading]:

"Our association is not in favor of any modification by the Department of Justice which will permit the five big meat packers to reenter the wholesale grocers business in the distribution of canned food and dried fruits. Can't help but believe if the packers get back in the game again it will eventually whittle down the earnings of the brokers."

Mr. Daily, in further support of his opinions, reads in the record (p. 492) letter from Mr. Floyd E. Bowen, of the Bowen-Hassett Co., of Detroit, Mich., wherein Mr. Holbert states:

"I am positively against (their) the packers competing with the wholesale grocery trade."

Mr. Daily also presents (p. 492) letter from a New York City banker, George Knowland, stating:

"In our opinion it would be detrimental to the entire grocery trade to have the five big meat packers reenter the wholesale grocery business, because they would come into direct competition with the wholesale grocers who are organized to do a grocers business."

These few extracts from the testimony of Mr. Daily disclose that while ostensibly he is greatly interested in the questions of public policy involved, his real interest and the interest of those associated with him shows through again and again that these gentlemen are actuated by purely selfish motives and from that standpoint can not be blamed for wishing to eliminate competitors of their friends, the wholesale grocers. Alfred H. Beckman, secretary-treasurer National Chain Stores, who testified here against modification of the decree, I am informed was formerly secretary of the National Wholesale Grocers' Association. He did not claim to officially represent the chain stores. He testified that the chain stores frequently had trouble with the wholesale grocers. It is possible that his former connection with the National Wholesale Grocers' Association had something to do with his testimony.

Mr. J. A. M. Wilson states:

"What we object to and what we fear is unfair methods of competition."

If this is really Mr. Wilson's position in this matter, he should be advised by the eminent counsel representing the Southern Wholesale Grocers' Association and the National Grocers' Association, that section 5 of the Federal Trade Commission act declares unlawful "unfair methods of competition" and that all Mr. Wilson need do should he encounter such, is to report the facts to the Federal Trade Commission, who, no doubt will seek to have any of his competitors corrected in such unfair methods. Mr. Wilson should know also that the Clayton Act declares unlawful certain unfair methods of competition in specific terms, and under the provisions of said act no doubt Mr. Wilson could be fully protected. Mr. Wilson (p. 556) frankly states:

"That the wholesale grocers have been dependent upon the large margins of profit carried by the canned fruit items in order to bring his average gross profit up to the point where it will cover his operating expenses and leave a net profit in return for his labors."

This is exactly the point which I made in my original statement, namely, that the canned foods bore an unequal proportion of the distributing cost.

Ex-Senator Hoke Smith (p. 556) stated that he had a resolution which had been adopted by the rice growers. It will be noted, however, that upon reading the case, that it is in fact a resolution of the Rice Millers' Association. This is a plain case of attempted misrepresentation.

John G. Clark, wholesale grocer, Bad Axe, Mich., states he is objecting because he believes the packers have been given preferred and expedited service in transportation matters. This proposition is answered, of course, by the Interstate Commerce Commission's decision heretofore referred to.

Mr. Clark states (p. 575) that, estimating 5 per cent of known packing-house products that Swift & Co. handled, all their entire volume of business prior to their signing the consent decree would be about \$60,000,000 per year. I should like very much to know upon what authority Mr. Clark bases his

estimate that 5 per cent of the business of Swift & Co. was canned goods. It is well known that Libby, McNeill & Libby, formerly a subsidiary of Swift & Co., was separated from that company in 1918, and that prior thereto 80 per cent of Libby, McNeill & Libby's distribution was through wholesale grocers and only 20 per cent thereof through Swift & Co. Mr. Clark's estimate of \$80,000,000 of canned goods handled by Swift & Co. is not based upon any facts whatsoever which could lead to any such conclusion, and I challenge him to present any facts from which such a conclusion could be reached. Mr. Clark complains that in 1919 some packer sold tomatoes at a dollar a dozen in Port Huron when the market at that time was \$1.70. He does not know what the tomatoes cost. His objection is that he could not meet other competitors, who secured an advantage through the fact that the packer could afford to sell tomatoes at a dollar a dozen while Mr. Clark held the price of \$1.70 per dozen.

Mr. Clark states (p. 586) that the packers handled good-quality goods; that "their goods are usually very, very good and their service prompt."

Mr. Clark states (p. 587) that the smaller meat packers do not own refrigerator cars of their own. If the committee will examine the report before them in the Interstate Commerce Commission case, they will readily see that certain of the so-called smaller packers do own their own refrigerator cars and are using them in developing a trade in wholesale grocery items; and no doubt, as these smaller packers' volume of business increases, the wholesale grocers will make the same objection to them as competitors.

R. L. Fitzwater, Buffalo, N. Y., states that his fears in this matter are based upon what he believes an unfair advantage which the meat packer has in the way of transportation facilities. As I have heretofore stated, the Interstate Commerce Commission was originally organized and has been functioning for practically 30 years for the very purpose of eliminating any unfair transportation advantages enjoyed by any person or corporation, and no doubt such commission will continue to protect the interests of the public in this respect.

Mr. Daily asks (p. 607) if Mr. Fitzwater knows of any attempt having been made by any interest outside of the meat packers to buy, own, and control cars in order to meet their competition. Mr. Fitzwater replies that he does not. Upon what assumption of facts is Mr. Daily's inquiry based, in view of Mr. Thorne's testimony as to the manner in which refrigerator cars were developed by the meat packers in order to care for the meat business? Where has it ever been stated by anyone conversant with the facts that the packers have ever bought, owned, or controlled cars in order to meet competition against the wholesale grocers or any other concern?

Mr. B. D. Crane, of Fort Smith, Ark., bases an objection upon what he claims is to expedited service given the packers' refrigerator cars. As heretofore stated, the Interstate Commerce Commission's decision answers all this, and if the committee will kindly consider that decision they will find that every phase of this matter was taken up by the commission and fully discussed and a unanimous decision rendered that the packers did not enjoy unfair advantages in transportation service. Surely if the wholesale grocers' claim in this respect had been meritorious, at least one member of the Interstate Commerce Commission would have rendered a dissenting opinion in the matter.

Mr. Crane (p. 617) points out "the theory and temper of our laws is for equal opportunity to all and special service to none, and the Sherman law and the Clayton Act were both in the public interest and as against monopoly."

I agree thoroughly with Mr. Crane in this statement that all I am asking for is an equal opportunity to all, and I am firmly of the opinion that the Sherman Act and the Clayton Act and other antitrust laws are wholly sufficient to control any monopoly or attempt to monopolize, should such conditions arise. Mr. Crane, like all others opposed to modification of the decree, failed to state any facts which show any combination, contract, agreement, or understanding among the five meat packers, to whom reference is so often made. As I stated at the outset, the Government in its petition did not claim that these five defendants were acting together in regard to so-called unrelated lines, and such proof is absolutely necessary, as I understand it, in order to establish a monopoly or attempt to monopolize within the legal definition of those terms. Nothing has been shown by any witness that these five are not in the keenest competition with one another in the distribution of wholesale grocery items. I assert that they are in competition and challenge these gentlemen to present any facts whatever to show otherwise. They continue to lump their sales together, however, although there is no real reason for doing so, any more than to lump together the five sales of the five largest wholesale grocers and apply to them

the term the "Big Five," or some other appellation which would carry with it the idea of joint action.

Mr. Crane states (p. 620) that in certain lines the packers handle as high as 25 per cent of the volume of business. He states his source of information is seeing the goods on the customers' shelves "through the eyes of our salesmen, and from the statements of our salesmen, and from the reports that come in to us." Surely the committee is not going to accept any such statement as this as evidence. The wholesale grocers opposed to modification of this decree must have smiled when they heard such statements as these when each of them well knows the line of salesmen excuses given the house when he is unable to fill his order book. This is mere "salesman talk," as it is known in the trade and should be given no weight whatever by this committee.

Mr. Crane states (p. 636) that the number of canners run "probably into the hundreds, maybe into the thousands." The committee should bear this statement in mind in connection with the many assertions that the packers might control the sources of production.

Mr. George E. Lichty, who has been in the wholesale grocery business for 32 years, represents the Iowa, Nebraska, and Minnesota wholesale grocers, and is an ex-president of the National Wholesale Grocers' Association, and therefore well qualified to speak as to the volume of wholesale grocery business in the country, states (p. 678):

"I estimate that the business of the branch wholesale grocers will range from five hundred thousand a year to five million per year; but this would not include many local jobbers whose business is even less, but it would include the majority of grocers interested in the issues in this matter."

If we accept the figures of the wholesale grocers as to their number at 4,000, although they have corroborated my statement that there are, in fact, approximately 5,950 of them, and assuming this average stated by Mr. Lichty, we find that 4,000 wholesale grocers doing a business would amount to \$2,000,000,000, while 4,000 of them sound business at five million per year would amount to \$20,000,000,000, while 4,000 doing business of \$2,750,000 a year—that is, midway between five hundred thousand and the five million—we find their business would amount to eleven billions.

I would at this point respectfully ask the committee to refer to the figures introduced in my statement compiled by the Bureau of Research, Harvard University, showing the average annual volume of business transacted by wholesale grocery firms reporting to that bureau, and which figures show a constant increase in volume of business transacted during the years that the wholesale grocers claim the meat packers were making such alarming inroads into their wholesale grocery business.

Mr. Lichty states (p. 685) that while he was connected with the Food Administration they found at that time—1918—there were a few less than 3,100 wholesale grocers. He now states (p. 688) that if the figures as to the number of wholesale grocers were reviewed they would not show 5,950 of the "so-called wholesale grocers, and these fellows who buy at wholesale prices and sell at retail, I believe it would come down nearer to 5,000."

Accepting Mr. Lichty's statement as correct, it would certainly show a healthy increase in the number of wholesale grocers between 1918 and the present date.

I note Mr. Lichty states (p. 691) that he found his company handled, according to their cost book, 6,000 items. The committee might wish to consider this in connection with the claim that wholesale grocery items, as far as the packers are concerned, are "unrelated products." I am wondering what the wholesale grocer would consider an unrelated product as regards his own business.

Mr. Lichty claims (p. 693) that in Wisconsin the meat packers control more than 65 per cent of the cheese production. I believe this statement wholly incorrect, particularly so since Mr. Lichty does not support it by any figures as to the total production, and, of course, neglects to state that the meat packers who buy cheese sell it in competition with one another as well as with the wholesale grocers, and further, that the meat packers buy the cheese throughout that State as elsewhere from dealers, and I entertain no doubt that such dealers would sell as readily to the wholesale grocers as they do to any other customer. If the wholesale grocer were disposed to buy.

Mr. Lichty states (pp. 725, 726), in taking up the question of what he calls "the packers dealing in rice" and attempts to discredit my previous statement on this point. Armour & Co. is the only one of the Big Five packers handling rice, according to Federal Trade Commission reports, so there is no use in

Mr. Lichty trying to confuse this point by referring to "the packers." He says: "I think you will find something like this, that they handled 165,000 bags of rice in their wholesale grocery trade." There is no statement anywhere with which I am familiar as to the number of bags of rice handled by Armour & Co. Mr. Lichty by later giving the weight of a bag of rice as 100 pounds attempts to confuse this issue. The charge of the Federal Trade Commission is, and the charge which I met is, that Armour & Co. sold 16,000,000 pounds of rice in 1917. Whether this rice was packed in bags, cartons, or sold in bushel baskets I do not know. Let us stay with the facts, or at least the charge made by the Federal Trade Commission. Mr. Lichty then goes on to state positively "the packers distributed about 165,000 bags at 100 pounds each." I do not believe Mr. Lichty knows this; but he states it very positively. I mean he does not know whether the rice was sold in bags or cartons or how many bags there were. However, accepting his statement as correct, 165,000 bags at 100 pounds each would amount to 16,500,000 pounds. You will not that Mr. Lichty has, inadvertently of course, increased the amount by 500,000 pounds over the figures stated by the Federal Trade Commission, their statement being that Armour & Co. handled 16,000,000. Mr. Lichty then goes on to claim the total production of rice in the United States that year was about 9,000,000 bags of 100 pounds each. He does not state, however, the source or authority of the statement or why or how he knows that each of the 9,000,000 bags contained 100 pounds each. He then says that it would take 16,500,000 bags the way I computed it.

We are not concerned with the question of bags of rice or whether any rice was packed in bags. We are interested in the total production of rice in the United States, which, according to page 504 of the 1918 Yearbook of the Department of Agriculture, was 34,739,000 bushels. They do not state whether rice was placed in bags or not, or how many pounds each bag contained. They differ from Mr. Lichty at least to that extent. I do not think there is a court in the land, and very few citizens, who would not accept as more authoritative a report of the United States Department of Agriculture as to the total rice production of the country than a statement by Mr. Lichty that the total production of rice in the United States for 1917 "was about 9,000,000 bags of 100 pounds each."

As I have previously stated that 45 pounds per bushel, which is the figure for rough rice, it is larger than that for cleaned. But the Department of Agriculture is not clear whether it means rough rice or cleaned rice; so taking the smaller figure, which gives a lesser total, that is 1,500,000,000 in round numbers—1,563,155,000, to be exact.

If the committee will then make their own computation as to what percentage 16,000,000, as stated by the Federal Trade Commission, or 16,500,000, as stated by Mr. Lichty, is of 1,563,000,000 pounds, I think they will find the figure nine-tenths of 1 per cent correct, where there is added to the total imports of rice, which for the year 1917 amounted to 266,000,000 pounds.

When Mr. Lichty was questioned as to whether any rice was imported, he states: "Very little rice, because the only rice that came into this country came from the Dutch possessions." But he absolutely and totally fails to state in figures as to the imports of rice into the United States for the year 1917.

I consider this point extremely important, because the Federal Trade Commission has referred to it as "This is perhaps the most striking instance of the potentialities in this direction"—meaning in the direction of monopoly. Moreover, the star witness for the National Wholesale Grocers' Association, Mr. Bode, read into the record this part of the Federal Trade Commission's report concerning the rice question and commented on it as one of the things which caused him to view with alarm along with the other wholesale grocers, the proposition of allowing others beside the wholesale grocers to enter into the field of competition. Mr. Bode, probably along with hundreds of wholesale grocers, continues to disseminate information of this kind, which, if the full facts were known, is one of the best illustrations of the old maxim that a half truth is worse than a falsehood.

I might refer also at this point to the statement of Mr. Bode that Swift & Co. is the largest distributor of butter in the United States, and that they handled in 1918, in round figures, 50,000,000 pounds. This was referred to by other witnesses as well and in the Federal Trade Commission report, and I believe one of the exhibits introduced by Mr. Thorne containing extracts from the Federal Trade Commission reporting this proposition, is set out in yellow journal style. Fifty million pounds of butter sounds like a tremendous

amount. However, the total production of butter in 1918 was 1,475,000,000 pounds and the quantity entering trade channels was 1,050,000,000 pounds. The amount of butter distributed by Swift & Co. shrinks in importance, as does the rice distributed by Armour & Co., when the total production of the entire country is given consideration.

Presumably, the Federal Trade Commission and the wholesale grocers inadvertently overlooked the factor of total production of the country as compared to the amount distributed by any one of the meat packers.

I am indebted, and feel that this committee and the public are indebted, to L. D. H. Weld, manager of the commercial research department, Swift & Co., formerly professor of business administration at Yale, who has gone into this question thoroughly and who testified before the Interstate Commerce Commission on these points. While those opposed to modification of this decree may say that Professor Weld is in the employ of one of the packers, they can not, nor can he, change the figures given by the Department of Agriculture as to the total crop productions of this country.

I have here an abstract of the evidence before the Interstate Commerce Commission in the case of National Wholesale Grocers' Association *v.* the Director General of Railroads and the Southern Wholesale Grocers' Association *v.* Southern Railway Co. Mr. Weld's testimony was given under oath before an examiner of the Interstate Commerce Commission and if this abstract of evidence is incorrect, I believe Mr. Thorne has already stated that he will leave with the committee the transcript of record in that case and the committee can itself check up the transcript, since this abstract refers to the pages of the original transcript.

(The paragraph from the bulletin entitled "Prices of oats, rice, buckwheat, and their products," referred to by Mr. Campbell, is as follows:)

"Upon the entry of America into the war the prices of all kinds of rice rose rapidly. Thus rice showed the same tendency as other cereals. After March, 1917, the relation prices of both Honduras and Japan rice increased rapidly, Japan much more than Honduras. From March to May, 1917, the price of Japan increased 82 per cent; that of Honduras, 43 per cent. Except in a few months, the prices of both types continued to advance until July, 1918, again Japan more than Honduras."

Mr. CAMPBELL. I put this into the record, Mr. Chairman, because of the statement in the Federal Trade Commission in this rice matter that during this period rice increased 65 per cent in price.

I will say in connection with this rice matter that after studying very carefully all the date which was available on this rice in production and consumption in this country, that my figures as given in my original statement are approximately correct. I can see no difference.

There is one statement here that I want to speak of while our eminent friend ex-Senator Hoke Smith is here, which is this: Ex-Senator Smith stated that he had a resolution which had been adopted by the rice growers. It will be noted, however, upon reading the same that it is, in fact, a resolution of the Rice Millers' Association. Millers and growers are a long ways apart in this world on some things.

Mr. SMITH. I do not remember the statement. Some one gave me the resolution, and I stated what I understood it was, as I was told when it was handed to me.

Mr. CAMPBELL. Some of the witnesses took up the matter of the foreign trade. Their argument was something like this: They said that if the surplus were exported that the prices on food would advance, and they seemed to be opposed to foreign trade, and were interested in allowing the surplus of food to accumulate in this country in order to force the producers to take less in price. As the producers' representative, I am unable to understand their point of view. We have here, for the past two years, been trying to work out some better method of exporting; some way of exporting our surplus products and get money for them for the farmer. The War Finance Corporation has been re-established, and everything has been done to assist in the exporting of these foods. I can not understand why these eminent attorneys allowed the witnesses to be cross-examined in such a way as to bring out those things.

As to the attitude of our California delegation in this matter, referring to my friends Messrs. McKinney and Chase, I have here a bulletin, No. 62-A. And I love to quote from Mr. McKinney's bulletins. They contain words of wisdom. This is signed by Mr. McKinney, and I know, therefore, it is good.

He says [reading]:

[Bulletin No. 62A.]

"CANNERS' LEAGUE OF CALIFORNIA,
"San Francisco, Calif., August 12, 1919.

"Foreign trade in canned goods.

"To Members: A joint meeting of the executive committee and the foreign trade committee of the canners' league was held Wednesday, July 30, and plans were made for an energetic campaign to improve the export possibilities on California canned fruits.

"For several weeks V. H. Pinckney, acting for Chairman C. H. Bentley, of the foreign trade committee and the secretary of the league, have been compiling data from governmental and other sources to be used before the Ways and Means Committee of the House of Representatives in an effort to secure a section in the new tariff bill which will enable this country to enter into trading negotiations with other countries covering the duties they charge for canned goods and other products. If this can be accomplished, then the countries which, for example, are charging as much as 50 cents a can duty, will be approached by our Government with the proposition that if they will reduce their duty on canned goods to a reasonable figure, we in turn will make more favorable arrangements for the importation into this country of their products.

"An immense amount of data has been prepared by Mr. Pinckney showing the imports of canned goods into all countries of the world, the duty charged, etc. He has also made a most comprehensive study of the various treaty provisions which must be met if a reciprocal tariff becomes operative.

The secretary of the league has compiled data showing the increased production of fruit in California and the likelihood of further increase, the purpose of this being to show to Congress the necessity for enlarging our market as soon as the present abnormal war conditions cease.

"Members generally will be interested in some of these figures, which are given below:

"It is a certainty that the production of fresh fruit in California will increase very rapidly in the next few years. This is borne out by official documents issued by the State commissioner of horticulture, in which he quoted the acreage now planted in California and not yet productive, his figures being based on a compilation of the assessor's rolls of each county. The California nonbearing acreage—that is, acreage planted out and soon to come into bearing, in 1918 is shown below:

	Bearing acreage, 1914.	Bearing acreage, 1918.	Non- bearing acreage, 1918.	Total.
Apples.....	29,213	43,647	15,684	59,331
Apricots.....	32,234	40,886	19,444	60,330
Cherries.....	8,981	8,610	5,187	13,803
Peaches.....	101,995	107,575	12,388	119,963
Pears.....	23,351	22,416	23,087	45,503
Plums.....	10,178	17,284	4,656	21,940
Olives.....	9,117	18,801	12,222	31,023

"These surveys are quite interesting. The totals are bearing and nonbearing acreages, of which over half of them are nonbearing acreages. In apples, you will notice, the total is 59,331 acres, of which 43,647 were bearing, and 15,684 were nonbearing. Of peaches, the total is 119,963, of which 107,575 were bearing and 12,388 were nonbearing. In olives the total is 31,023. [Continuing reading:]

"It will be noted that in the case of pears the nonbearing acreage is larger than the bearing acreage, indicating that within the next five years the production of pears in this State will double. The other figures all are of sufficient size to require the most serious consideration of foreign markets by canners and driers of this State.

"The increase in acreage in the period from 1914 to 1918, inclusive, with its resultant increased production, has been largely overcome by the unusual and sporadic foreign demand. This unusual demand can not be figured as a constant

factor in the future marketing of our fruits, for world conditions will return to normal eventually, and thus even if our production remained where it is we would naturally look with fear on our ability to market our pack, unless it became possible to better facilitate the exportation of our product to foreign countries.'

"Every member of the league should get behind this effort to increase our export business in every way possible. While the present market certainly does not require any added outlet, we must all of us lay our plans for that time which is sure to come when the seller's business will not be as favorable as it is to-day. Every case of canned goods which is sold in a foreign market helps the market situation for every canner whether he gets the export business or not—this for the reason that every case exported ceases to be a competitor for domestic business.

"The above plans are given in detail to all members for the reason that the executive committee of the league desires as much guidance as possible covering this campaign.

"Would appreciate letters from any member expressing their ideas.

"Yours very truly,

"CANNERS' LEAGUE OF CALIFORNIA,
"PRESTON MCKINNEY, *Secretary*.

Judge HAINER. What is the date of that?

Mr. CAMPBELL. August 12, 1919. These facts, as prophesied by our friend, Mr. McKinney, are now here. Our acreage and our tonnage in California is constantly increasing. We sold, in canned fruits from California, previous to the war, some 5,000,000 cases of canned fruits, and we often sold those with difficulty. During the year the volume increased to 16,300,000 cases.

Mr. MCKINNEY. The whole industry?

Mr. CAMPBELL. Just the canned fruits. We have now arrived at the place where we are practically forced on the domestic market for these fruits. We find it difficult to market the total of this business. So much so, if we had a normal crop next year throughout the United States, I agree with one witness, Mr. Crane, I believe it was, of the wholesale grocers, that if the crop had been normal this year it would have been impossible to market the canned fruits of California.

Judge HAINER. Mr. Campbell, did the big five packers before this consent decree was entered engage in exporting canned goods?

Mr. CAMPBELL. Very extensively engaged in it, Judge. My acquaintance with their export facilities was largely with Armour. He sold some canned goods to the smaller packers. But our goods were shipped all over the world. In our warehouses I would find cases marked to almost every country in the world. Immediately they went out of this business, or were driven out of it by this decree, we lost all of that trade. We have no other companies who are equally equipped with the machinery for the export trade. The packers distribute their meat into all parts of the world. For instance, Thomas Lipton's organization is the selling agency in India for Armour. They will get orders for as high as 50,000 cases of goods to be distributed in India. To-day it is unlawful for these people to take these goods and ship them out of this country. I might multiply these things indefinitely for the committee.

Judge HAINER. The decree prohibits it?

Mr. CAMPBELL. The decree prohibits it, absolutely.

Judge HAINER. Now, do you think it would be injurious to the fruit growers and canneries of California to permit this exportation or would it be beneficial?

Mr. CAMPBELL. I do not, Judge. I think I had as well open up the situation and tell you exactly what is in the minds of the California men who appeared here in opposition of the modification of the decree. Many of the packers, for instance, Mr. Richmond, who is a partner in the Richmond-Chase Co.—

Judge HAINER. Fruit packer?

Mr. CAMPBELL. Yes, sir.

Mr. SMITH. How can he tell what is in the mind of anybody; isn't that going a little too far?

Mr. CAMPBELL. Mr. Chairman, I think I can proceed with complete satisfaction to the men who asked what I know about the mind of another man. I will state it in another way if it is offensive to him.

Mr. SMITH. It is only offensive because I think it is illegal.

The CHAIRMAN. Proceed with what you know, Mr. Campbell.

Judge HAINER. Base what you have to say on what you know.

Mr. CAMPBELL. Mr. J. Ogden Armour and Mr. Thomas Wilson have stated to me many times that they are in favor of all farm cooperative organizations. Both of these men are exceptionally high-type men. Their business dealings, so far as I know in dealings with either of them, have been perfectly clean, and their transactions are clean and above board. I do not know as I can say so much for the other three, because I do not know so much about them. But I do know this, Swift & Co., through their control of Libby, McNeill & Libby, have joined hands with the jobbers in the distribution of their goods. That Louis Swift is opposed to the modification of the decree. I do know that Mr. Creigh, attorney for one of the other packers—

Judge HAINER (interposing). Cudahy.

Mr. CAMPBELL. Cudahy & Co. has been opposed and, I suppose, is still opposed to the modification of the decree. I do know that Morris & Co. have side with Swift & Co. in opposition to a modification of the decree. Cudahy & Co. is distributing Old Dutch Cleanser and some other commodities through the trade which use the packers for distribution. Those three packers are opposed to it, because their interests are identical with the interests of the wholesale grocer, while Mr. Armour and Mr. Wilson are free from entanglements with the wholesale grocers, and has stated to me frequently that they are in favor of the grocers' cooperative organizations. Cooperative organizations can not be, unless there has been a change in their attitude friendly to the wholesale grocers in the way of armed neutrality, for the reason that the dried-fruit packers of California and the packers, like the Packing Corporation and Libby, McNeill & Libby on the coast, are all of one mind as to the dangers of cooperative organizations among the growers in limiting their profits.

Mr. SMITH. Now, Mr. Chairman, how does he know their minds? If he can put in some evidence of what they have done, that would be admissible. But for him to sit here and philosophize about the psychological situation of these men is not evidence.

Judge HAINER. He states he has had various conversations with them.

Mr. SMITH. That is all right; if he has talked with them, then let him say so.

Judge HAINER. Have you talked with them?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. With whom?

The CHAIRMAN. He will answer questions after he finishes his direct statement.

Mr. SMITH. I insist he should state—

Mr. CAMPBELL (interposing). I object to these gentlemen disturbing me, because I did not disturb them—

Mr. SMITH (interposing). I insist on disturbing him if he does not tell the facts. He has not the right to sit here and fill the record with mental processes about these men.

The CHAIRMAN. He has stated that it was from conversations.

Mr. SMITH. Then he should state the conversation and let the commission reach a conclusion on it, and not give his conclusion.

Mr. BREED. And the names.

Mr. SMITH. And the names of the men who said it.

Judge HAINER. If we applied the strict rules of evidence in a proceeding of this kind, we would have to strike it all out.

Mr. SMITH. There has very little gone in under the strict rules of evidence that has gone in anywhere. But this expression from this witness seems to me to be simply unthinkable for any kind of evidence.

Mr. GRAY. We have heard it here for 10 days.

Mr. SMITH. You have nothing of the sort.

Judge HAINER. Just proceed, and state the facts.

Mr. CAMPBELL. I do not want to disturb these gentlemen, and I will go on with my argument.

Judge HAINER. What I want to bring out is in relation to the export business. You got away from that, and it was really not responsive to the question.

Mr. CAMPBELL. I am sorry; but I remember the attorneys on the other side did that themselves.

Mr. BREED. Is it proper to ask whether these statements of Swift and Armour favorable to the others were authorized? Are you authorized to make those statements for those men?

The CHAIRMAN. He will answer that when he gets to answering questions.

Mr. BREED. Why not now?

The CHAIRMAN. He insists that he should not be disturbed, and he has that privilege.

Mr. STEVENS. These points arise in our minds, and we may forget them. Would it be proper for the chairman to ask him now?

The CHAIRMAN. You would not be permitted in any proceeding in court to interrupt and cross-examine.

Mr. STEVENS. This is explanatory.

The CHAIRMAN. You may proceed, Mr. Campbell.

Judge HAINER. Let us go on and get through.

Mr. CAMPBELL. In my opening statement I made some economic argument, and as the witnesses on the other side went into it pretty fully, I will give you a little more on that subject.

I charged the wholesale grocers as being the hub of our present distributing system; that they were in control of this system. They confirmed my charge by their own witnesses. They claim, and it is true, that the majority of cannery are unable to finance their packing operations without future orders; they are thus in a position to dictate both price and terms to the small canner. There is no other buyer to whom he can go but the chain store and mail-order house, whose volume of business is too small to give the canner protection through competitive buying. Wholesale grocers freely confess, through their witnesses, that they finance 75 per cent of the retail dealers, thus holding their customers in their power.

The wholesale grocers admit they were called in consultation by former Attorney General Palmer in formulating the terms of the decree; they admit by their presence here of themselves and their attorneys that they are the beneficiaries of the operation of this decree by the elimination of their competitors.

Mr. BREED. They did not admit that. You are mistaken, I think, when you say that the wholesale grocers admitted that they were called in by the Attorney General in the formulation of this decree. I do not think I should let that pass, because it might be taken as an admission against the truth.

Mr. CAMPBELL. Many wholesalers appearing here have stated that they could not compete with the packers; many others were as equally emphatic that they could compete in cost of service. Such differences of opinion among witnesses as to what they could or could-not do in competition makes it impossible for me to answer. The witnesses did not seem to be in agreement; the one opinion they all seemed to agree on was that they could not compete in service, due to the packers' superior delivery facilities, on account of route cars used by them.

I stated to the committee that the wholesale grocers should not be allowed a retrial before the Interstate Commerce Commission of the case which they lost before that tribunal. But, so far as I am personally concerned, I am pleased that the committee did allow them to so fully present the facts in this case. Mr. Clifford Thorne made a most wonderful impression upon me by his most hearty indorsement and complete exposition of the packers' wonderful distributive system. Since his testimony I am more than ever convinced that the packers have machinery for distribution which should not be denied to the people of this country.

I would like, Mr. Chairman, to have you consider Mr. Clifford Thorne's statement regarding the economic value of this distributive system and the careful explanation of the method of its operation as a part of my testimony in support of my contention that the people of this country should not be denied the use of these facilities. One wholesale grocer has stated that it required 7 to 32 days for him to ship groceries from Chicago to a point 100 miles out, while the packers make delivery within 24 hours. It seems to me that all such statements of the wholesale grocers are extremely damaging to their case. I can not imagine why their attorneys allow such evidence to be written into the record. Certainly, as a representative of the producers, I would suggest that unless the wholesale grocers mend their methods of handling foodstuffs in a way that will give better service they should be eliminated and some one else substituted. The producers and consumers of this country are looking for service.

I am of the same opinion as the Interstate Commerce Commission on this subject of service: That instead of preventing the meat packers rendering this very necessary service, the wholesale grocer should equal that service—or even better it—by establishing their own route-car system. I call attention to the

progressive methods of some retail dealers in modern methods of cooperative delivery.

I want to call the attention of the committee to the cooperative method of delivery by many of the retail dealers in some of our larger towns, by the establishment of a cooperative system, through which goods are picked up at the stores and delivered by one truck, just eliminating duplication of service. It occurs to me that the wholesale grocers in cities of sufficient size might join together in a cooperative delivery system similar in nature, delivering their goods to these destination points by a route-car service, which might be used in common.

There is no reason why the wholesale grocers in large shipping centers could not cooperate together and join with the green fruit and vegetable jobbers in establishing such delivery. There is no reason why with their large variety of products, their superior salesmanship, long years of experience in this business, that they should not be able to compete with the packers and, in fact, render this service at an equal or less cost than the packers.

One witness testified that the packers had driven them out of the butter business, largely because the packers, through the use of refrigerator cars, delivered butter in good condition, while the butter they handled reached its destination melted and otherwise unfit for consumption. All such arguments, of course, are extremely favorable to my contention in the matter. The conclusion of this witness, I suppose, would be that the people should eat butter in fluid form, allow it to get rancid in transit, and otherwise submit to annoyance and inconvenience so that the wholesale grocers might continue to render unsatisfactory service to the people.

There is an article in the February, 1921, issue of the Wholesale Grocer which, I might say, is a conservative magazine devoted to the interests of the wholesale grocers of the United States. It is a very short article. It is headed "Penalizing efficiency" and refers to the Government's interference with the packers, and is entirely in favor of my contentions, as representing, I think, the views of the wholesale grocers, and I would like this short article written into the record. I do not need to read it. It is a very strong argument on the economic value of the packers in distribution.

The CHAIRMAN. It may go in.

(The article referred to is as follows:)

"PENALIZING EFFICIENCY.

"It does not seem possible that a group of men possessing an ordinary degree of intelligence would solemnly put themselves on record as favoring such a silly bill as that which has passed our great Senate for the regulation of the packing industry. It seems hardly possible to treat this piece of law making in a serious vein. The only object to be attained is to make a few more Government jobs for distribution; at least it seems that this can be the only real purpose of the bill.

"In all the activities looking to the destruction of the meat-packing industry as now conducted, there does not appear to be any reason advanced except in meaningless general terms.

"The meat producers, of course, charge the packers with manipulating prices. They want more for their beef and pork. That is their sole interest in the matter. Under such regulations as are proposed they will get less for their meat, because the market will lack stability. It will be up and down, and the stock grower will find it generally necessary for him to sell when the market is down.

"Any man fit to sit in the Senate ought to know and may know that the big packers do not and can not control the live-stock market. They buy from day to day in competition with anyone who wants to buy sufficient live stock for their daily needs. They have a large killing, packing, and distributing organization that must be kept going daily. They must buy live stock every day and pay the market price, and this price is regulated by the law of supply and demand.

"On the other hand, the consumer is asking for lower priced meat products. How are the wise Senators going to provide for higher prices to the cattle producer and lower prices to the consumer? The proposition is ridiculous. The packers lost millions of dollars last year because they paid too much for live stock on the hoof, and sold the finished products too low. These facts may be known to all Senators. Having that knowledge, what would they do? Tie the hands of the packers so they would lose more money. The packers, facing

a certain loss, would shut up shop and we would see such a big difference in the cost of handling meat products that live stock would be lower and meat products higher.

"This is just what we are coming to if the Senate bill becomes a law. The law will operate just contrary to the way it is pretended it will work.

"The packers' organization is probably the most efficient business organization in the country, rendering splendid service on the smallest possible margin of profit. If this efficiency is to be penalized by our lawmakers the country at large will suffer, live-stock producers and consumers alike. One thing this proposed law will do, it will make fat jobs for a lot of incompetent politicians, who would attempt to tell the expert packers how to run their business.

"It is to be hoped this food bill will never become a law. If it should get on the books the lawmakers will feel competent to run all the big business in the country. In fact, to be consistent, they would have to undertake this big job."

Mr. CAMPBELL. I have extracts here which I have taken from the same conservative magazine in regard to the packers' methods and the cost of doing business. It is in this same magazine and is very valuable, I think, for this committee to look over. I would like to introduce it. It is under date of September, 1921, page 8, and is as follows [reading]:

"THE WHOLESALE GROCER.

"An analysis of the aggregate profits, sales, and investments (capital and surplus) figures of 175 of the leading corporations of the country for the year 1920, including the five largest packing companies, shows how economically the packers are serving the public.

"The corporations surveyed were selected because of the availability of their annual reports. The figures are taken from the company reports as given either by Moody's Manual or the Commercial and Financial Chronicle.

"These 175 corporations, with an invested capital and surplus of more than nine and one-third billions of dollars, handled during 1920 more than \$13,000,000,000 worth of business, which netted more than \$800,000,000 in profits.

"The aggregate business of the five packers was about \$3,013,000,000, with an aggregate net profit of \$7,218,068. The combined business of the other 170 corporations was \$10,124,207,985, or less than four times that of the 5 packers. On this amount of business the nonpackers received aggregate net profits of \$813,128,417, as compared with the \$7,218,086 for the 5 packers.

"Sales (\$3,013,002,000) of the 5 packers were approximately three-tenths of the sales of the 170 nonpackers, while the aggregate profits of the 5 packers were less than one one-hundredth (one one-hundred-and-twelfth) of the aggregate profits of the nonpackers. In other words, the nonpackers, doing less than four times as much business as the packers, earned more than one hundred times as much in profits as did the packers.

"None of the five packers averages as much as three-fifths of a cent of profit on each dollar of sales. The average for the five was less than one-quarter of a cent.

"The five packers had about \$590,000,000 of capital and surplus at the beginning of the fiscal year. The packer with the highest turn received about 2½ cents on each dollar invested.

"The other 170 corporations had more than \$8,800,000,000—to be accurate, \$8,806,591,395—of capital and surplus. Their average profit per dollar of investment was more than seven times as great as that of the packers—9.23 cents, as compared to 1.23 cents."

Also an article from page 8 of the October issue, 1921, of the Wholesale Grocer, as follows [reading]:

"The entire question resolves itself into a matter of judicious differentiation and of good faith—in this sense, that if the object in view is, as stated, to reduce the expense of transportation by the elimination of waste motion, to apply the principles of economy and conservation to an honest effort to distribute the products of the fruit growers, and not a veiled attempt to nullify and break through the barriers of the famous consent decree, there will be but slight chance of defeating the petition, for the principle 'pro bono publico,' must almost certainly prevail in the final analysis and adjudication. This is the opinion of men high in the various councils of the food industry."

That, I think, is a very fair view that the most conservative wholesale grocers take of this question here.

There is one more question that I want to take up here, and that is the legality question. I was asked a number of questions here in the beginning in

regard to this act—the packer control act. I think, in further reply to those questions that were propounded to me in the beginning, I would like to read two or three pages that I have written on the subject. I have found some old cases. They may not be appropos to this thing, but to my mind they are.

In my opening statement I referred to the illegality of the decree. These wholesale grocers seek Government aid in eliminating competitors; they claim that they are the only concerns which should be allowed to handle groceries. Such claim is similar to that made by the retail grocers and others during the decade of 1890–1900, when department stores were growing rapidly and the small traders claimed they were being driven out of business. The retail grocers maintained that these great department stores should not handle both dry goods and groceries. Retail butchers, druggists, retail jewelers, and liquor dealers added their complaints that these large department stores were monopolizing the retail business, just as the wholesale grocers of to-day attempt to conceal their own selfish interests in the matter. These concerns sought to eliminate this new competitor, the department store, from their particular field of business under the guise of saving the public from a monopoly.

In the State of Missouri a statute passed, known as the antidepartment store act, approved May 18, 1899 (acts of 1899, p. 72). By section 1 of such act all goods, wares, and merchandise in the cities to which the act applied (cities having a population of 50,000 inhabitants or over) were divided into 73 classes, and these classes then rearranged into 28 groups or departments. By section 2 of the act it was made unlawful, after 120 days from the date of its passage, for any person or persons, firms, corporations, or associations to have on hand for sale, or sell any goods, wares, and merchandise of more than one of these several classes or groups without first having obtained a license therefor. By section 4 of the act the applicants for a license were required to state the class or group in which he proposed to conduct his business, etc. In brief, the statute imposed a heavy license tax on the privilege of selling goods from each one of numerous groups or classes of merchandise, and permitted sales to be made without license from only one of such classes or groups.

In the State of Illinois, the city of Chicago, at about the same time (1899), passed an ordinance attempting to regulate department stores by arbitrarily prohibiting the sale of provisions in any store where dry goods, clothing, jewelry, and drugs were sold.

In commenting upon this legislation in the annual report of the legislation of the country before the American Bar Association in 1899, President Charles F. Menderson said:

“Department stores are receiving attention, and a disposition is evidenced to interfere with their spreading tendencies in the State of Missouri.

“Did the lawmakers desire precedent for the attempted destruction of department stores, they could have found absolute prohibition of the carrying on of more than one business, under heavy penalties, among the discarded rubbish of the English law, in statutes of the olden time, when the might of kings controlled the right of subjects. In the act of 37 Edward III, passed 1350, we read: ‘Item—for the great mischiefs which have happened as well to the King as to the great men and commons, of that, that the merchants, called grocers, do ingross all manner of merchandise vendible; and do suddenly enhance the price of such merchandise within the realm—hath ordained that no English merchants shall use no ware nor merchandise, by him nor by other, nor by no manner of covin, one only one, which he shall choose betwixt this and the Feast of Candlemas next coming. And such as have other wares or merchandise in their hands than those that they have chosen, may set them to sale before the Feast of the Nativity of St. John next ensuing. And if any do to the contrary of this ordinance in any point, and be thereof attained in the manner as hereafter followeth, he shall forfeit against the King the merchandise which he hath so used against this ordinance; and, moreover, shall make a fine to the King—and whosoever will sue for the King in such case shall be thereto received, and shall have the fourth penny of the forfeiture of him that so shall be attained at his suit.’ But 550 years ago, when this law came into being, there were no invidious distinctions.

“The artisan or skilled laborer has no superior right to the tradesman, for we read in the same act of 37 Edward III: ‘Item—it is ordained that artificers, handicraft people, hold them every one to one mystery, which he shall choose betwixt this and the said feast of Candlemas;’ and those who did not so choose and work at the ‘one mystery’ were punished by imprisonment

for half a year and fine and ransom. It is unnecessary to state in this presence that long ages ago these impositions upon personal liberties were consigned, with many others of like import, to the dust heap."

Likewise the imposition on personal liberty by the Legislature of the State of Missouri and the city council of Chicago were consigned to the dust heap by the Supreme Court of the State of Missouri and that of Illinois, respectively.

In the State of Missouri the Supreme Court held in reference to the anti-department store act, *supra* :

"Due process of law is denied when any particular person of a class or a community is singled out for the imposition of restraints or burdens not imposed upon or to be borne by all the class or of the community at large, unless the imposition or restraint be based upon existing distinctions that differentiate the particular individuals of the class to be affected from the body of the community."

The Supreme Court of Illinois likewise held the ordinance of the city of Chicago was unconstitutional. Such ordinance was held not to be a regulation but a prohibition, and a purely arbitrary one which attempted to deprive certain persons of exercising a right which had always been lawful and had been exercised throughout the State and the country without question. It was nothing other than an attempted interference by the city with rights guaranteed by the constitutions of the United States and of the State of Illinois. The court said—

Mr. STEVENS (interposing). Mr. Chairman, are we going to have the legal phases of this question argued now?

The CHAIRMAN. If any layman wants to read his notes he may do so.

Judge HAINER. He is citing, I understand, from cases of the supreme courts of Missouri and Illinois.

Mr. CAMPBELL. I only wanted to give these attorneys something to chew on when they went home.

Judge HAINER. Proceed. Let it go in the record.

Mr. CAMPBELL. They need something, if they are going further with this evidence, on the other phases.

The court said:

"These constitutions insure to every person liberty and the protection of his property rights, and provide that he shall not be deprived of life, liberty, or property without due process of law. The liberty of the citizen includes the right to acquire property, to own and use it, to buy and sell it. It is a necessary incident to the ownership of property that the owner shall have a right to sell or barter it, and this right is protected by the Constitution as such as incident of ownership. When an owner is deprived of the right to expose for sale and sell his property he is deprived of property, within the meaning of the Constitution, by taking away one of the incidents of ownership. Liberty includes the right to pursue such honest calling or avocation as the citizen may choose, subject only to such restrictions as may be necessary for the protection of the public health, morals, safety, and welfare. The State, for the purpose of public protection, may in the proper exercise of the police power impose restrictions and regulations; but the right to acquire and dispose of property is subject only to that power. The individual may pursue, without let or hindrance from anyone, all such callings or pursuits as are innocent in themselves and not injurious to the public. These are fundamental rights of every person living under this Government. The legislative can neither by an enactment of its own interfere with such rights nor authorize a municipal corporation to do so."

The CHAIRMAN. Gentlemen, I understand that Mr. Chase and Mr. McKinney have reservations for California to-night, and if it is agreeable Mr. Campbell will discontinue his statement at this time so that Mr. Chase and Mr. McKinney may make such statements as they desire to before they go.

(And thereupon, by common consent, Mr. Campbell discontinued his statement at this time.)

The CHAIRMAN. Now, Mr. Chase, we will hear you.

FURTHER STATEMENT OF MR. ELMER E. CHASE.

Mr. CHASE. Mr. Chairman and gentlemen, there seems to be a very strong inclination to make it appear that I do not represent the dried fruit interests of California. I wish to state that I thought I clearly informed the committee

in my opening statement of my position in that matter, in which I stated that I also represented, by appointment, the Dried Fruit Association of California, which is the dried fruit organization of the State, and then went on to enumerate the organizations belonging to the Dried Fruit Association.

The Richmond-Chase Co., of which I am vice president, is a member of that organization, and I want to say, in explanation, that I did not know at the time I left my home that I was to be appointed to represent this association; therefore, I had no opportunity of conferring with the officers of that organization. I did, however, make inquiry as to the status of the Dried Fruit Association in this matter and was informed that the resolution passed by them in opposition to the modification of this decree has been submitted to all of the members who were not present at the time the resolution was passed. I had, therefore, a right to assume—and I think my position is a reasonable one—that all of the dried fruit organizations of the State approved, or at least did not disapprove, of this resolution passed by the Dried Fruit Association.

The CHAIRMAN. You were acting upon that assumption?

Mr. CHASE. I was acting upon that assumption. I hope that the committee will not feel that I in any shape or manner wanted to appear here under any misapprehension.

The CHAIRMAN. We see your situation.

Mr. CHASE. It matters but little, of course, as to whether I do represent these three cooperative organizations or not. The Prune and Apricot Growers' Association and the Beet and Fig Growers' Association are on record in this matter as against a modification of the decree. The Raisin Growers' Association, according to the telegram Mr. Gray received, decided not to take any action, I presume, as an organization.

But my statement still stands, gentlemen, that these cooperative organizations have not come to the rescue of the California Cooperative Canneries in prosecuting their appeal to have this decree modified.

Referring to Mr. Gray's statement regarding the canners who appeared upon boards of directors of banks, etc., I noticed that the evidence singled me out, but directly after that read the name of S. E. Johnson, president of the Growers' Bank of San Jose. Mr. Johnson is also president of the Cooperative Canneries, and Mr. George Singleton, vice president of the Lewis Co., organized the bank and was one of the principal stockholders.

Mr. BREED. Of what?

Mr. CHASE. Of the Growers' Bank of San Jose.

Mr. McKINNEY. Did it get clear in the record that Mr. Johnson is president of the California Cooperative Canneries?

Mr. CHASE. Yes; and he is also vice president—

Mr. GRAY (interposing). I did not read the name of S. E. Johnson in connection with the California Packing Corporation. I read the list of the directors of the California Packing Corporation who were officers of banks in California.

The CHAIRMAN. The record will speak for itself. Proceed, Mr. Chase.

Mr. CHASE. I did not consider there was any particular point to it, except it did not seem consistent to me.

I want to say that it did not occur to us, or did not occur to me, that it was of any consequence to get personal telegrams from our people, or directors and stockholders, or anybody else. I just wanted to mention that, because we could have furnished any number of those, if it had been thought that it would have been of any particular importance. There are, of course, quite a good many of those telegrams here of stockholders of the Cooperative Canneries. There is no objection to that, only I wanted to explain the reason why we did not secure telegrams from some of our people and stockholders, some of whom are growers. In fact, we are large growers ourselves, operating between 500 and 600 acres of orchard in the Santa Clara Valley. That is one of our principal works is the orchard business.

Mr. Campbell has been very lenient, and I don't think there is anything that he has stated that I want to give any explanation on.

In regard to the statement of the Richmond-Chase letter that went into the record, I did not write it, and I did not see it until after it was written, and I am quite positive that the failure did not occur in southern California, because I know nothing about them, and I am sure my partner did not.

I also want to say for the record that when I said there was one cannery at San Jose that I was very honest in my statement, and that I did not know there was more than one cannery there.

I think that is about all that I have to say. I had some other memorandums, but the time is very short. I thank you, Mr. Chairman.

The CHAIRMAN. If that is all, we thank you, Mr. Chase.

Mr. McKinney, we will hear you.

FURTHER STATEMENT OF MR. PRESTON MCKINNEY.

Mr. MCKINNEY. Mr. Chairman, I will be very brief. It is rather difficult, of course, to answer, not being trained on these lines, to answer so many things on such short notice, and I will request for both Mr. Chase and myself that if we find, after we have had the same opportunity that these others have had—two weeks to look over the record—if there is anything we have overlooked, we would like to have the opportunity of submitting our answer, by letter or brief.

The CHAIRMAN. Well, you can make your arguments by brief.

Mr. MCKINNEY. I have only a few points that I want to touch upon. I have only a few points that I have a memorandum on, and I assume there will be no objection to putting anything else in that may occur to us.

Judge HAINER. We can not keep this open indefinitely. There must be an end to it. We must close it up.

Mr. MCKINNEY. I mean, after we read the record.

Judge HAINER. If you find anything you desire to call attention to, you can send it to your counsel, and they can use it in oral argument. We do not care to be bothered with it.

Mr. MCKINNEY. Mr. Gray devoted a day and a half to the work that he has done, and he referred many times to the cooperative movement in California. He might have given the impression—I think he surely would have given the impression to anyone who was here only a part of the time anyway that there was a line of cleavage here between the cooperative organizations and the commercial packers on this specific subject that we have before us. I want to point out to you gentlemen that there is no such line of cleavage. We have offered nothing here, nor would we want, nor do we want to do anything detrimental to the cooperative movement in California. We would be foolish if we undertook it. It is an economic movement that will reach its level, and it is traveling rapidly, too, in California. We certainly, in this proposition or any other, have no fight with the cooperative organizations. Mr. Gray has stated that there are 42 such cooperative organizations in California. I have not the figures, but I assume his figures are right, and I want to point out particularly to you gentlemen that the California Cooperative Canneries, one of those 42, is here for the purpose of having, if possible, this consent decree modified; that not one of the other 41 cooperative organizations in California are here represented for that purpose. It seems to be clear, from that particular point, as to where California stands.

Now, he did read a telegram from Mr. Wylie Giffen, which I believe was sent on a long premise, because I am certain the record did not indicate that Mr. Giffen or the California Associated Raisin Co. was represented by Mr. Chase.

The California Prune & Apricot Association is clearly on record as opposed to a change in the consent decree. Also the California Peach & Fig Association. The only other large association is the dried fruit business—the only one in which there might be any question—is the California Associated Raisin Co., and Mr. Wylie M. Giffen's telegram cleared up without any question of a doubt the fact that they have officially taken no action.

Mr. Gray stated rightfully that Mr. Wylie M. Giffen, president of the California Associated Raisin Co.—he mentioned the powerful work he has done there as an organizer. He is indeed the great man of the dried fruit cooperative movement, unquestionably, and I desire to read, therefore, a letter from him which I think clears up his position. It is dated November 14, 1921, and it was handed to me by one of the wholesale grocers. It is framed to George R. Newell Co., Minneapolis, Minn. Incidentally it was handed to me, of course, subsequent to my testimony, and to Mr. Chase's. It says:

"Your letter of October 24 inquiring as to our stand on the modification of the packers' consent decree is at hand. A great deal of pressure has been brought to bear upon us from parties on both sides of this question to get us to use our influence in their behalf, and as an organization we have not taken any stand at all, nor do we intend to. This, however, is the position of the

association as an organization, and does not necessarily represent us as individuals. I personally do not think that this decree should be modified.

"Yours very truly,

"CALIFORNIA ASSOCIATED RAISIN CO.
"WYLLIE M. GIFFEN."

I point out the pressure he speaks of. It is being brought by both sides. No doubt the same pressure was brought on the other 42 associations, and I point out to you that not one of them succumbed to the pressure and is here. The only other ones that have made any appearance, either by telegram or letter, are five, I believe, associations which Mr. Gray read into the record. I will have to say that of those five, I do not know the operations of a single one. Do not understand me that I am questioning that such exist. I have been around California a good many years, and it so happens that I have never heard of them. I state that merely to indicate that I do not believe that they are associations of any very large size. They do not indicate, nor does Mr. Gray indicate, the size of the associations, except in one instance, and that is the Santa Clara Valley Growers' Association, which states in its telegram that it has 300 members. Now, in the Santa Clara Valley I would estimate, and I believe it is a conservative estimate, that there are 12,000 to 15,000 fruit growers.

Mr. Gray mentions the fact that on a 6,000 ton pool which he purchased for the California Cooperative Canneries, they, by so doing, worked the price up from \$37.50, approximately, to somewhere around \$100—\$92.50. I point out to you that in cling peaches, which I presume this pool was, in that season 125,000 tons were used in the canning process, and I doubt if the purchase of 6,000 tons would have that effect.

Getting back just for one moment to this question, which I doubt if you are so vitally interested in anyway, as to who represents who, I want to invite you to California, all of you or any one of you, or any representative of any one of your three departments, to come out, because it is important, I think, to know what the feeling of perhaps the most progressive State in growing in this country is. I want to invite you or urge you to either come in person or by any representative of any department, and investigate with the growers themselves, with the canners, and with the others that have helped to build up California, as to just what this feeling is on the subject. That would clarify your own minds, and you would get your direct evidence, without any question from the outside.

Now, as to Mr. Campbell's testimony, I want to explain briefly that the Canners' League for the last three years has compiled the statistics of the pack of California, both from members and nonmembers. The pack in 1920, the last pack which we compiled, we had 98 per cent of all the canners in the State reporting to us, whether they were members or not.

Now, I base my figures which are in the record, my direct testimony, not on the number of canners but on the number of cases packed, because it seemed to me that that was the pertinent thing, rather than the number of canneries. Mr. Campbell stated that there were 20 California Packing Corporation canneries and 40 others represented on our figures of those who had actively declared themselves as opposed to this change in this consent decree. His figures, he stated, he merely took from his own knowledge of it, and his knowledge probably is not as complete as mine, and I will state that there were 76 represented, rather than 60.

Now, if you will leave out, or rather add in the California Cooperative Canneries—we know where they are—put in Libby, McNeill & Libby, who, as I stated in my direct testimony, have not declared themselves to us, certainly, or to me in any way on the thing—we have 87 plants that we know the position of.

Mr. Campbell stated that there were, I believe, 126—wasn't it?—126 plants in that part of the State, that is, fruits and vegetables, so we have 26—or let us make it 50—the figures are very unimportant there, because I want to point out to you that those plants that are not represented, in the first place not one of them is here as in favor of the change in the consent decree. And these, say 50, which are not represented on either side are, as in every district, the small canners who are not in any association, the importance of their operations is so limited that you can not figure them. They only figure in numbers, and not in pack. I would say safely that taking all those 50 small canneries and put them together, and the big plants of any one of a dozen of the bigger concerns in California will pack ten or fifteen times as much—one plant, I mean—as all those little ones.

Mr. SMITH. All together, do you mean?

Mr. MCKINNEY. Yes, sir; I thought I made clear, and I endeavored to make clear to you gentlemen the fact that the small canners of California are personally and vitally interested in this matter. And you will remember, which I think answers Mr. Campbell's argument—you remember first I gave you the figures including all who signed this telegram, which would include the California Packing Corporation. Then I took out the two to whom he has again referred—the California Packing Corporation and Libby—and gave you the percentage of the canners, assuming for the moment that these two concerns were not in the packing business there at all, and those figures you will remember; that 89 per cent, based on the pack, not on the number of canners, are opposed to changing this consent decree.

I wish to state further that if the authenticity of my figures is in the least bit in question in the minds of you gentlemen, I will say that these percentages which I give you are compiled from the signed statements of all the canners, whether members of the Canners' League or not. We have spent a great deal of time going to the little canner—that is one reason why we do contract with him, because we want to get the whole pack. Those are signed statements given to me in confidence for the purpose of announcing the total, but I would be very glad indeed, if there is any question as to the truth of my statement, of any of these percentages—and I can only give them to you in percentages in public—if there be any question whatsoever about them, I would be very glad indeed if the Department of Justice, or any of the commission would in any manner delegate a representative of the Federal Government to come into my office in San Francisco and I will open up to him each and every one of those records for his perusal.

I am about through now, gentlemen. Mr. Campbell mentions the fact that in this list is the Golden State Canneries which had several plants, and which he inferred we had figured into these totals. I stated in my direct testimony that I was dealing only with the canning plants north of the Tehachapi Mountains, where 87 per cent of the pack is made, and the Golden State Canneries are all in the South, and therefore are not entered into these percentages one way or the other, despite the fact that they are on record as opposed to a change in the consent decree.

He also refers to the fact that in our circular—I believe you date September 17; it was either September 17 or 14, 1921—we stated that we had been notified by the National Wholesale Grocers' Association of this effort to change the consent decree. That is correct, of course, but I desire to refer you back to my testimony, in which I stated that we first heard of this matter in the latter part of August, the information being given to us by one of the members of our executive committee, Mr. Frank Wilder, and that at that meeting we decided that if any action was to be taken we should get into it as opposed to a change in the consent decree at once, and we did some two weeks later hear from Mr. Drescher, of Sacramento, a wholesale grocer, to the effect that this action was about to be taken, and I proceeded without any further authority, having received it at the meeting before.

Mr. Campbell gave some figures as to the pack of the California Packing Corporation, in an effort to indicate their control of the situation out there. I did not get them down exactly, but I think it was three million and either six hundred or seven hundred thousand cases. I just want to point out that the pack of the members of the Canners' League of California, as per my direct testimony, in 1920, was 13,000,000 cases. I want to say that I don't believe that his figures are quite right, but am taking them as they are.

He also makes reference to the matter of dues. I didn't get what he was undertaking to convey there. His schedule of dues, while I didn't read it, I presume was correct. It did not indicate—I guess that is one reason I wanted to have a chance to answer back if there was anything in the record there. I didn't get what point he was making.

The CHAIRMAN. Well, I think the proposition that he made—

Mr. MCKINNEY (interposing). If it registered anything in your minds I would like to answer it.

The CHAIRMAN. The point he made, as I understand it, was that the fact that the California Packing Corporation, having such a large pack, by virtue of the fact of their large pack, connected with the further fact that the dues in your association are based upon the pack, and having the largest dues to pay, therefore they would probably have the most influence in the organization.

Mr. McKINNEY. Well, they certainly pay the largest dues, there is no question about that.

The CHAIRMAN. I think that was his point.

Mr. McKINNEY. It is a fact, however, that their relative size compared to the total is not dominant.

Mr. CAMPBELL. Mr. Chairman, what I was trying to convey, and I think I failed to do so, was the fact that Louis Swift was interested in paying part of his expenses.

The CHAIRMAN. Yes; that is true; he had that in.

Mr. McKINNEY. Well, it is a fact that Libby, McNeill & Libby are members of this organization; it is a fact that they pay dues into this organization.

Judge HAINER. How much dues do they pay?

Mr. McKINNEY. Well, it is based on the pack; I don't remember.

Mr. GRAY. Mr. Campbell gave that.

Judge HAINER. Well, I was asking Mr. McKinney to give it.

The CHAIRMAN. He gave a calculation.

Mr. McKINNEY. I believe he gave a statement of \$2,700.

Mr. CAMPBELL. Well, the nearest fact we can arrive at—we haven't got your books—but about \$3,000?

Mr. McKINNEY. These books are open to your inspection.

Judge HAINER. Don't you know, approximately, how much they are, Mr. McKinney?

Mr. McKINNEY. My recollection is they pay \$1,200.

Judge HAINER. A year?

Mr. McKINNEY. A year; yes. There are several very close to them.

The CHAIRMAN. Are you at all sure of that approximation or not?

Mr. McKINNEY. Reasonably so. I would be very glad to give you the exact figures.

The CHAIRMAN. Well, I don't think it is material enough. Proceed with your statement, Mr. McKinney.

Mr. McKINNEY. Along that line, speaking of control, I understand that the Federal Trade Commission hearings indicate that Armour & Co. are financially interested in the big rice project in Sacramento County, the Sutter Basin Reclamation Project No. 1500. I just learned that the other day. I then became cognizant of the fact that through that fact I have loaned—myself personally—\$2,000 to Armour and their associates, for the reason that I hold bonds for \$2,000 in the Sutter Basin Reclamation district No. 1500.

The CHAIRMAN. Well, it is pretty good security?

Mr. McKINNEY. Yes, sir; indeed it is. My bond broker said it was good; that is the reason I bought it. But I did not know it was an Armour project. So my influence was pulling a good many ways here, if that be it.

Getting just for one moment, in closing, to the bulletin which Mr. Campbell read, in which he pointed out the efforts which the Cannerymen's League has made and is making toward a change in the tariff, and our statement about the great increase in production in California—those facts, of course, are absolutely true, and I want to say to you that one of the fears we have in this matter is that, with a rapidly increasing production of fruits in California, if at the time and during this increase there shall be a breakdown in the method of distribution which has been followed for between 30 and 40 years, the net result will be not an increase but a decrease in the marketability of our product and therefore endanger seriously the grower as well as the canner.

I would like to ask—while this may be a bit out of order—I would like to ask Mr. Campbell just one question: Whether the southern California cooperative canning organization, the name of which I don't remember, but you can remind me—

Mr. CAMPBELL. California Growers' Association.

Mr. McKINNEY. California Growers' Association, with 5 of the 10 cooperative canneries of the State, as I understand it, is on record in this proceeding as being opposed or in favor of a change in the consent decree?

Mr. CAMPBELL. They are unable to go on record; like most of the other canners they are afraid to go on record because of you jobbers.

Mr. McKINNEY. They are not on record?

Mr. CAMPBELL. They are not on record. We advised them not to go on record.

The CHAIRMAN. Anything further, Mr. McKinney?

Mr. McKINNEY. That is all.

The CHAIRMAN. Thank you, very much.

Mr. GRAY. While Mr. McKinney is here I would like to clear up one matter of record on the Giffen matter, and I would not want to bring it up after he has gone away, so I would like to bring it up now.

The CHAIRMAN. Go ahead and ask him.

Mr. GRAY. I am very familiar with this letter from George R. Newell & Co.; in fact, Mr. Giffen showed me this letter while I was in conference with him in California regarding this matter, and he pulled it from his files on his desk, saying—and I shall quote his exact words: "Dallas, I am very glad that you have come in to see me, for I have not really made this subject of the meat packers a study, and you have certainly given me some light regarding this subject"; he referred to my explanation of the elimination of the packer as a marketing facility, and that this elimination would tend to curb the distribution of our products. That was in substance the argument that I gave to him. And, further, that I was opposed personally as a grower to the curbing of the marketing outlet, and only did I present such arguments as were in favor of an expanding of the marketing facilities, which he expressed to me he was perfectly in sympathy with.

He further said: "This letter of George R. Newell's," which he read, is as follows, in substance:

"MY DEAR MR. GIFFEN: What is your mind in the matter of the packers' consent decree?"

He stated: "I gave them my idea of the action of the directors—that they had determined to remain neutral in this matter—but I will say that my personal opinion in this matter is so changed that I would not express it as I did. And I am certainly glad that you came to me, and hope to see you again before you go to Washington."

Mr. McKINNEY. I would say on that point we have Mr. Wylie Giffen's signed statement, and Mr. Gray recounts the conversation with him. I would say it would be logical, it would be the logical thing for the commission to write Mr. Giffen and ask him what his opinion is.

Judge HAINER. How long do you expect us to keep this open? Do you suppose we are going to keep this open and write to everybody in this country?

Mr. McKINNEY. The only reason why we are going into these little details is because we have had our credibility questioned.

Judge HAINER. We have been here two weeks, and you could have gotten it in that time.

Mr. SMITH. Did this gentleman write you and withdraw this letter?

Mr. McKINNEY. No, sir; nor anybody else.

Mr. SMITH. Did he know you were going to use it here?

Mr. McKINNEY. No.

Mr. SMITH. He did not understand that you were going to use it here?

Mr. McKINNEY. It was not written to me. It was to someone else; Newell, of Minneapolis.

Mr. GRAY. George R. Newell?

Mr. SMITH. He did not know that it was going to be used here?

Mr. McKINNEY. He wrote it with the purpose that it was going to be used.

Mr. SMITH. That is what I mean.

Mr. McKINNEY. Yes.

Mr. SMITH. And he has not withdrawn that?

Mr. McKINNEY. No.

Mr. GRAY. And he wrote that letter previous to my conference with him.

Mr. SMITH. I understand, but he has not withdrawn it since his conference with you.

Mr. McKINNEY. What was the date of the conference with you?

Mr. GRAY. November 19 or 20, just two days before I left for San Francisco and here.

The CHAIRMAN. Mr. Stevens, any questions?

Mr. STEVENS. I have just one. Mr. McKinney, is the explanation of Mr. Campbell's assertion that Louis Swift paid part of your expenses here contained in the fact that Libby, McNeill & Libby are contributing to your association?

Mr. McKINNEY. They are simply members of the association.

Mr. STEVENS. That is all there is to it?

Mr. McKINNEY. I don't know who paid it. I simply drew on my treasurer. When I get home it may be that they will object to its going out of the general treasury. That which we get from Libby, McNeill & Libby is very small, very, very small. Let me answer that now. I will tell you: Five or six per cent of our income comes from Libby, McNeill & Libby.

Judge HAINER. Mr. Stevens wanted to bring out whether Louis Swift contributed directly.

Mr. STEVENS. Yes.

Mr. SMITH. There was no contribution toward your expense except their contribution toward your treasury, toward your association?

Mr. MCKINNEY. That's right.

Mr. SMITH. There was no other contribution, was there?

Mr. MCKINNEY. No. I drew enough out of the treasury. I hope it will cover.

The CHAIRMAN. Anything more, Mr. Stevens?

Mr. STEVENS. No.

The CHAIRMAN. Senator?

Mr. SMITH. Nothing more.

The CHAIRMAN. Mr. Daily, have you any questions?

Mr. DAILY. No.

The CHAIRMAN. Very well, that will be all. We will adjourn then until 10 o'clock Monday morning, gentlemen.

(Whereupon, at 5 o'clock p. m., Saturday, December 10, 1921, an adjournment was taken until Monday, December 12, 1921, at 10 o'clock a. m.)

MONDAY, DECEMBER 12, 1921.

The committee met at 10 o'clock a. m. in room 704, Department of Commerce, pursuant to adjournment on Saturday, Hon. Herman J. Galloway (chairman) presiding.

The CHAIRMAN. Let us come to order. Mr. Campbell, you will conclude your statement.

STATEMENT OF MR. VERNON CAMPBELL (In rebuttal)—Resumed.

Mr. CAMPBELL. Gentlemen of the committee, I will remain standing in order to assure you that I will hurry through and finish my statement promptly.

The matter brought up by Attorney Thorne for the wholesale grocers requires some little answer. This matter is also broached by some of the witnesses here, particularly by Messrs. Kelley and Marsh and a number of the wholesale grocers, in regard to the private car systems of the country.

Attorney Thorne continually puts this question to the witnesses: "Do you think it fair for the packers to have the use of private car systems when those private car systems are denied the wholesale grocers?" I feel that this has some bearing upon this economic question we have under discussion.

I have here a report of the Interstate Commerce Commission in the matter of private cars; this decision was rendered in July, 1918, and in this conclusion here the Interstate Commerce Commission passes upon this question of the private ownership of cars and in this decision approves of that method.

It seems to me, and I believe it does to all such men as Mr. Morrill and others of us who have had practical experience in the shipping of products, both perishable and nonperishable, that this system of private ownership of cars must be followed in this country until the railroads are consolidated. There are some 1,500 steam roads engaged in interstate commerce. In addition to those there are about 350 electric roads engaged in interstate commerce. Many of those electric roads handle freight. Then there are a large number of intrastate roads over which the Interstate Commerce Commission has no jurisdiction or control.

Now, it is manifestly impossible under existing conditions for the wholesale grocers to expect, or for anyone to expect, that we could get together some 2,000 roads engaged in interstate commerce in the ownership of all the private car systems. It is impracticable and it is impossible. And if the wholesale grocers are to persist in their attitude which they showed in their first appearance before the Department of Justice, which I attended, and also in their appearance before Justice Stafford, that any modification of this decree should not be made until this question of service is taken care of by the Interstate Commerce Commission, we will never get a modification of this decree, because, as I pointed out, and as the Interstate Commerce Commission has several years ago decided, it is impossible to throw the ownership of these cars into the railroad companies so long as they are operating independently, as at the present time.

The private car system, as so well pointed out by a former witness, Mr. Morrill, is handled in a way that is entirely satisfactory to the shippers of

canned goods, green and dried fruits, and other products that must have these facilities offered them at different times during the year, or, rather, available to them. For instance, we must ship apples from Washington, Oregon, New York, Missouri, and other points where they are produced in abundance to various parts of the United States in refrigerator cars. They must be iced at some times in the year and other times, during the winter, they must be shipped in the refrigerator cars to protect them against the cold. That applies equally to canned goods in the wintertime, as all canned goods after October 15 in California are required by the railroads to be shipped in refrigerator cars to prevent freezing in transit.

Now, these private car lines are managed in the interest of the shippers. They are engaged always in handling these goods largely in interstate commerce, while if the local railroads, any one or any number of the 1,500 railroads were to buy private refrigerator cars to use in interstate commerce, it would be impossible to get these various roads together for the private handling and management of these cars for the benefit of the producers of perishable products.

As a large shipper of products, both perishable and semiperishable, such as canned goods of California, I have been unable to see, during the last 25 or 30 years since I have been acquainted with the system, any method by which the railroads of the country could satisfactorily own and operate these car systems. There is no central management by which the thing could be controlled or handled. Machinery would have to be set up for the handling of these products properly. You would have the same difficulty in accommodating the shippers as would the railroads in accommodating passengers with sleeping cars. The sleeping cars used in this country are practically all owned by the Pullman concern. These people distribute these cars over the country as they are needed in passenger service. A car may start from Oregon and land up in New York without change of service. That same method and system must be applied to the handling of fresh fruits and vegetables and canned products.

I think I have explained to this committee here that, so far as the present system of private ownership of cars is concerned, it is absolutely essential to the proper distribution of our food products in this country. I think that has been admitted, so far as meats are concerned, and we shippers of fruits and other perishable products are perfectly acquainted with the necessity of private car systems.

The packers' route cars have been referred to here time and again by the attorneys or the opposition as practically a special privilege of those packers, and furnishing a service which the wholesale grocer is unable to furnish. In my statement Saturday I referred to the possibility of the wholesale grocers getting together and furnishing their own cars, own privately owned car. There is no reason why they could not do this, and there is no reason why the packers should be prevented from handling all kinds of products in their cars.

I am quite sure when the attorneys for the opposition cross-examine me they will bring up this matter of car service, and I would like to file with this committee here—not to be copied into the record—this report of the Interstate Commerce Commission for use here in our discussion if it comes up.

Judge HAINER. The decision, do you mean?

Mr. CAMPBELL. Yes.

The CHAIRMAN. No; that is on a different matter. That is in private cars?

Mr. CAMPBELL. Private car systems.

Judge HAINER. Oh, yes; cause No. 4906, in the matter of private cars, before the Interstate Commerce Commission.

Mr. BARRETT. Can we have the date of that, Mr. Galloway?

The CHAIRMAN. There is no date.

Mr. SMITH. The number gives it.

Judge HAINER. Submitted April 1, 1918; decided July 31, 1918.

Mr. CAMPBELL. I notice that witnesses Mrs. Kelley and Marsh, who represent parties entirely outside of this discussion here, seemed to be a unit on the proposition of the railroads being compelled to own these private-car systems. They, of course, are not acquainted with the necessity for private-car ownership.

Mr. SMITH. Would it interfere with you for me to make one suggestion and get you to discuss it right now in this connection?

Mr. CAMPBELL. I would be glad to have it, Senator.

Mr. SMITH. Suppose a private company was organized, like the Pullman Co., and took over all the private-car systems. Wouldn't that make it analogous to the Pullman system?

Mr. CAMPBELL. I think that is a good suggestion, but it has this difficulty: There are so many different—

Mr. SMITH (Interposing). I made it broadly, not merely as counsel for these people, but suggesting a line of thought that occurred to me from your remarks.

Mr. CAMPBELL. That was one of the questions that was in the minds of the opposition—the question of private cars—and, as a layman and as a user of these cars in a very large way, I think that I am probably able to discuss it from an economic standpoint in a way that will clear the whole matter up to both sides here, and I think will probably put it in a little different shape to the committee, so they will understand the position of the producer.

When we begin to discuss the private-car systems we will have to take in all sorts of private cars, passenger cars, oil cars used for transporting crude oil from the fields, vegetable oil cars, such as used in the transportation of peanut oils and other oils, and used exclusively for that purpose; circus cars that are owned by circuses for transporting their animals, and various sorts of cars built for special purposes. Heinz, for instance, owns his own pickle cars, in which he ships pickles; no one else could use those cars; they wouldn't want to use those cars. There are many, many different sorts of cars. The steel corporation owns its own cars to transport iron ore. So, there are dozens of different cars owned by private owners, and these cars must be owned and controlled by these concerns and distributed and managed by them.

In my own business some 20 years ago, I think in the fall of the year, I would lease cars from the railroad company and equip them with a certain kind of tank, which we used for the transporting of olives for a distance of some five or six hundred miles. These cars carried four tanks, and those tanks were filled with a liquid to preserve those olives in transporting them to the factory. We had about 25 or 30 cars constantly in use for some six months. It would have been impossible for the railroad to furnish these peculiar cars; they would have refused to install those tanks. These cars had to be under our control, so that we could ship them to any point we needed during that harvest season. If we should have gone to the railroad company, following the plans of some of these witnesses here, and said to them: "We want a certain type of car installed with a certain type of tank which we have invented to use for this peculiar kind of business," they would have refused to furnish them. We would have to have gone into court to compel them to do so, under any law which would compel railroads to furnish the use of private cars.

So I think this whole scheme is impracticable; it is theoretical, it is not something that can be carried out practically, as a practical thing by the railroads in this country. The railroads, to my way of considering this, the same as a public highway; they ought to be considered as a public highway where any man may take his automobile or truck and convey his products over it. That may be an extreme illustration, but it shows to my mind a parallel case to what we have here, on transportation by railroad.

I want to make this point clear to the committee from the producers and shippers' standpoint: The utter impossibility of ever inaugurating in this country, under the present system of transportation that we have, with nearly 1,500 to 2,000 railroads engaged in interstate commerce, of any system of Government ownership of private cars as now used.

Mr. SMITH. Railroad ownership, do you mean?

Mr. CAMPBELL. Yes; either public or railroad ownership.

Mr. SMITH. You meant public, then?

Mr. CAMPBELL. Public or railroad ownership. A common ownership of those cars it seems to me is impossible. You might have to segregate certain classes of cars, and say, "Here, we will take over into common ownership amongst the railroads, or of the Government, or of one central holding corporation, certain types of cars."

That brings up the question, "What types of cars shall we hold in common ownership?" If we are to hold up any modification of this decree on account of private car ownerships we will never get the decree modified. That is the point I wanted to make on this matter, because as a practical man engaged in the business of handling goods in interstate commerce, and using a certain type of refrigerator car, I know that it is utterly impossible to have any central ownership of those cars and get any sort of service.

The question would come up: How, and what railroads are to own these cars? How we would compel 1,500 railroads to take over these cars, and how they would be apportioned, and how they would be handled, and what central control would be provided to distribute these cars?

If there is any other point that is not clear to the committee, why, I would like some questions on this matter so as to clear it up. It will likely be brought up in cross-examination.

The CHAIRMAN. Proceed, Mr. Campbell.

Mr. CAMPBELL. I don't know whether it is worth while to take up this matter that Mr. Thorne brought up and discussed at such great length here, in the matter of preferential service on private cars owned by the meat packers, and the ordinary cars.

Now, I happen to have with me a transcript of the arguments and evidence produced in the Interstate Commerce Commission hearing. I thought in the beginning that this whole matter of the car business was not to be brought up at all by these attorneys, and I dislike very much to have to—

Judge HAINER. I think that seems to be the crux of this proposition, that by reason of the fact that they are permitted to handle these unrelated products in these cars; that is, fill the cars with unrelated products, in shipping their meats, that thereby they are giving them a decided advantage over the distribution of the wholesale grocers. It appeared to me from the arguments here that that is one of the principal propositions in this case.

Mr. CAMPBELL. Well, if that is the heart of the thing I want to touch on it.

Judge HAINER. In other words, if you would eliminate that feature of it, then the wholesale grocers say they are willing to compete with any one in the world, where they have equal facilities and equal advantages in transportation.

Mr. SMITH. And I would suggest further, that not only with reference to the wholesale merchant, but with reference to the broad proposition of preserving competition, that we urge that the situation is one which will destroy all competition unless it is in some way modified. It finally is to the interest to the public, not to the wholesaler. I try to make it broader than the wholesaler.

The CHAIRMAN. Senator, I had an idea like this. A thought occurred to me that I would like to get some expression of views on, if you could do so: What would be the position of the wholesale grocers upon a modification that would permit the meat packers to handle these unrelated lines, but not permit them to carry them in their refrigerator cars?

Mr. SMITH. Well, I will be glad to think about it and suggest something further.

The CHAIRMAN. Yes; I would appreciate something along that line.

Judge HAINER. Yes; that has occurred to me right in connection with that proposition.

Mr. STEVENS. Mr. Chairman?

The CHAIRMAN. Mr. Stevens.

Mr. STEVENS. That at once raises the query in my mind as to just how broad that statement would be construed; whether that would mean that the packers would be prohibited from using the meat cars, but would have private lines that have the same expedited service.

The CHAIRMAN. No; I don't think that would be included in the proposition. Of course, details of any such a plan would have to be worked out, necessarily.

Mr. STEVENS. I think that, as Judge Hainer says, the crux of the whole situation is the elimination of preferential railroad service in any form and putting of these dealers on a competitive basis.

The CHAIRMAN. Pardon us for interrupting you, Mr. Campbell.

Mr. CAMPBELL. I am glad you did, because that brings up a point here that I had in mind, and in the answers I find in this abstract of evidence which I have been going over—and I will say for the benefit of the attorneys that I really have made quite a study of this private-car service and the matter of expedited service; I have done the best I could in the last few months in looking up this matter. I find on page 81 of this abstract of evidence, under date of September 9, 1920, published at Chicago, that the attorneys for the packers make this statement—I think this is the attorney for Swift & Co. [Reading:]

"This recapitulation"—

They have a recapitulation here of a large number of instances—

"shows that 10,632 towns are served by the peddler cars operated by Swift & Co.

"To 2,745 of such towns the peddler-car service, if its schedule is maintained, is more expedited than the carriers box-car service from the same point of origin to the same destinations, by from one to three days."

Now, that bears out contentions made by Mr. Thorne here about expedited service. But he goes on to say [reading]:

"On the other hand, the number of towns to which the carriers' box-car merchandise schedule is more expedited than the peddler-car schedule is 2,614, while the number of towns to which the carriers' box-car schedule and the peddler-car schedule are the same is 5,273."

Now, then, we have evidence here that the service is no more expedited, and here is the schedule showing all of those instances. So that so far as trying this case out here before this committee, I think that is almost impossible of doing, because there is a difference of opinion on the difference of schedules, etc.

I have here also a brief before the Interstate Commerce Commission, on the same date, in behalf of the attorneys for these packers, and I read from page 244.

Mr. STEVENS. The attorneys for the meat packers, do you mean?

Mr. CAMPBELL. Yes; the attorneys for the meat packers. Before the Interstate Commerce Commission.

The CHAIRMAN. That is the meat packers' brief before the Interstate Commerce Commission?

Mr. CAMPBELL. Yes; I am reading from the meat packers' brief before the Interstate Commerce Commission. I am just taking some points out of it here, and I will just cover certain points here in answer to the statements made by Mr. Clifford Thorne. [Reading:]

"The peddler-car method of distribution is not superior to the merchandise distribution by carriers, but it is peculiar to the packing industry and is necessary to the proper transportation of meat-products refrigeration to small cities and towns."

Judge HAINER. I take it that you do not take issue on that as to the fresh meat; you have no objection to that?

Mr. CAMPBELL. I take it we have no objection to that.

Mr. SMITH. We haven't anything to do with the meat proposition.

Judge HAINER. Well, go on.

Mr. CAMPBELL. I am just coming to the point. To quote further from this, page 244 [reading]:

"With but few exceptions, peddler cars are operated but once a week over a given route by a particular packer."

"Out of practically all of the 1,899 cities and towns where wholesale grocers are located, the carriers operate daily merchandise cars to points within the normal radius of distribution of the wholesale grocer."

Judge HAINER. In other words, they have got six days?

Mr. CAMPBELL. Yes; every day. [Continuing reading:]

"Peddler cars are loaded by the packer in station order at his own expense. No such expense is borne by the wholesale grocer shipping through the carriers' freight house."

"Peddler cars are iced initially and in transit at the expense of the packer. No such expense is borne by wholesale grocers shipping perishable property in carriers' scheduled refrigerator cars."

"The carriers require a certain minimum charge for each peddler car. There is no such minimum charge upon small-lot shipments made by wholesale grocers in carriers' merchandise cars."

"The packer bears the expense of ownership and maintenance of his refrigerator cars in so far as such expense exceeds the mileage allowance paid by the railroads. No such expense is borne by the wholesale grocer."

"The transportation cost to the packer of peddler-car traffic, over and above the freight rate paid alike by the packer and the wholesale grocer, is upward of 30 cents per hundred pounds of freight now shipped in peddler cars."

Here is an important point:

"Comparisons of peddler-car schedules and merchandise schedules throughout the United States show that the time in transit for each class of cars is the same under similar conditions, and without preference to the peddler car; but that the peddler car ordinarily moves but once a week, while the merchandise cars to the same points generally move daily."

Here is another point of importance:

"Meat and meat products do not receive or require a more expedited service than that accorded to the carriers' merchandise cars, in which are transported the small-lot consignments from wholesale grocers and jobbers to their normal trade territory."

Mr. SMITH. You are reading from the brief of the packers' attorneys?

Mr. CAMPBELL. I am reading from the brief of the packers' attorneys, while Mr. Thorne was reading from his own brief, and the attorneys associated with him. So, so far as I can see, there are two sides of that question.

Mr. SMITH. The lawyers on each side take the side of their clients.

Mr. CAMPBELL. And that is a matter that I think neither this committee here nor any of us here can decide. That is a matter for the Interstate Commerce Commission to decide, and I would not have taken up this question at all except that it was brought up here by Mr. Thorne and others, and compelled me to make some sort of an answer.

The point I want to make before the committee is that some of us are extremely anxious to have this valuable service of the packer restored to us, and we do not feel that their cars should be put out of service. These cars are loaded with meat and filled up with groceries and perishable and nonperishable products, and give us a service throughout the land which we feel is valuable to us.

Now, as to those who are in opposition—

Judge HAINER. Right in that connection, Mr. Campbell, suppose a car from Chicago is sent out with meat and filled up with these unrelated commodities, and the destination of the meat is some point in California. That would be sent out in one of these refrigerator cars, would it not?

Mr. CAMPBELL. Yes, sir.

Judge HAINER. Now, after the meat is unloaded at some point in California, how are those same cars brought back to the point of origin?

Mr. CAMPBELL. I am not familiar with that traffic. They often come back loaded, but in my own experience—

Judge HAINER (interposing). Are they loaded with fruit and unrelated commodities?

Mr. CAMPBELL. Well, they are seldom. In my own experience we never used any of those cars. Our canned goods, after the 15th of October, are usually shipped in refrigerator cars because of the danger of being frozen in transit, and in all the history of my experience, which has covered over 25 years, I have never had the use of a packers' refrigerator car. Always a fruit car, a private car owned by these private car companies. Armour & Co. did own a number of those private cars, I think, refrigerator cars used for fruit transportation, but in my experience I have never had the use of the packer's car. They may come back loaded with some other products. I doubt whether fresh fruit would ever be loaded in them, because they are salt brine cars and are not clean and fit for that.

Judge HAINER. What cars does this decree cut you out of, the use of what cars?

Mr. CAMPBELL. Mr. Morrill stated that it cut them out of the use of the Armour private fruit car system, which is a different car.

Judge HAINER. I know Mr. Morrill stated that, but I am referring now to California.

Mr. CAMPBELL. Well, it does cut us out of those. For instance, those cars operated by the Armour people. The Armour private car line, which is a separate corporation, I think—I am sure of that—sold its cars to the railroads down in Senator Smith's country. Those cars are now taken out of other districts and are under the control of a few railroads in the South. Now, those cars are not available to us. That private corporation can not be appealed to now for cars to be sent to California or to Michigan or other points where they may be needed, because these railroads own them, and whether or not they will deliver those cars off their tracks and use them in our traffic is a question. They may stand down on the sidetracks there and accumulate there. We have no way of reaching these people satisfactorily, because they have been used to reaching these private car systems.

Now, the cars that we are discussing here, that we want to use, are what is called the "route car." It is kept in service in a certain district.

That route car is that salt-brine car that carries meat, and has carried cheese and butter and canned goods and other products, groceries, to small towns along these lines, usually traveling once a week out of the branch house.

The CHAIRMAN. That is used in local service?

Mr. CAMPBELL. That is used in local service.

The CHAIRMAN. The distribution of the products after the packers have obtained them?

Mr. CAMPBELL. Yes.

The CHAIRMAN. And the other refrigerator car lines, which are the fruit car lines owned by the Armour car line company that you spoke of, were used in through traffic, were they?

Mr. CAMPBELL. That is right; or, in some cases, local traffic.

Judge HAINER. What I am referring to now is through traffic. How does this decree curtail transportation of your canned fruits and canned goods from California to the eastern markets?

Mr. CAMPBELL. I never have held that it ever did. I never have held that it did at all. That has never been my contention and I never suggested it.

Judge HAINER. Well, then, how does it affect you?

Mr. CAMPBELL. It affects me in the distribution of those goods in the East, in the merchandising of the goods after they are shipped east. It does not interfere with us at all in the transportation from California east. There has been a great deal of argument had along that line. I never did contend that it interfered with us in the least.

The CHAIRMAN. You are not affected in the same way that Mr. Morrill stated the Michigan people were?

Mr. CAMPBELL. Yes, sir; we are affected in the same way, but we are not affected to so great an extent. I am talking now about—let us not confuse these two systems of cars. There are two car systems, and we want to get that straight in our minds, and I think there has been a little confusion about that.

Judge HAINER. I think it ought to be clarified.

Mr. CAMPBELL. Let us clarify that; yes. Let us first hold to the route car. That car was valuable to us as producers because it enabled Armour & Co., Swift & Co., or the other owners of these private cars, and even some of the smaller packers in the Middle West, like some of them in Iowa and in Indiana who had these same cars, to transport our goods after they were received at a terminal point or distributing point to these smaller towns.

Now, we have taken away through this decree the use of these peddler cars, or route cars, in this service of distribution, and that, therefore, has limited and restricted our methods of distribution.

Then, on the other hand, discussing these other cars, these ordinary refrigerator fruit cars which are used in service in the winter to keep products warm and in summer to keep them cold, those cars have been taken out of the hands of the packers, such packers as Armour & Co., who was interested in those private car systems, through this decree, and it has taken him out of all transportation and the handling of fruit products, and all products except meat products and allied products, as they are called.

Now, in so far as Armour & Co., for instance, was rendering a service to Michigan or California through the private ownership of these cars, just so far have we been damaged by taking them out of the business and throwing those cars into the ownership of the railroads, who are not competent and not organized and not efficient in the management of the distribution of these refrigerator cars.

The CHAIRMAN. Do you know anything, Mr. Campbell, about the operation of this fruit car line during the past season, especially with reference to the peach crop in Georgia and its movement, as compared with its operation in prior years?

Mr. CAMPBELL. I am not competent to answer that; but all I know is by hearsay. You had better get some other witness on that.

Judge HAINER. Now, another element here is how it has affected the growers. Isn't it a fact that this decree curtails the buying of futures from the canneries of California and the fruit-growing regions?

Mr. CAMPBELL. I have introduced evidence here, and others have introduced evidence, to show that the competition in buying between the packer and the wholesale grocer stimulates the buying of futures; has in the past.

Judge HAINER. Have they engaged in that business in California, for instance?

Mr. CAMPBELL. Yes, sir; absolutely; they have engaged in it; yes, sir.

Judge HAINER. Well, now, who transports those products? Suppose Armour & Co. and Wilson & Co. bought futures in California, didn't they use their cars to transport those products to the East?

Mr. CAMPBELL. Not necessarily, not necessarily. I don't think I have ever seen a meat car in use in transportation of our goods at least. They did, however, use Armour's private car system in the transportation of these goods.

Judge HAINER. That is what I am getting at.

Mr. CAMPBELL. Yes; they did.

Judge HAINER. Well, from your statement they didn't do any business on the Pacific coast; then how does it affect them? I supposed that these big packers

had to use some transportation facilities from the Pacific coast to the eastern market.

Mr. CAMPBELL. Those facilities they have been getting rid of, and sold those cars out to others.

Judge HAINER. When did they sell them?

Mr. CAMPBELL. During the last year.

Judge HAINER. No; when prior to the entry of this decree?

Mr. CAMPBELL. Oh, prior to the entry of this decree Armour private car lines were transporting fruits, canned goods, dried fruits, and fresh fruits out of California; that is true.

Judge HAINER. Well, to what extent? That is what I am trying to get at.

Mr. CAMPBELL. Just what proportion of that I don't know.

Mr. SMITH. What is the difference between Armour's private car line and Armour & Co. proper? Is it a separate corporation, entirely separate and distinct?

Mr. CAMPBELL. I understand it is an entirely separate corporation; yes.

Mr. SMITH. It is a private car line like the Pullman Co.?

Mr. CAMPBELL. Yes.

Mr. SMITH. That handles anybody's products, not Armour only, but all kinds of products?

Mr. CAMPBELL. All kinds of products.

Mr. SMITH. It is open for everybody?

Mr. CAMPBELL. That is right.

Mr. STEVENS. Well, this company that comes within this decree, are they prohibited from using their cars for transportation of unrelated products, fruits and such?

The CHAIRMAN. Why, the decree speaks for itself. They have sold their cars under this decree. They have disposed of their cars.

Mr. STEVENS. Well, I didn't know whether the private car line——

The CHAIRMAN. It is not a party.

Mr. STEVENS. It is not a party?

The CHAIRMAN. But by virtue of the ownership of stock it comes under the decree.

Judge HAINER. What I wanted to get into the record and clarify is the volume of business they did prior to the entry of the decree, and what has been the effect of it since, in the transportation of these canned goods and fruits and other unrelated commodities from the coast to the eastern markets.

Mr. CAMPBELL. In so far as we are concerned——

Judge HAINER (interposing). Generally speaking, not yourself.

Mr. CAMPBELL. Well, so far as California and the west coast is concerned——

Judge HAINER. Yes, sir.

Mr. CAMPBELL (continuing). The only damage that we have experienced from the separating of the Armour car lines from the Armour organization has been to take out of service those cars—I think some 4,000 cars—and put them into the hands of a certain group of railroads in the South. It has taken away from California service and from Michigan service these cars, and has concentrated them into the hands of a certain group of railroads, where we are unable to reach them.

Judge HAINER. Well, that is what I wanted to know; approximately the number of cars?

Mr. CAMPBELL. Now, that has not been a sufficient number of cars to, to any great extent, injure the shipment of our fresh fruits out of California, because there are many other private car lines owning these refrigerator cars, but in so far as the taking of this out of interstate service is concerned—that is, the service of the people of the United States is concerned—they have injured us to that extent.

Now, where our main injury has come in, the principal injury has come in, has been in the marketing facilities and the transportation facilities of the packers through these route or peddler cars, and through the use of their branch houses. There are some 1,200 branch houses owned by these packers, and those branch houses have cold-storage facilities, they have sidings where these peddler cars are loaded, and we have a service there which has been always valuable to us as a competitive service to the wholesale grocery service, and that competitive service we want to keep established. I think the wholesale grocers here have practically, with one accord, agreed that they can compete with the packers in merchandising.

Judge HAINER. Well, how would these unrelated commodities get from the producers into these branch houses, through what medium, and in what channels?

Mr. CAMPBELL. Of course, I take exception to the word "unrelated." I think our friend Grover of the Federal Trade Commission invented that word, and I take violent exception to that word "unrelated." I suppose you use it without reference to any particular commodities?

Judge HAINER. The way it is written into the decree. That is plain and specific, and surely anyone who reads the decree understands what it means.

Mr. CAMPBELL. Yes.

Judge HAINER. That is the sense in which I am using it.

Mr. CAMPBELL. Well, so far as I am concerned, we take exception, of course, to the question of unrelated products.

Judge HAINER. Well, that is immaterial whether you take exception. We have the word used and classified in the decree.

Mr. CAMPBELL. Then you refer, in referring to unrelated products, to the products covered by the decree?

Judge HAINER. That is the subject under consideration; yes.

Mr. CAMPBELL. Those products are usually shipped to the branch houses, the central distributing point in car lots from the points where they originate. Canned goods will be shipped from California or Michigan or Maine or any other point in the United States to these various branch houses, and there they are loaded into these peddler or route cars and distributed out to the small towns.

The CHAIRMAN. Well, who owns the cars that they are shipped from the Pacific coast to the branch houses in?

Mr. CAMPBELL. Sometimes these privately owned car corporations. Often they are owned by the railroad companies. The box cars will be owned by the railroad companies.

Judge HAINER. Take as an example the company you represent, the California packers, just trace the movement of your products.

Mr. CAMPBELL. If we had an order for a carload of canned goods to be shipped to Armour & Co. at Des Moines, Iowa, we would load 60,000 pounds in this car. The car might be a box car, usually a railroad box car during the summer months. If it was shipped in the fall of the year, late in the fall, it would be Pacific Fruit Express, or Merchants Express, or some other private car line's refrigerator car. The car would move to the branch house of Armour & Co. in Des Moines. These goods would be unloaded in their storage warehouse there.

During the course of the week, in loading a route car, they would put in some meats, some of my canned goods, some cheese, butter, other products covered by this decree and called "unrelated lines," and might travel out over the North Western or the Rock Island to the little towns outlying from Des Moines and tributary to the Des Moines jobbing district. This car would stop at the town in which I was born and raised there in Iowa, and it would stop at the little town above Redville and call at these little places up above the little town of Fonda. These cars would stop and this freight would be unloaded for the various merchants there, thus giving those merchants a service practically direct from California, with only one salesman between me and the retail dealer.

The question of my discounts to Armour & Co. of 5 per cent was spoken of by a former witness here, Mr. Chase, and he intimated that that would about cover their profit of their canned goods usually. He failed, however, to mention the fact that they allow from 2½ to 5 per cent, and in many places it is 5 per cent, of brokerage to the broker in selling these goods to the jobber or wholesale dealer. We allowed this brokerage to Armour & Co., and that is the only discount we allowed in selling.

Mr. SMITH. Mr. Chairman, that is rather going into the distinction between his business in detail and the California men, and I believe it was understood that his continued examination was not to relate their peculiar differences. I don't know as I object to it. I just want him to get away from that.

Mr. CAMPBELL. I was trying to cover this point. The judge was asking me the question of how my goods were moved.

Mr. SMITH. Yes; that is all right.

Mr. CAMPBELL. Now, I was stating that it moved through one buyer direct to the retail dealer, and I simply covered the point of discount to show that we had eliminated several middlemen in between.

Judge HAINER. In other words, you eliminate the spread and presumably get the products to the consumer without these intermediary agencies that have been referred to?

Mr. CAMPBELL. That is true. Now, in further answer of a point along that line, the question was brought up as to selling on commission, and I think I ought to answer that a little more fully to the committee. Both Mr. Wilson and Mr. Armour have agreed to handle goods on commission to the retail trade. Some four years ago I took up this matter with Mr. Wilson, saying that the spread between the producer and the consumer was getting wider all the time, and that we needed some help to reduce this cost of distribution, and we needed competition that would force a reduction in that case, and I explained to him that I thought that the packers—at least, a few of them—should engage in the transportation of these goods on a commission basis and in that way reduce or force a reduction in the spread between the producer and the consumer. I asked Mr. Wilson about what it cost him to handle his products—and he was handling these unrelated lines at the time—to the retail dealer, and he said, "Our cost to-day is approximately 6 per cent, covering all our products." And I said, "Would you be satisfied with an additional 2 per cent to cover the turnover and you guarantee the account and you do all the collecting?" And he said, "I think we will be satisfied with that." Making it 8 per cent.

I don't know whether that would cover the cost to-day, but that was the statement he made to me at that time. And he further said, "We are ready to help you, Mr. Campbell. You get the people ready."

Subsequent to that, I think about one year after that time, I talked to Mr. Armour along the same line. Mr. Armour said, "I am heartily in favor of all cooperative movements among growers and producers. I would like to assist in any way I can." And he said, "We are perfectly willing to put our distributive system to the service of our people, both producers and consumers."

Now, with those statements in mind I tried to further that method of distribution by delivering these firms our goods at the lowest possible cost, and to prove to some of these who have objected to the commission system that it can not be operated successfully I will refer them to an arrangement I have made with Armour & Co., of London, England, which is a separate corporation, covering the distribution of our canned goods in the British Isles. The contract, which was made this spring, provides for the handling of our goods on a 5 per cent commission basis. They get no other compensation. We pay the cost of transportation from our plant to the retail dealer's place of business—the actual cost. Armour guarantees all the accounts. I say Armour & Co., from London England, guarantees the accounts and return to us all the money they receive from these goods less a service charge of 5 per cent. Now that is working out in a very practical way, and the people of England, through that system, are receiving the canned goods at a much less cost than they are receiving them here.

The CHAIRMAN. What about being able to borrow money on such a contract as that? And finance your pack in that way?

Mr. CAMPBELL. By our showing on this contract we were able to borrow from the War Finance Corporation all the money we desired to finance our pack for export.

It is possible that in my cross-examination other points will be brought out by the opposition unless you want me to continue.

There is one matter I want to bring up, however, and of course I will submit to the will of the committee on this. I have a clipping here from the Daily News, of Chicago, under date of November 30. It is dated from Washington, D. C., as follows:

"Opposition to any modification of the court decree which prohibits the Big Five packers from engaging in unrelated lines of business will be voiced by Houston Thompson, chairman of the Federal Trade Commission, before the Department of Justice committee holding hearings on the proposition.

"The Federal Trade Commission, Mr. Thompson will declare, believes the packers should not be permitted to engage in the grocery business. He will probably appear before the committee some time next week.

"The Southern Wholesale Grocers' Association plans to-morrow to present some witnesses, among them Edward W. Hoffman, a Milwaukee wholesale grocer, who will explain the indorsement of the movement against the modification of the decree at a meeting of the Western Cannery Association in Chicago."

The point I want to make is this, that if the Federal Trade Commission is going to argue against a modification of the decree it seems as though we should have an opportunity to answer. That is all I wanted to say.

The CHAIRMAN. We will consider it and let you know later.

Mr. STEVENS. May I inquire, Mr. Chairman, of Mr. Campbell, if there is any other purpose in introducing that newspaper clipping into the record than to have a chance to reply?

Mr. CAMPBELL. Well, I would like to have that go in the record, so that it will be notification to all that such is their intention.

Mr. STEVENS. Well, that has been announced here.

Mr. CAMPBELL. I did not know that before I read this clipping.

The CHAIRMAN. I don't know that it has been announced as to what the attitude of the Federal Trade Commission will be.

Mr. STEVENS. No; that is true.

Mr. CAMPBELL. Well, I didn't know that.

The CHAIRMAN. Perhaps we assume what their position is, but there has never been any announcement of it.

Judge HAINER. We assume that they will present the facts impartially.

Mr. STEVENS. As they see them.

Mr. CAMPBELL. In this connection, I think I should say to the committee that in the presence of Mr. Lyman, the secretary of the National Board of Farm Organizations, at the office of the National Board of Farm Organizations, one of the representatives of the Federal Trade Commission discussed this matter at some length, probably two hours, one morning, and he stated to me, as did Mr. Lyman also, that the Federal Trade Commission had from the beginning been absolutely opposed to the consent decree.

Mr. SMITH. Well, Mr. Chairman, I hardly think he ought to go into that, because they are going to speak for themselves.

Mr. CAMPBELL. Well, that is proof of that, if they want the proof of it.

Mr. SMITH. Well, if there is a desire to contradict any of their statements, that will come more properly afterwards.

The CHAIRMAN. Yes; let us not indulge in any discussion of what the Federal Trade Commission will do. We will wait and see how they feel about it.

Mr. STEVENS. They may have changed their mind.

The CHAIRMAN. Go ahead, Mr. Campbell, and complete your statement.

Mr. CAMPBELL. That is about all I want to say.

I want to say, in conclusion, that I want to thank the committee for the patience and kindly liberal manner in which they have conducted this hearing. You have given the opposition every opportunity to present their evidence and show real cause why this decree should not be modified or entirely set aside. In our opinion, they have utterly failed in their presentation of facts and evidence; neither have they been able with their great organization, which covers the entire country, to show that they have the support of numbers.

In that connection I want to say that I have introduced here a letter from Mr. J. R. Howard, who is in favor of modification of the decree.

Judge HAINER. Who is Howard?

Mr. CAMPBELL. J. R. Howard, the president of the National Farm Bureau Federation.

Judge HAINER. What is the membership of that federation?

Mr. CAMPBELL. 1,200,000, I think; or something like that. And you have on record, I think, as I have copies of them, resolutions from many growers' organizations running into thousands.

Judge HAINER. What other farm organization has introduced these resolutions, or passed these resolutions?

The CHAIRMAN. The Michigan.

Mr. CAMPBELL. The Michigan Farm Bureau Federation. I have a copy of a resolution—

Judge HAINER (interposing). What is the membership of that organization, the Michigan Federation?

Mr. CAMPBELL. About 100,000.

The CHAIRMAN. Is that a constituent part of the American Far Bureau Federation?

Mr. CAMPBELL. Yes; it is a part of the American Farm Bureau Federation.

Mr. SMITH. Now, Mr. Chairman, what those letters show is contained in the letters themselves; the letters speak for themselves. I do not agree at all with him as to the effect of the letters that he referred to.

Mr. CAMPBELL. I felt during this hearing that there was a disposition on the part of our opponents to belittle the numbers who are in favor of modification. The committee, of course, is acquainted with the large number of petitions which have come in here and can not be read into the record from many growers' organizations. I want to say this, too, in reference to our California organizations, that those organizations decided entirely to keep out of this whole matter.

Judge HAINER. What organizations do you refer to?

Mr. CAMPBELL. Some 37 cooperative organizations of California. State organizations.

You, gentlemen of the committee, represent the people—more than 100,000,000 consumers of this country. We are entirely willing to allow you to decide as to the justice of our position.

With all confidence we rest our case in your hands.

The CHAIRMAN. Senator, do you want to examine him now?

Mr. SMITH. No; I want to wait until Mr. Breed comes.

The CHAIRMAN. Very well. That will be all now, Mr. Campbell.

Mr. Wood wants to make a statement.

STATEMENT OF MR. MANNING STIRES, ATTORNEY AT LAW, 220 WEST FORTY-SECOND STREET, NEW YORK CITY.

Mr. STIRES. Gentlemen of the committee, my name is Manning Stires. I appear for Harry E. Wood, of the firm of Wood & Stevens, brokers, of New York City.

The CHAIRMAN. Your address, please?

Mr. STIRES. I am an attorney, with offices at 220 West Forty-second Street, New York.

Gentlemen of the committee, we appear on a question of personal privilege. It developed and was brought to our attention on Saturday that Mr. Dallas H. Gray, in the course of his testimony, saw fit to relate as an argument the character of treatment a grower was apt to receive in support of his theory that the brokers and brokerage organizations, in conjunction with the wholesale houses, was an imperfect, at best, means of distribution of the farmers' commodities, a personal attack on Mr. Wood, citing a transaction which took place some 12 years ago.

With that short preface I would like to ask Mr. Wood some questions.

STATEMENT OF MR. HARRY E. WOOD, BROKER, OF THE FIRM OF WOOD & STEVENS, 97 HUDSON STREET, NEW YORK CITY.

Mr. STIRES. Mr. Wood, I will ask you how long you have been in business in New York under the name of Wood & Stevens, a corporation, or as a partnership?

Mr. WOOD. About 21 years.

Mr. STIRES. At the time of this transaction—in 1908 and 1909—with Mr. Gray it was a partnership?

Mr. WOOD. Yes, sir.

Mr. STIRES. Prior to entering this business of brokerage, what was your business?

Mr. WOOD. I was a buyer for F. H. Liggett Co. about six years.

Mr. STIRES. In 1908 and 1909 you represented various raisin growers and fruit growers and canneries in California and elsewhere, did you not?

Mr. WOOD. Many of them.

Mr. STIRES. Among them being this Mr. Gray?

Mr. WOOD. Yes, sir.

Mr. STIRES. Subsequent to 1909 there was organized an association of raisin growers in California?

Mr. WOOD. Yes; the California Associated Raisin Co.

Mr. STIRES. Do you recall the year in which that organization was made?

Mr. WOOD. It was about seven years ago; that would be 1913, I think; I think the spring of 1913, I believe.

Mr. STIRES. And at the time of the organization of the raisin growers did they employ you?

Mr. WOOD. They did. I think it was about one year after they had started their organization.

Mr. STIRES. And in what capacity did they then employ you?

Mr. WOOD. As their Greater New York manager of their office, which they shared with us. I was managing their business and Wood & Stevens at the same time.

Mr. STIRES. On a commission or on a salary?

Mr. WOOD. Working for them on a salary.

Mr. STIRES. And it is that same organization of which this Mr. Gray was a member?

Mr. WOOD. Yes, sir.

Mr. STIRES. How long did you represent them in that capacity?

Mr. WOOD. One year.

Mr. STIRES. And during that time what was the extent of your authority?

Mr. WOOD. I had, as I remember, practically unlimited power of attorney to borrow money for them; draw checks; open bank accounts and draw drafts; negotiate foreign documents of all kinds, including bills of lading; and insurance certificates. That was in connection with the exportation for them of around something like 350 or more carloads of raisins that were sold for them, to be shipped abroad, but forwarded to New York, to be forwarded through us afterwards. I looked after the handling of all their foreign exchange.

Mr. STIRES. And you handled that business in that way for one year?

Mr. WOOD. One year.

The CHAIRMAN. This power of attorney applied only to the exportation, did it?

Mr. WOOD. No; it was practically a full power of attorney in connection with practically everything connected with the running of their New York office. At that time they were having bank accounts in New York, and borrowing more or less money there, and I was borrowing for them and signing notes for them.

Mr. STIRES. About what volume of money did you handle for them in that way, Mr. Wood?

Mr. WOOD. At that time the bank agreed to loan up to a half million dollars. I think the greatest amount I had ever borrowed was around \$350,000 at any one time.

Mr. STIRES. At the end of that time what became of your relation with the Raisin Growers' Association?

Mr. WOOD. I then was given their account on a commission basis.

Mr. STIRES. And that lasted how long, Mr. Wood?

Mr. WOOD. Until the 1st of June, 1921.

Mr. STIRES. How did you come to lose that account at that time?

Mr. WOOD. They had made up their minds, around January or February, 1921, to establish their own salaried sales organizations throughout the entire United States, and they severed their connections with all brokers in the United States as of June 1, 1921.

Mr. STIRES. I have here a copy—I have the original letter—of a letter from the California Associated Raisin Co., membership 10,000 growers, Fresno, Calif., dated January 5, 1921.

The CHAIRMAN. What is the purpose of it?

Mr. STIRES. Merely to show the fact that he ceased this relationship because of a change of policy, and for no other reason. I am going to file this letter. I am not going to read it; it is too long. I wish to have it available for reasons which will develop later.

I also have four other letters, which I would like to file in the same way, in which it will appear that at various times they have complimented Mr. Wood not only for the way in which he handled their business but—

The CHAIRMAN (interposing). My proposition is simply this, that the attack was made—if I am wrong on this, I want to be corrected, of course—but the attack was made on Mr. Wood regarding a personal transaction between Mr. Gray and Mr. Wood and did not concern or cover the transactions between the California Associated Raisin Co. and Mr. Wood, and therefore I do not exactly see how these have any bearing upon the question we are considering here.

Mr. STIRES. Mr. Gray did attack Mr. Wood in a personal way. At the time he made this attack there was not in existence this organization. In spite of the attack upon Mr. Wood and the extent to which he sought to carry it in California and elsewhere, strange as it may appear, Mr. Wood was the very man who was elected by this organization, of which Mr. Gray was a member, to represent the whole organization.

Mr. SMITH. Subsequently selected?

Mr. STIRES. Subsequently selected. Now, as it affects his character, he certainly is privileged, it seems to me, to show that his dealings, which involved many hundreds of thousands of dollars with others in the same business, including Mr. Gray's organization, was so satisfactory.

Judge HAINER. Subsequent to this particular transaction referred to and the Philadelphia transaction?

Mr. STIRES. Yes, sir.

Judge HAINER. And the organization was formed afterwards?

Mr. STIRES. Yes, sir.

Mr. SMITH. And I would like to make this suggestion to the committee: Mr. Gray, as I understood him, was assaulting generally the whole brokerage business in general, and he was undertaking to show that they were all disreputable, and he selected Mr. Wood as an illustration of the disreputable and dishonest manner in which they were being treated by the brokers' organization. We had Mr. Wood within reach, and we thought the best way to meet it was to have Mr. Wood here and show whether his attack on Mr. Wood was true or false.

Mr. STEVENS. Mr. Chairman, I recall that fact, and I think the committee will remember that Mr. Gray did say all brokers—

Judge HAINER (interposing). Oh, no.

Mr. STEVENS. Mr. Daily took that up.

Judge HAINER. We certainly did not think that he was covering that broad scope.

Mr. HALL. He did not go that far.

Mr. SMITH. And he was illustrating his attack on the system by referring to Mr. Wood.

Mr. STIRES. This is what Mr. Gray says, on page 1587, after he is asked definitely by Mr. Daily what he means:

"I mean it as to both an imputation upon the character and a practice."

The CHAIRMAN. Upon whose practice?

Mr. STIRES. The practice of brokers generally.

Mr. SMITH. That is what he meant.

Mr. STIRES. You mean—he was asked further by Mr. Dailey: "You mean it is a general trade practice?"

"Mr. GRAY. I have not said so. I asked Mr. Wood then to give me a statement of all the money he had received, if he had received any——"

Judge HAINER (interposing). Then you could not claim that, when he disclaimed it. He meant that one instant transaction. Now, we will permit you to go into that one transaction. I think that is all that is material.

The CHAIRMAN. That is all I see.

Judge HAINER. Because he disclaimed, and Mr. Daily so understood it.

Mr. STIRES. And Mr. Gray does say, on page 1590 [reading]:

"And I want to surely pay tribute to this Mr. Worth, because he championed my cause against all the opposition of the wholesale, jobbing, and brokerage trade in New York, and I want to say that they practically ostracised him in that city because of his action in protecting a grower."

That is an indictment which is rather general.

The CHAIRMAN. Well, the letters may go in.

(The letters are as follows:)

CALIFORNIA ASSOCIATED RAISIN CO.,
FRESNO, CALIF., January 5, 1921.

WOOD & STEVENS,
99 Hudson Street, New York City, N. Y.

GENTLEMEN: The management has just decided to make a change in our selling system and as soon as practical open our own branch houses in the various distributing centers in the United States. This decision was reached only after the most mature consideration for, although we feel that the raisin business has grown to a point where the most intensive retail cooperation with our jobbers is vitally essential, it is awfully hard to break most of our brokerage relations, as the personal touch has crept in and business association has been cemented by friendship until most of you seem almost one to us.

But we feel the time has come when we must build and maintain in each market a well trained and personally supervised organization of raisin specialty men to plus the efforts of the jobbers' salesmen and insure as near 100 per cent distribution as possible in every market. We can not afford to maintain such an organization and pay brokerage also, and we do think that the maximum outlet is absolutely essential.

We want to be fair with you gentlemen and for that reason we are giving you this notice in advance, for although our branches will be opened as soon as practical, they will be organized for the marketing of the 1921 crop and we will protect your commissions on all sales of our 1920 pack in your territory sold before June 1, 1921; and there is still a considerable amount of brokerage yet to be earned on the 1920 crop, of which we hope you will get your share.

We want to emphasize our appreciation of the splendid service you have rendered and we sincerely hope that the interruption of your representation will not mean the severance of the friendship which has been built up during these past years. Whenever you come to California you may be sure of a cordial reception at Fresno.

With our most sincere wish for your personal prosperity, we are,

Yours very truly,

CALIFORNIA ASSOCIATED RAISIN Co.,
By S. Q. GRADY,
General Sales and Advertising Manager.

CALIFORNIA ASSOCIATED RAISIN Co.,
Fresno, Calif., January 14, 1921.

WOOD & STEVENS (INC.),
97 Hudson Street, New York City.
(Attention Mr. Harry Wood.)

GENTLEMEN: Mr. Seymour tells me this morning that he has received a very nice letter from you offering your utmost cooperation. It certainly is gratifying to receive your assurance, but frankly it is no more than I expected of you.

We have employed Mr. F. W. Delaney, formerly sales manager of the canned goods department of Cudahy Packing Co. Mr. Delaney will be district sales manager for New York, Connecticut, and half of New Jersey. We have had him out here for about two weeks, and have gone into our plans pretty thoroughly with him. He left for the East this morning, with instructions to make the first call after arriving in New York on Wood & Stevens. I feel very sure that you are going to like Mr. Delaney. He has had a well-rounded sales experience and has a likable personality.

As you know my policy is to get as far away as possible from the things that irritate and rub our customers the wrong way, and build up good will among our distributors, based on service and a realization of their viewpoints. Mr. Delaney will open an office in New York and organize a retail speciality sales force to supplement the jobbers' efforts in distribution. I feel that his introduction to the trade is of paramount importance, and I am counting on you, Mr. Wood, to give him the proper send-off. Mr. Delaney is going to work as closely with Wood & Stevens as possible, and we sincerely trust that your company will get as large a share as possible of the more than \$100,000 yet to be earned in brokerage.

Until June 1 our specialty force is really your specialty force, and you are serving a mutual purpose. I have assured Mr. Delaney that there is no better source than yourself to which he can turn for advice and counsel.

I expect to leave for the East within a month's time and hope to have the pleasure of renewing your acquaintance.

Yours very truly,

CALIFORNIA ASSOCIATED RAISIN Co.,
By S. Q. GRADY,
General Sales and Advertising Manager.

(Charge to Mr. F. W. Delaney, care of Lord & Thomas, Malters Building, Chicago, Ill. Special delivery.)

CALIFORNIA ASSOCIATED RAISIN Co.,
Fresno, Calif., January 18, 1921.

WOOD & STEVENS (INC.),
97 Hudson Street, New York, N. Y.

GENTLEMEN: We have your letter of the 8th, and want to say that the necessity of severing relations with your organization is one of the most unpleasant experiences that the writer has had since becoming identified with the Raisin Association.

We have felt that you have given us a real service, and our decision was reached only after the most mature deliberation and because we felt that our action was necessarily in line with the policy which had been adopted.

We heartily appreciate your good wishes and the very generous offer you have made to assist us in every possible way.

Mr. Delaney, the gentleman we have selected for your territory, has been advised of your attitude and will no doubt call upon you in the very near future. He has been requested to avail himself of your offer of assistance.

Again expressing our regret at the necessity of this action, we are,

Yours very truly,

CALIFORNIA ASSOCIATED RAISIN Co.,
F. S. SEYMOUR,
Assistant to the President.

CALIFORNIA ASSOCIATED RAISIN Co.,
Fresno, Calif., February 5, 1921.

WOOD & STEVENS,
99 Hudson Street, New York City.

GENTLEMEN: Mr. Delaney has wired me this morning that it seems he is unable to get located in an office which would be satisfactory, and that you have very kindly offered him room in your offices, which I have telegraphed him to accept.

However, we feel that we must insist on paying our share for this office or a subrental price based on anything which you feel is fair. So kindly make us a figure, so the matter can be attended to.

I am very sorry that the rush of business following the organization of our new sales force, together with the new advertising campaign started, has delayed me until now acknowledging the splendid way in which you are cooperating with us. Not only do I appreciate it by Mr. Giffen and Mr. Seymour have mentioned it several times, and we certainly hope to keep our relations so that they will always continue on this basis.

Yours very truly,

CALIFORNIA ASSOCIATED RAISIN Co.,
S. Q. GRADY,
General Sales and Advertising Manager.

CALIFORNIA ASSOCIATED RAISIN Co.,
Fresno, Calif., March 10, 1921.

WOOD & STEVENS,
97 Hudson Street, New York, N. Y.

GENTLEMEN: We want you to know that we appreciate your loyal cooperation at this time in working so closely with our Mr. Delaney.

Knowing you as we do, we naturally expected this; nevertheless we can not help but notice the way you are working with us. Mr. Delaney has mentioned this several time in his letters.

Assuring you of our kindest regards, we are,

Yours very truly,

CALIFORNIA ASSOCIATED RAISIN Co.,
C. G. STANDEFORD,
Sales Department.

Mr. STIRES. What other organizations of growers do you represent?

Mr. WOOD. We have represented the California Walnut Association, of Los Angeles, Calif., I think something over 15 years; we have represented the California Lima Bean Growers' Association, of Oxnard, Calif., something over 5 years; we have represented the California Almond Growers' Exchange, of San Francisco, Calif., going on 2 years; and we have represented the California Pea Canning and Growers' Association, of Albany, Ga., I think something over 3 years; and we have represented the Columbus Canning Co., of Columbus, Wis., packers and canners of canned peas and corn, I think something around 17 or 18 years.

The CHAIRMAN. Is that a cooperative association?

Mr. WOOD. No; that is not.

Mr. STIRES. The others are?

Mr. WOOD. The others mentioned are all cooperative associations.

Mr. STIRES. All told, you represent some forty odd of growers or packers of foods?

Mr. WOOD. At this time I think our account shows something over 50, maybe, of organizations, made up of independent packers and growers' associations.

Mr. STIRES. And you have been a director of the Dried Fruit Association of New York?

Mr. WOOD. I believe I was director of that association two terms, eight years. Mr. STIRES. And have you ever been appointed an arbitrator of that association in settling disputes between buyer and seller?

Mr. WOOD. Many times. In fact, I am at present on one of their standing committees.

Mr. STIRES. I can give you gentlemen a list of those concerns, if you think it is of any importance.

The CHAIRMAN. I don't think it is.

Mr. STIRES. Now, Mr. Wood, Mr. Gray made two specific charges; one was that the arbitration of this dispute was unfair. He has stated on the record that his own arbitrator, Mr. Worth, meant right and did his best. He also stated on the record that Mr. Juhring, a member of the firm of R. C. Williams & Co., wholesale grocers, was the arbitrator selected by you, who was intimidated by you in making the decision, and he was silent as to the third arbitrator, Mr. Pierce, who is since dead. I have here some affidavits which have been made by Mr. Juhring and Mr. Worth and by Mr. Higgins. Mr. Higgins was mentioned by Mr. Gray as being the only simon pure honest man engaged in this business in New York, the man who gave to Mr. Gray the only encouragement that he was able to derive from the trade in New York City, and as these are pertinent on the charge, I am going to read them, and then file them.

Judge HAINER. Do you say he made that statement?

Mr. STIRES. Yes, sir.

The CHAIRMAN. That he was the only honest man in New York?

Mr. STIRES. Practically so.

Judge HAINER. Please refer to that statement.

Mr. STIRES. I think I can. On page 1589 he says—this is after he has made the statement that everyone was against him. [Reading:]

"I appealed to some friendly interest there in New York, and I will say that Mr. Higgins was very, very fair in this matter, although he did not, or could not come out openly and declare himself. But the commercial interests of that city, the bank and other institutions, denounced this practice most vehemently."

When that is read in connection with—

Judge HAINER (interposing). I think your statement is not justified.

Mr. STIRES. I think so.

Judge HAINER. You draw that distinction, as a lawyer?

Mr. STIRES. I think so.

Judge HAINER. It is a very far-fetched statement.

Mr. STIRES. He said that Mr. Juhring did not act honestly, because of intimidation by Mr. Wood.

Judge HAINER. You said he said he was the only honest man in New York.

Mr. STIRES. I said that he said that he was the only simon pure honest man in New York engaged in this business.

The CHAIRMAN. Let us not argue this thing further. The committee will draw its own conclusions as to what he said.

Mr. STIRES. All right. [Reading:]

In the matter of hearing before the interdepartmental committee on question of modification of consent decree in the case of United States v. Swift & Co. et al., with reference to unrelated commodities.

STATE OF NEW YORK,

County of New York, ss:

William L. Juhring, being duly sworn, deposes and says I am the Mr. Juhring referred to in the testimony of Dallas H. Gray, on pages 1589 and 1601 in the above matter.

I am a member of the firm of R. C. Williams & Co., wholesale grocers, in the city of New York. My firm has been in business for 110 years and I have been connected with it in one capacity or another for 43 years, continuously.

My firm's business in the last few years will average in excess of \$7,000,000.

I have known Mr. Harry E. Wood for a period of about 20 years and have done business with him more or less consistently during that period of time.

During this time my dealings with Mr. Wood have always been satisfactory and, in case of any disagreement or dispute, amicably adjusted.

I recall an arbitration of a difference between Wood & Stevens, of which the said Harry E. Wood was a partner, and Dallas H. Gray over the consignment to Wood & Stevens of certain carloads of raisins.

Mr. A. C. Worth, of this city, was selected by Dallas H. Gray as his arbitrator, and we two selected Mr. Robert T. Pierce (since deceased), of the firm of Palmer & Pierce, dealers and packers of dried fruits.

The arbitration was submitted to us by agreement, dated January 29, 1909, signed by Harry E. Wood, for Wood & Stevens, and by Dallas H. Gray, was witnessed by William Hills, jr., and was sworn to before a notary public.

I have had an original copy of this original agreement to submit to arbitration submitted to me which refreshes my recollection as to the date of its execution and the signature thereto.

Mr. Worth and I promptly began to examine into the merits of the controversy and found the transactions involved and containing many entries and required a great deal of investigation of the books of Wood & Stevens; and as a result our arbitration was concluded and our decision rendered on the 15th of February, 1909, in which we unanimously found that there was nothing due from Wood & Stevens to Dallas H. Gray, but there was due from Dallas H. Gray to Wood & Stevens the sum of \$420.47.

This decision was signed by Mr. Worth, Mr. Pierce, and myself, and was our unanimous opinion that the account of Wood & Stevens with Dallas H. Gray was correct in all respects as is certified in the decision, copy of which is attached hereto.

I am sorry that Mr. Pierce is no longer living, because I feel certain he would gladly make an affidavit to the same general effect as I have were he living.

I wish to deny the statement made by Mr. Gray that I was intimidated by Mr. Wood in making my decision. My business career and record makes any further comment on this charge unnecessary.

WILLIAM I. JUHRING.

Sworn to and subscribed before me this 10th day of December, 1921.

[SEAL.]

M. CAMPBELL, Jr.,

Notary Public, Kings County, No. 2.

Mr. STIRES. I have here the agreement for arbitration and the decision of the arbitrators.

The CHAIRMAN. How long are they?

Mr. STIRES. They are just short. I do not think we should be cut off in a matter of this sort. Mr. Gray was allowed very ample opportunity to proceed at length into the charge, and we certainly ought to be given any needed time to answer.

The CHAIRMAN. You may proceed.

Mr. STIRES (reading):

AN AGREEMENT.

We, the undersigned, hereby covenant and agree to submit, and do voluntarily submit, to Mr. A. C. Worth and Mr. W. L. Juhring, with power to select a third party, for their consideration and adjudication the controversy now existing between us with respect to accounts and consignments and sales of merchandise; and we hereby covenant and agree to and with each other to abide by such decision and award as the said committee may render in the premises, and in the event of failure by either of us to comply with such decision and award we hereby authorize and empower the said committee to assess the damage arising therefrom; and we further covenant and agree to abide by such assessment and award as the said committee may render in the premises, and agree that a judgment of the Supreme Court of the State of New York may be entered upon the award made pursuant to this submission agreement.

It is further understood and agreed that our heirs, administrators, executors, successors, or assigns are bound by this instrument, and that sections 2365, inclusive, of the New York Code of Civil Procedure shall govern this arbitration.

Dated, New York, January 29, 1909.

HARRY E. WOOD,
For Wood & Stevens.
DALLAS H. GRAY.

Witness:

WILLIAMS HILLS, Jr.

STATE OF NEW YORK,
County of New York, ss:

On this 29th day of January, 1909, before me came Harry E. Wood, to me known to be the individual described in and who executed the foregoing instrument, and he acknowledged that he executed the same.

[SEAL.]

WM. A. LEMCKE,
Notary Public, New York County.

STATE OF NEW YORK,
County of New York, ss:

On this 29th day of January, 1909, before me came Dallas H. Gray, to me known to be the individual described in and who executed the foregoing instrument, and he acknowledged that he executed the same.

[SEAL.]

WM. A. LEMCKE,
Notary Public, New York County.

Mr. STIRES. And I have now the decision of the arbitrators, as follows. [Reading:]

Established 1811. R. C. Williams & Co., importers, manufacturers, and wholesale grocers, 56, 58, and 60 Hudson Street, and 93, 95, and 97 Thomas Street, New York. Post-office box 1384. Telephone, 2200, 2201, 2202, Worth. Cable address, Recreer.

NEW YORK, February 15, 1909.

ARBITRATORS' DECISION.

Dallas H. Gray v. Wood & Stevens.

We, A. C. Worth for Dallas H. Gray, William L. Juhring for Wood & Stevens, and Robert T. Pierce, chosen jointly as third arbitrator, do find as follows:

First. All account sales rendered by Wood & Stevens to Dallas H. Gray on January 15, 1909, covering nine carloads of raisins and some peaches, all moneys received on consigned goods and moneys paid to Dallas H. Gray, dates, amounts, etc., to be correct.

Second. Wood & Stevens's brokerage statement for six carloads of raisins sold for Dallas H. Gray during the season of 1907, to be correct.

Third. The account sales and statement were verified by Mr. A. C. Worth and Mr. William L. Juhring, and they both certified to Mr. Robert T. Pierce that the same were correct.

Fourth. The amount due Wood & Stevens on February 15, 1909, from Mr. Dallas H. Gray, with interest, to be \$420.47.

WM. L. JUHRING.
A. C. WORTH.
ROBERT T. PIERCE.

Mr. STIRES. You will notice in the decision this:

"Third. The account sales and statement were verified by Mr. A. C. Worth and Mr. William L. Juhring, and they both certified to Mr. Robert T. Pierce that the same were correct."

In other words, there was an agreement between the two arbitrators without calling on the umpire.

We found we were fortunate in getting the affidavit of Mr. Worth, who was the arbitrator selected by Mr. Gray, who is now a man considerably over 80 years of age, but we secured his affidavit on Saturday, and it is as follows. [Reading:]

STATE OF NEW YORK,
County of New York, ss:

A. C. Worth, being duly sworn, deposes and says: I am the A. C. Worth mentioned in the testimony of Dallas H. Gray in the foregoing proceedings on page 1590.

I am a dried-fruit merchant in the city of New York and have been in business as such for a period of 60 years.

I have been shown the original signed copy of the agreement to submit to arbitration dated January 29, 1909, referred to in the affidavit of Mr. Juhring, which was made in my presence, and I have been shown the copy of the award made by the three arbitrators dated February 15, 1909; and from these papers

I refresh my recollection and am able to say that Mr. Juhring and I made a very careful and exhaustive study of the books of Wood & Stevens in relation to their account with Mr. Gray and that the decision made by the arbitrators, of which I was one, represented our honest judgment that the account of Wood & Stevens with Dallas H. Gray was correct in every particular, and that there was no money due from Wood & Stevens to Dallas H. Gray, but that there was due from Dallas H. Gray to Wood & Stevens the sum of \$420.47, as we certified in our decision.

My conclusions as arbitrator were reached purely and solely as a result of my own judgment without collusion and without intimidation.

With reference to the charge made by Mr. Gray in his testimony on page 1590 that as a result of my having taken sides with a fruit grower against a broker, that I was practically ostracized by the trade in New York City, that such statement is absolutely without foundation and has no merit whatever.

I am still in business, and have been continuously since this award was made, and I have never heard a word whatever about it up to the present that my action in that matter did me any harm with the trade.

A. C. WORTH.

Sworn and subscribed to before me this 10th day of December, 1921.

[SEAL.]

M. CAMPBELL, Jr.,
Notary Public, Kings County, No. 2.

We also have the affidavit of William A. Higgins, as follows. [Reading:]

STATE OF NEW YORK,

County of New York, ss:

William A. Higgins being duly sworn, deposes and says that I, William A. Higgins, am the Mr. Higgins referred to in the testimony of Dallas H. Gray, mentioned on pages 1586 and 1589.

I am president of the corporation of Higgins & James (Inc.), which succeeded to the partnership of William A. Higgins & Co., which had been in business for a period of over 25 years, and I am still engaged in the business of wholesale dried fruits, with an annual volume of upward to \$8,000,000.

During all the time that I have been in business I have known Mr. Harry E. Wood, of the brokerage firm of Wood & Stevens, and my dealings with him have always been satisfactory and upright, and our transactions have amounted to many thousands of dollars annually.

Our business relations, as buyer and broker, have been continuous since before and after 1909, and still continue very satisfactorily to us. This is not from any favoritism on our part, but from the fact that Messrs. Wood & Stevens have represented some of the most important shippers of dried fruit in California, whose products we buy.

I have had my attention called to the statement made by Mr. Gray that I had said to him in the year 1909 that I had paid to Wood & Stevens before deliveries of bills of lading for the raisins sold me by them, or immediately after the delivery of the bills of lading, and that I owed them no money on that account, or words to that effect. As a matter of fact, I had not paid to Wood & Stevens the entire amount owing for the raisins delivered, and the records show that on January 14, 1909, my firm paid Mr. Gray personally \$2,621.22, which was credited on my firm's account by Wood & Stevens. This payment was made against Wood & Stevens's two separate invoices of January 9, 1909, the net amounts being, respectively, \$1,001.50 and \$1,619.72.

During all the time I have been in the dried-fruit business I have known Mr. William L. Juhring, Mr. A. C. Worth, and Mr. Robert T. Pierce, until the latter's death, who acted as arbitrators in the dispute between Mr. Gray and Wood & Stevens, and from my long acquaintance and business dealings with them can certify that they are gentlemen of the highest integrity and excellent judgment.

I am glad to be able to certify to these facts, because I consider the vicious and reckless charge made by Mr. Gray against Mr. Wood and the gentlemen who acted as arbitrators is most unwarranted and should be expunged from the records.

WM. A. HIGGINS.

Sworn and subscribed to before me this 10th day of December, 1921.

[SEAL.]

N. FALCONER, Jr.,
Notary Public, Kings County, New York County, No. 441.

My commission expires March 30, 1923.

Mr. STIRES. I call attention specially to the last paragraph of the affidavit.
[Reading:]

"I am glad to be able to certify to these facts, because I consider the vicious and reckless charge made by Mr. Gray against Mr. Wood and the gentlemen who stood as arbitrators is most unwarranted and should be expunged from the records."

In which I concur most heartily.

Judge HAINER. Do you think we have power to expunge it, as a lawyer?

Mr. STIRES. I don't know that you have.

Judge HAINER. You may put in what you wish.

Mr. STIRES. Now, Mr. Wood, the other charge that was made against you was to the effect that he tried for four months to get his money. On page 1589 he says: "This thing kept me in New York for four months, at a heavy expense, with my family there"—trying to get his money.

Now, you went over your books on Saturday with me, Mr. Wood, did you not?

Mr. WOOD. Yes, sir.

Mr. STIRES. I am going to ask you these questions rather leadingly, in order to hurry it up.

Judge HAINER. Yes; go ahead.

Mr. STIRES. In the year beginning in January, 1908, I find an entry on the 15th of an advance of \$1,700 on a car of raisins; and on the 16th a charge for advanced freight of \$658, and storage, insurance, and cartage, etc., of \$310.37.

Mr. GRAY. That is in 1908?

Mr. STIRES. Yes, sir.

Mr. GRAY. In January?

Mr. STIRES. January; yes.

Mr. GRAY. That is on the year previous crop?

Mr. STIRES. Yes. That particular car it develops in the details are as follows: The first sale was on January 17, 1908, and there was not but about \$300 of that sold until November, 1908, the last sale being on December 31, 1908. In other words, it then was in such condition that it was difficult to make sales, and the stuff remained in storage for almost a year. On January 27, 1908, your books show that there was a debit balance in your favor—

Mr. GRAY (interposing). Mr. Chairman, may I have your attention just a minute? I requested, you remember, the other day when Mr. Daily notified us that Mr. Wood was coming here for this purpose, that this hearing be postponed for five or six days or a week, until I could get all my data from California, which I have there preserved, to be able to rebut this testimony. Now, it is impossible for me, although I have a telegram here of some seven or eight hundred words, the wire is very incomplete. Now, I would like to have the hearing postponed for a week, at which time I will bring all this data here with reference to McKenzie, of Philadelphia, and Mr. Higgins, and the others. I will bring it here in their own handwriting with reference to this case, although they have given affidavits here denying these things, due to some pressure that might have been brought. I would like to have it postponed one week. I think I am being taken advantage of in this particular thing. I am not willing this morning to retract one statement I made.

Mr. SMITH. I was going to say that Mr. Wood certainly ought to be able to complete his statement.

Mr. GRAY. No; I consider it—

Mr. SMITH (interposing). Mr. Gray began this in the absence of Mr. Wood.

Mr. GRAY. And I am willing to finish it.

Mr. SMITH. He made the charges, and Mr. Wood ought to be able to complete his statement.

Mr. GRAY. Then I would like to have an opportunity a week from now to substantiate my charges.

Judge HAINER. You mean to bring in your rebuttal?

Mr. GRAY. To bring in the rebuttal.

Mr. STIRES. I understood the committee did not want to go into the merits of this account. We have no objection to it. But I understood that the chairman had stated that the award of the arbitrators was something the committee did not care to go into.

Judge HAINER. That is conclusive on this committee, isn't it?

Mr. STIRES. It seems so to me.

Judge HAINER. Is there anything more?

Mr. STIRES. Mr. Gray had his opportunity to assault Mr. Wood.

Judge HAINER. Why should you go into this, except as to any improper attack?

Mr. STIRES. The award is final, so far as to find there was no money due from Wood & Stevens to Mr. Gray, and also that there was money due from Mr. Gray to Wood & Stevens. But it is not final that Mr. Wood had kept Mr. Gray out of his money for four months.

Judge HAINER. Couldn't you shorten that up and let him answer that question? We do not want to shut you off, but we do not regard it as seriously, perhaps, as counsel would think. Of course, any imputation of his character he should be given an opportunity to answer.

Mr. STIRES. Mr. Wood, in January, 1908, and down to November 16, 1908, it shows there was certain debit balances in your favor, and on December there was \$2,704.16. I will show you your own figures, so that you may verify if that is correct.

Mr. Wood. That is correct.

Mr. STIRES. And that debit balance somewhat beginning to lessen until December 29, 1908, and that on the 2d day of January, 1909, occurred the first credit balance of Mr. Gray of \$2,334.96, resulting from a receipt from a customer on the 2nd day of January; and that two days later you paid Mr. Gray \$1,200, leaving a credit balance in favor of Mr. Gray of \$1,134.96; and that on the 7th day of January, 1909, by payment of \$1,300 to Mr. Gray it brought this credit balance in his favor down to \$962.21; and that on the 2nd day of January, 1909, there was a debit balance in your favor of \$611.95, which remained continuously until the award of these arbitrators. So that during this whole period of one year, during 1908 and for the first 12 days of 1909—that was a total period of 10 days instead of 4 months—you had some of Mr. Gray's money; is that correct?

Mr. Wood. That is correct.

Mr. STIRES. And these facts, figures, and books are the books from which the facts and figures were determined by the arbitrators who examined into the accounts?

Mr. STIRES. That is right; they were the books of original entry.

The CHAIRMAN. Your books?

Mr. Wood. Our books, which these arbitrators audited.

Mr. STIRES. Now, Mr. Wood—

Judge HAINER (interposing). You should show that Mr. Gray also had an opportunity to submit all his books and figures.

Mr. STIRES. Yes; Mr. Gray was challenging our books. What data he had I don't know.

Mr. Wood. He was in there, present all the time, and his arbitrator was there all the time.

Judge HAINER. But other than that—

Mr. Wood (interposing). I will explain that in this way: Mr. Juhring and Mr. Worth spent four or five evenings in our office, and Mr. Gray and myself were present at all times. They had our books and went over them together—Mr. Worth and Mr. Juhring.

Judge HAINER. But were the original accounts submitted by Mr. Gray presented to the arbitrators and considered by them in making up their decision?

Mr. Wood. I know Mr. Gray was there all the time talking to the arbitrators and looking at the books and checking with them. I can not remember that he ever raised a question as to any of our figures at any time.

Mr. SMITH. You were giving the facts to the arbitrators as to the transaction?

Mr. Wood. We turned our books over.

Mr. SMITH. And on the facts given them they found that the books were correct?

Mr. Wood. Yes; they so stated in their decision. I think they also found that those accounts were correct, instead of being padded by excess storage charges, and so on, as Mr. Gray has testified to.

Mr. STIRES. Now, Mr. Gray also said that you had committed a criminal offense in that you hypothecated some peaches that you had on sale; did you, in fact, hypothecate those peaches?

Mr. Wood. I did not.

Mr. STIRES. As a matter of fact, you learned that Mr. Gray had gone behind you to some of the people to whom you had sold some of his raisins, and by making certain representations and promising them the next year's business, which in fact resulted, that he got that concern to pay him the balance of that account direct; isn't that true?

Mr. WOOD. I would not want to say the balance, but according to the books—

Mr. STIRES (interposing). It is the balance? [Handing paper to the witness.]

Mr. WOOD. Yes, sir.

Mr. GRAY. What concern was that?

Mr. WOOD. William A. Higgins & Co.

Judge HAINER. What amount was that?

Mr. STIRES. \$2,621.22.

Mr. WOOD. As disclosed in the affidavit of Mr. Higgins.

Judge HAINER. What was that for?

Mr. STIRES. We owed Wood & Stevens, and in spite of that, Mr. Higgins gives him two thousand six hundred and some odd dollars that was owing on these raisins.

Mr. GRAY. What date was that on?

Mr. WOOD. The 14th of January.

Mr. STIRES. The 14th of January, 1909.

Now, Mr. Wood, when you learned that Mr. Higgins had paid this money direct to Mr. Gray, and knowing that Mr. Gray owed you \$611.95, what did you do with that car of peaches?

Mr. WOOD. I transferred title, for the reason that I had been advised by the warehouse that Mr. Gray had been around there seeing whether they had any peaches belonging to himself or to us. I transferred it, and did it because I anticipated that he would get the peaches and go back to California, leaving him in our debt, as he had been for some two years before.

Mr. STIRES. What happened about the car of peaches the minute this arbitration was settled?

Mr. WOOD. When he paid us the balance due us, as shown in the award, I paid him for the peaches and he turned it over to his arbitrator.

Mr. GRAY. What date was this?

Mr. WOOD. What is the date of the payment of the money?

Mr. STIRES. February 6, 1909, is when Mr. Gray paid the balance due, which was found by the arbitrators.

Mr. WOOD. Twelve days after the award.

Mr. STIRES. Now, Mr. Wood, he also says that Mr. H. C. McKenzie, of Philadelphia, stated to him that he did not owe any money for the peaches, and therefore could not give him any, implying that you had received this money and that it had not been turned over in a legitimate way to himself. I think the books show that on December 5, 1908, you did receive \$1,300 from Mr. McKenzie; but it further discloses—

Mr. GRAY (interposing). What date was that?

Mr. STIRES. On December 5, 1908. But it also discloses that at that particular time there was owing to Wood & Stevens for advances—not commissions; we have not figured commissions in here at all—\$1,057.79—

The CHAIRMAN (interposing). I think we have had enough of this detail as to this transaction. You may ask Mr. Wood if he ever kept any moneys belonging to Mr. Gray, and such as that; but I do not think we care to go into the details of this question, and decide this matter.

Mr. STIRES. We do not care to have you decide anything. But this thing has been spread before the world.

Judge HAINER. Let him refute it.

Mr. STIRES. I will ask you the question: You received from Mr. McKenzie on the 5th of December \$1,300?

Mr. WOOD. Yes, sir.

Mr. STIRES. And the 6th of December, \$1,500?

Mr. WOOD. Yes, sir.

Mr. STIRES. And it is also true that you had a general account; is that not so?

Mr. WOOD. That is correct.

Mr. STIRES. And that he was always in your debt for prunes, or raisins, or other commodities?

Mr. WOOD. Yes, sir.

Mr. STIRES. And that this \$1,350 did not necessarily refer to the raisins?

Mr. WOOD. That is correct.

Mr. STIRES. Or even that it had reference to the raisins, and even if it did have reference to the raisins, is it or is it not so that there was money due to Wood & Stevens for advances on drafts or checks sent to Mr. Gray, which more than offset the amount sent by Mr. McKenzie; is that correct?

Mr. WOOD. That is correct.

Mr. STIRES. That is all.

The CHAIRMAN. Is there anything, Senator?

Mr. SMITH. Did you at any time keep Mr. Gray's money for four months?

Mr. WOOD. No, sir.

Mr. SMITH. And keep him out of it?

Mr. WOOD. No, sir.

Mr. SMITH. Did you take Mr. Gray's goods and dispose of them for your own benefit—these peaches?

Mr. WOOD. No, sir.

Mr. SMITH. You were simply seeking to protect yourself against his getting the money for them when he owed you?

Mr. WOOD. That is right.

Mr. SMITH. Instead of the money from them being used up to pay you what he did owe you?

Mr. WOOD. That is correct.

Mr. STIRES. Mr. Wood, on that point, it is a fact, is it not, that you did endeavor to get the commission due you from Mr. Gray on the crop of 1908 and had failed to get it?

Mr. WOOD. Yes; and right in connection with that Mr. Gray insisted on settling this account with Mr. Stevens in California. I suggested that we wire Mr. Stevens about the account, and we did, and the reply, as I remember it, was something like this: "Ask Dallas to settle with you, as the books are kept in New York."

Mr. STIRES. In other words, Mr. Gray wanted you to settle these other matters, and to leaving hanging in the air these commissions of \$688 from the other crop?

Mr. WOOD. That is what he insisted.

Mr. STIRES. He insisted on that?

Mr. WOOD. Yes, sir.

Judge HAINER. When did you begin doing business with Mr. Gray?

Mr. WOOD. He stated it was—

Judge HAINER (interposing). Not what he said; what do you say?

Mr. WOOD. We have been in business for 21 years. We could not have represented him—not over 8 or 9 years prior to that, because we were not in business. This controversy was in 1909.

Judge HAINER. Did you have any controversy prior to that time?

Mr. WOOD. Not that I can remember.

Judge HAINER. What period of time do you remember you represented him before this controversy arose?

Mr. WOOD. The period of eight or nine years; ever since we had started in business.

Judge HAINER. And you were the broker for Mr. Gray, were you?

Mr. WOOD. The firm of Wood & Stevens were brokers for Mr. Gray during that period of time.

Judge HAINER. And your relations were cordial?

Mr. WOOD. Cordial and pleasant. In fact, I believe they were just a few days prior to this controversy.

Judge HAINER. When did this difference arise, in 1910 or 1909?

Mr. WOOD. In January, 1909; the latter part of January, 1909.

Judge HAINER. Had your accounts been balanced up to that time, and the business amicably adjusted, and the commissions?

Mr. WOOD. No; Mr. Gray had owed us a brokerage account on sales of his 1907 crop of raisins, which he had not paid, some \$600.

Judge HAINER. Had you demanded payment of that brokerage?

Mr. WOOD. Yes, sir.

Judge HAINER. Of 1907?

Mr. WOOD. Yes; it was the crop of 1907.

Judge HAINER. Why was that payment delayed up until 1909?

Mr. WOOD. Well, I can not answer. All I know is that Mr. Gray had not paid it to us.

Judge HAINER. And still you continued doing business for him, did you?

Mr. WOOD. Oh, yes; it has been a custom of brokers, during all that time and up to the present, we are more or less resilient with the growers. If they have a hard year and they want us to continue to represent them, we carry over the next year; in fact, for several years, and carry the accounts from year to year.

Judge HAINER. What was the reason Mr. Gray gave that he did not pay that account of 1907?

Mr. WOOD. I can't remember. He said that he wanted to settle with my partner, Mr. Stevens, in California. What his reasons were, I never knew.

The CHAIRMAN. What reasons did he give them out there; hadn't they tried to collect it?

Mr. WOOD. So far as I know Mr. Stevens had tried to collect it. We made a practice of sending statements of all outstanding account as brokers to Mr. Stevens regularly. And in his going around and collecting and seeing the people, he would ask for moneys on account, or collect in moneys, and hand in his report to me from time to time when he would send the money in.

The CHAIRMAN. Then it had been the custom for him to collect from some of the raisin growers, had it?

Mr. WOOD. Yes, sir.

Judge HAINER. Did you advise him promptly when sales were made?

Mr. WOOD. I would answer that in this way: Mr. Stevens represented our California end. He was seeking accounts and sales, and we wired back as contracts for sales were made out. He was handling the details at that end of the sales, and I was handling it at this end with the buyers, as he was handling it at that end with the sellers.

Judge HAINER. But on this particular transaction that he detailed, I think in Philadelphia, if you had made the sale as broker, and if you did not promptly advise him of that fact, did they request that you report whether you had made the sale?

Mr. WOOD. We made the sale of those raisins in Philadelphia.

Judge HAINER. When?

Mr. WOOD. They were made in this way: They were consigned to H. C. McKenzie by us. And Mr. McKenzie's account, the balance due was, I think our books will show, was received on March 4, 1909.

Mr. STIRES. After this account was settled?

Mr. WOOD. That was the raisins we had consigned to Mr. McKenzie belonging to Mr. Gray.

Mr. HALL. Were any books kept in California?

Mr. WOOD. None that I know of.

Mr. HALL. They were always kept in New York?

Mr. WOOD. Always in New York.

Mr. HALL. And Mr. Stevens advised the New York office always about settlements in California, did he?

Mr. WOOD. So far as I know he advised us when he made collections. He would have periods of advising us, after he had made so many collections on certain days. And we would pass those to the credit of the people, unless he would advise us differently. Sometimes he would keep the money to defray his expenses.

Mr. HALL. You kept an account with him, did you?

Mr. WOOD. We kept an account with him at all times.

Mr. HALL. Did that account show an account with Mr. Gray in California?

Mr. WOOD. I think you misunderstood me. We did not keep an account with Mr. Stevens as to the money due us from the shippers.

Mr. GRAY. You say you consigned these two carloads of raisins to Mr. McKenzie in Philadelphia?

Mr. WOOD. Yes, sir.

Mr. GRAY. No prices were named in the so-called consignment?

Mr. WOOD. That I can not answer definitely. I assume the prices I gave Mr. McKenzie were the prices you were asking for your raisins at the time.

Mr. GRAY. In purchases you did not let the goods go out without the purchase price?

Mr. WOOD. The purchases could no go out without the prices; there would be no purchases.

Mr. GRAY. Those goods were actually consigned?

Mr. WOOD. That is what our books show.

Judge HAINER. What is the fact?

Mr. WOOD. So far as I know those raisins were consigned to Mr. H. C. McKenzie.

Judge HAINER. Who consigned them?

Mr. WOOD. Wood & Stevens.

Mr. STIRES. Were those raisins consigned to you by Mr. Gray?

Mr. WOOD. Yes, sir.

Mr. STIRES. They were not sold to you?

Mr. WOOD. No, sir.

Mr. STIRES. You were a factor to get the best prices you could for Mr. Gray?

Mr. WOOD. That is right.

Mr. STIRES. And you passed these along to another broker to whom you might consign this merchandise?

Mr. WOOD. That is correct.

Mr. STIRES. Did Mr. Stevens sell any goods consigned to you in New York on the coast, or anywhere else?

Mr. WOOD. Not that I know of.

Mr. STIRES. As a matter of fact—

Mr. WOOD (interposing). No; he did not. Mr. Stevens never sold any goods consigned to us in New York.

Mr. STIRES. Those were sold by you in New York?

Mr. WOOD. Those were sold by me in New York.

Mr. STIRES. Now, Mr. Wood, there is one point I want to bring up—

Judge HAINER (interposing). Does your record show when these two carloads were consigned to Philadelphia?

Mr. STIRES. Yes; it shows.

Mr. GRAY. I would like to ask what you mean by consignment, to get the best price.

Mr. WOOD. I think I have already answered that. We undoubtedly give Mr. McKenzie the prices you were asking, and requested that he sell them no lower than those prices.

Mr. GRAY. Did you receive some money on those two carloads of raisins?

Mr. WOOD. I think that has already been answered.

Mr. GRAY. I want it answered again.

Mr. WOOD. Did we receive money on those raisins?

Mr. STIRES. Mr. Chairman—

Mr. GRAY (interposing). Just a minute.

Mr. STIRES. As I understood it, Mr. Gray took occasion to make, out of a clear sky, an attack on a man about a transaction that happened 12 years ago. You did not give that man an opportunity to be present. You did not have the decency to let him know about it, and have him have an opportunity to be present and cross-examine. And it seems to me very improper for my witness to be cross-examined by Mr. Gray. We have stated our case here.

The CHAIRMAN. If he is telling the truth, what objection is there?

Mr. STIRES. I haven't any objection at all, except this, that I feel very strongly that this whole proceeding has been a sort of a star-chamber proceeding, where Mr. Gray—

The CHAIRMAN (interposing). If you say this is a star-chamber proceeding, we will strike it all out of the record.

Mr. STIRES. That is your privilege.

The CHAIRMAN. Th's is an open hearing, and we have not shut you off—

Mr. STIRES (interposing). I have been shut off.

The CHAIRMAN. This is not a star-chamber proceeding; it is open to the public, but we are not going to fill up this record with a lot of inconsequential matter.

Mr. STIRES. We have been shut off.

Judge HAINER. You are casting a great deal of reflection on this committee. If you say this was a star-chamber proceeding, absolutely you are not fit to be a member of the bar.

Mr. STIRES. Thank you, sir.

Judge HAINER. You may take your seat, and we will proceed with this hearing.

The CHAIRMAN. We will dismiss this matter right now; we would like to hear from the Federal Trade Commission. The committee will hear Mr. Fuller, the chief counsel of the Federal Trade Commission.

Mr. STEVENS. Mr. Chairman, may I have the ear of this committee just a moment?

The CHAIRMAN. Surely.

Mr. STEVENS. It seems to me this would be a very unfortunate thing—

Judge HAINER (interposing). Heretofore this has been a very pleasant and harmonious meeting, and this hearing has been conducted very cordially, and this gentleman has seen fit to make an unjust assault on the committee.

Mr. GRAY. I move that we absolutely refrain from any further comment on this matter and smooth this up.

The CHAIRMAN. I wish to clear this up for the record and make a statement. The charge has been made here by Mr. Gray with reference to the brokerage business in New York City. The broker who was concerned in this charge has been permitted to come here and deny it, which he has done. The committee does not care to go into the details of this transaction any further. The man who was charged has been permitted to protect his reputation and refute the charges, and we think that is all that is necessary.

Mr. STIRES. May I set myself straight? When I used the words "star chamber" I referred to the fact that this testimony was allowed to be adduced when my man was not present.

Judge HAINER. Do you think that is star chamber; do you think we knew he was going to say it?

Mr. STIRES. No; of course you didn't.

Judge HAINER. Then, how is it star chamber? Mr. Bode was on the stand for a day and a half here, and other witnesses have come here, and we did not know beforehand what they would say.

Mr. STIRES. Then, let me withdraw that offensive word.

Judge HAINER. Don't you think it is wholly unjustified, coming from a lawyer?

Mr. STIRES. Yes; I was thinking about Mr. Gray more than of the committee.

The CHAIRMAN. We will hear Mr. W. H. Fuller, chief counsel of the Federal Trade Commission.

STATEMENT OF MR. W. H. FULLER, CHIEF COUNSEL OF THE FEDERAL TRADE COMMISSION.

Mr. FULLER. Mr. Chairman and members of the committee, the Federal Trade Commission, in answer to the request of the committee "to furnish such information and data in its possession which may show unlawful acts by the packers or a monopoly by them in connection with the handling of unrelated lines," beg leave to say that the information in the possession of the commission refers almost entirely to the condition that existed before the entering of the consent decree.

While under section 6 (c) of the Federal Trade Commission act it is provided that the commission shall have power—

"Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation."

The commission did not feel justified in making an investigation upon its own initiative in regard to the manner in which the consent decree was being complied with, for the reason that in said decree it is provided as follows:

"And at any time within said two years the Attorney General may apply to the court for an order or orders to compel the defendants, and each of them, to make a report to the court as to the progress being made by them in disposing of said commodities and in divesting themselves of said interest."

This authority is further developed in paragraph 16 of the decree.

Under paragraph (e) of section 6 of the Federal Trade Commission act the Attorney General, and under paragraph (b) of section 6 of the packers and stockyards act the Secretary of Agriculture, may request the Federal Trade Commission to make any desired investigation.

In preparing to comply with the request of the committee the commission has been somewhat in doubt as to the extent that the committee would be interested in the result of the findings of the commission resulting from its extensive investigations made prior to the rendition of this decree.

The commission is desirous of presenting to the committee all the information which it may have that will in anywise aid and assist the committee in making its report to the Attorney General, and we merely call attention to the above provisions of the law for the purpose of suggesting to the committee that

in the event that the committee should deem it necessary before making its report to be advised as to what extent the packers have progressed in carrying out the terms of the decree, and what light, if any, such progress, or lack of progress, would throw upon the advisability of modifying the decree, that all the power and machinery of the commission are at the disposal of the committee to make any further investigation in bringing the data and evidence down to date. And the commission further states that, realizing the importance of this matter to all the parties concerned, and the desirability that the question presented to the Attorney General should be settled as speedily as possible, that if a request is made for an investigation by it to supplement and bring down to date its work, that it will use all its available help and resources to expedite such further investigation in every possible way.

The commission makes this suggestion in order that your committee may know that the commission is ready and willing to aid and assist you in every way possible to obtain all of the facts that can be obtained upon which to base your report.

Mr. Durand, assistant chief economist, under whose supervision a large part of this work was originally done, is here and will make a statement to the committee along the economic line, upon which it is understood information is desired, and request the committee to ask him for any information which he may have bearing upon the subject.

At the conclusion of Mr. Durand's statement, Mr. Gaskill, as chairman of the commission, will state the commission's position in regard to a modification of this decree, based upon the investigation which has been made by the commission under the direction of the President of the United States.

The CHAIRMAN. Are there any questions? [After a pause.] If not, we thank you very much, Mr. Fuller.

The committee will hear Mr. Durand this afternoon, and after that Mr. Gaskill, the chairman of the commission.

We will now stand on recess until 2 o'clock this afternoon.

(Whereupon at 12.20 p. m. the committee stood on recess until 2 o'clock p. m. of the same day, Monday, December 12, 1921.)

AFTER RECESS.

The committee resumed its session at 2 o'clock p. m., pursuant to the taking of recess.

The CHAIRMAN. We will come to order. Mr. Durand, we will hear you.

STATEMENT OF MR. WALTER Y. DURAND, ASSISTANT CHIEF ECONOMIST OF THE FEDERAL TRADE COMMISSION.

The CHAIRMAN. Will you give your name, Mr. Durand, and your position?

Mr. DURAND. Walter Y. Durand, assistant chief economist of the Federal Trade Commission.

The CHAIRMAN. You may proceed in your own way, Mr. Durand.

Mr. DURAND. Mr. Chairman and gentlemen of the committee, I want to present to you some of the economic conditions that constitute what the commission in its study and view of this matter regards as the menace of monopoly, or the fear of monopoly, in these unrelated lines.

In the first place, I wanted to say a word to this effect, that the commission over there is unbiased in this matter. I am aware that a rather wide impression has been created throughout the country that the Federal Trade Commission was biased and unfair in its treatment of the meat packers, and that by the same token it was partial to the wholesale grocers. I think that none of the members of this committee share that impression, but few people have read our reports, and not having read our reports or heard the facts as we have set them out they do have that impression of unfairness, and consequently I think it is desirable, if you will permit me to put into the record here, a brief statement to correct that misapprehension on the part of many people as to the attitude of the commission. So I should like to put in a brief statement analyzing what action the commission has taken in the various complaints, what we call informal complaints, and in the formal complaints which have been brought against the packers and against the wholesale grocers in the administration of section 5 of the Federal Trade Commission act, and the various sections of the Clayton Act.

The CHAIRMAN. That includes both packers and wholesale grocers?

Mr. DURAND. Yes.

The CHAIRMAN. I think that would be very interesting.

Mr. DURAND. This little analysis of the commission's action in matters under its own jurisdiction seems to me to dispose of any charge of bias.

Now here is the record, which I think is substantially complete:

Application for complaints against the packers—there have been entered 208.

Against the wholesale grocers there have been entered 33.

There have been dismissed of the packers' complaints, 176, or 85 per cent of the applications that were entered.

There have been dismissed of the applications against wholesale grocers, 12, or 37 per cent of the applications.

There are pending against the packers 20 applications, or 9 per cent of the total number.

Against the wholesale grocers there are 10 pending, or 30 per cent.

There were passed through the stage of formal complaint, the commission issuing a formal complaint in the case of the packers, 13 cases, or 6 per cent of the total number.

In the case of the wholesale grocers, 11 were passed to formal complaint, or 33 per cent of the total number.

Now, going to the formal complaints, there were entered 22 formal complaints against packers and 15 against wholesale grocers.

There were dismissed as to packers 2 cases, or 9 per cent.

As to wholesale grocers, 1 case was dismissed, or 7 per cent.

There are pending against the packers 18 cases, or 82 per cent of the formal complaints entered.

Against wholesale grocers there are pending 4, or 27 per cent.

The cease and desist orders issued against the packers 2, or 9 per cent of the total.

Against the wholesale grocers 10, or 66 per cent of the total.

I put that little table into the record, and there is a footnote which explains that the number of cases passed to formal complaint does not quite tally with the other number, because sometimes one informal complaint or application for a complaint resulted in two or more complaints being issued, and sometimes vice versa.

(The table presented by Mr. Durand for the record is as follows:)

	Against packers.		Against wholesale grocers.	
	Number.	Per cent.	Number.	Per cent.
Informal complaints:				
Entered.....	208		33	
Dismissed.....	176	85	12	37
Pending.....	20	9	10	30
Passed to formal complaint.....	113	6	11	33
Formal complaints:				
Entered.....	22		15	
Dismissed.....	2	9	1	7
Pending.....	18	82	4	27
Cease and desist order issued.....	2	9	10	66

¹ In some instances more than one formal complaint was issued from one informal complaint; and, also, two or more informal complaints were sometimes joined to make one formal complaint, which accounts for the apparent error in the total of the number of cases passed to formal complaint as compared to number entered, dismissed, and pending.

The CHAIRMAN. Have there been any appeals from those orders to cease and desist, in either instance, do you know?

Mr. DURAND. I can not speak with authority on that subject. It is my impression that in one of the cases against the wholesale grocers—that in Los Angeles—there was an appeal taken, and that the court sustained the commission in its order. Isn't that correct, Mr. Fuller?

Mr. FULLER (general counsel of the Federal Trade Commission). That is true, and there was one at Fort Worth, Tex., a few weeks ago which we have not heard the result of yet.

The CHAIRMAN. Was that a packer's case?

Mr. FULLER. No; that is a wholesale grocer.

The CHAIRMAN. Well, have you any appeals pending now, except that one, in these cases you refer to now, do you know?

Mr. FULLER. Well, I can not tell you as to the packers.

The CHAIRMAN. Pardon me for interrupting. Proceed, Mr. Durand.

Mr. DURAND. To summarize that: Against the packers 85 per cent of the applications for complaints have been dismissed.

Against the wholesale grocers 37 per cent only have been dismissed.

Against the packers 9 per cent of the formal complaints have been dismissed.

Against the wholesale grocers 7 per cent of the formal complaints have been dismissed.

And of cease and desist orders issued 9 per cent have been issued against the packers and 66 per cent against the wholesale grocers.

Those percentages of dismissal, and a reading of our reports on the meat-packing investigation (which you all know was made at the direction of the President, and not at the initiation of the commission) would dispel, I feel sure, any impression of unfairness that may have found lodgment in the public mind; and I thank you for this opportunity of putting these facts on record.

Now, the thought that I want to put before you as respects these unrelated lines is, in essence, this—I just want to outline briefly what I am to say—namely, the menace of packer monopoly in these unrelated lines, not an accomplished monopoly, but a menace of monopoly which this decree, if unaltered, will in some measure help to prevent.

I want to show you the great extent of packer business in unrelated lines, and the rapidity of their expansion into these fields and their growth therein. I want to let their files speak intimately of their attitude and purpose in going into these unrelated commodities. I want to show the undue advantages—if they may be called that—that make for their rapid growth in these businesses, and so far as we have data on their unfair or questionable practices in these outside lines, I want to show you that.

Particularly I want to challenge the claim that the rapid growth of the packers is due to special efficiency, and I want to place the burden of proof of any such claim squarely on the packers, where it belongs.

No one is contending that the five large packers now have any great percentage of the total wholesale grocery trade; but they do have a strong hold in many lines, and they are a force, an engine, a machine, that is capable of securing substantial domination of the trade within a few years, and apparently intent upon so doing if we let them.

The CHAIRMAN. Does that statement apply the same, Mr. Durand, to prior to the entry of the decree; that prior to the entry of the decree it was not contended that they had a substantial domination?

Mr. DURAND. Of the wholesale grocery trade?

The CHAIRMAN. Yes.

Mr. DURAND. Yes. What I am giving you is, I think, practically all, as Mr. Fuller said, as of the date of our inquiry.

The CHAIRMAN. I see.

Mr. DURAND. Which was prior to the entry of this decree. As a matter of fact, most of the figures which we gathered about the meat investigation, the meat end of the packers' business, did not go beyond 1916 and 1917. On these wholesale groceries and unrelated lines we got considerable data in 1918, but practically none beyond that time, except here and there we would get material from published sources, which, of course, is available to anyone.

Judge HAINER. I suppose your statement will show the percentage later on in the course of your remarks?

Mr. DURAND. Yes, sir. This is only my general statement of the view.

If you open the way for the packers to resume their apparent intention to monopolize these unrelated lines, it may be a legal question whether the packer and stockyards act will apply to them in these particular lines, and so serve as regulation, but in any case it is common sense that the admitted evils of our present food situation—the undue spread between producers' and consumers' price, the waste, and the duplication of effort—that these evils can not be cured by simply throwing the doors open and inviting the five packers to come in and take charge of these remaining portions of the food supply of the United States.

Instead of depending thus implicitly and blindly on the packers as remedial agents, it would be the part of wisdom to analyze the food problem and seek specific remedies. Many studies have already been made, and the time is ripe for action, at least for experimental action. Means should be sought for free-

ing the channels of trade and the market places, and leaving them open to competition rather than to expose them to the danger of almost certain monopoly.

Now, among the many public and private studies of the food problem are two investigations by the Federal Trade Commission. I might say here that in mentioning these two I do not want to forget, of course, that the whole question of the food problem has been studied by this present administration, and by the past administration for several years here, ever since war brought the question so vividly before us, and as you know, Chairman Anderson's committee, this joint congressional inquiry on agriculture, has been studying this broad problem. The President referred to it in his message to Congress the other day. It is a large question, and what I am saying here is that to simply rely on the packers to solve that question by letting them into the grocery trade is not the best method. We should have something more fundamental.

As I say, among the studies of the food problem are two investigations by the Federal Trade Commission—one, its investigation of private car lines, and the other its investigation of the wholesale marketing of food—and the commission would respectfully refer the committee to the conclusions reached in its reports on these investigations. The reports suggest fundamental solutions for these very problems of food distribution, which Mr. Campbell and some of the others seem to think can best be solved by letting the packers in to do the work.

Briefly stated, the commission's conclusion as to private car lines was that they should not be private lines, but should be common carriers, part of the railroad system of the country, available on fair terms to all shippers alike.

Its conclusion from its investigation of the wholesale marketing of foods went particularly to the matter of improving the physical and economic conditions in the great terminal food markets. It proposed the scientific reconstruction of the physical market on modern lines to avoid spoilage and wasting of foods, to avoid needless cartage and handling, to save the great expenses and costs entailed by our present inadequate, hit-and-miss, unscientific facilities. It proposed public ownership and control of these reconstructed terminal facilities, and the opening of those facilities to all private concerns desiring to carry on the business of distributing foods, therein, and the public regulation of such private dealers, through publicity of market information, standardization of grades, prevention of unfair practices, etc.

Thus the big concern and the little concern or the individual trader—the big packers in their permitted lines, and all their competitors—could do business, all enjoying, without discrimination and at a fair service charge the use of publicly owned market facilities. That is the thought that we suggest to the committee as a better program in the public interest than to modify this decree as has been proposed.

And I want to leave this one viewpoint: That a modification of this decree would tend substantially to increase the food monopoly. That is the judgment of the commission. Even then, if the Attorney General or this committee should become convinced that an increased degree of food monopoly, under proper regulation, is in the public interest, is more economical, he should nevertheless refrain, we believe, from seeking modification of this decree. The present law of the land is for competition. Only Congress, after full deliberation, should change our national policy—if we are to enter upon a policy of regulated monopoly. We believe it is not the province of the Attorney General nor the court to determine such vital questions. That is for Congress alone.

Now, I wanted to take up and develop this question of the menace of packer control of the substitutes for meat. And I want to point out to you the original, and I believe the correct, position of the Government and of the Department of Justice as to the packer control of substitutes for meat, and to show how far short the consent decree itself fell from remedying the conditions alleged by the Government petition in the case, and to show that if the decree is modified as now proposed the Government's original theory of the case will have been thrown almost entirely in the discard.

And I want to put you on inquiry as to what facts have been shown in the hearing to justify throwing to one side the theory of the Government, as shown in the petition of the Attorney General in this very case.

The Government's petition in this case announced a vital economic theory—the theory, namely, that it is not safe to permit the same interests to control both our meats and our substitutes for meat.

To modify the decree will be to abandon entirely the position that great groups of foods that naturally compete with one another for the consumers' favor ought to remain in many competitive hands, instead of being drawn into one monopolistic hand.

The Government's original theory, I say, is a vital one. If the price of meat seemed too high, people used to turn to fish and poultry, or they would eat more eggs, or a dish of baked cheese would take the place of the roast, or more vegetables, more bread and cereals, more salads would be used. Less meat was bought and hunger was satisfied with some other kind of food. The big packers saw that the price of their meats had to respond, in a measure, to the prices of these competing foods, and so they began to seek control of them in order that the value of their monopoly in meats should not be so much impaired by the competing prices of substitute foods. If they could control the prices of these competing foods their monopoly would become complete and self-contained. So they apparently placed before themselves as their goal the domination of every important food served on the American table.

Now, that was the menace of monopoly that the Government in its petition in this case feared in these nonmeat lines.

Now, to put it a little more specifically, the Government's petition in this case, on page 21, states the "Object to be attained." And this is the language:

"OBJECT TO BE ATTAINED.

"This petition is filed and these proceedings are instituted to put an end to any and all monopolies which the defendants may have created or obtained in the interstate trade or commerce of live stock, meat products, and substitute foods, and to prevent the continuance of unlawful monopolies by the defendants, in the aforesaid trade or commerce in the products and commodities so described, and to deprive said defendants of certain instrumentalities, facilities, and advantages by which they have been enabled heretofore to more effectively perfect their attempts to monopolize; to compel the defendants to desist from dealing in certain of the unrelated commodities; to limit in the manner hereinafter set forth, the interests which the individual defendants may have in corporations handling certain substitute foods and unrelated commodities; and to dissolve any and all contracts, combinations, and conspiracies in restraint of trade or commerce between the several States, which contracts, combinations, or conspiracies are more fully hereinafter described, and to prevent said defendants from maintaining said contracts, combinations, or conspiracies with each other, or from entering into further contracts, combinations, or conspiracies with each other or with other persons."

Now, the first object stated there is to put an end to monopolies in interstate trade and live stock and meat products, and the elimination of the control of the packers from the stockyards under this decree, was the means that was regarded as useful toward bringing about an end to the monopoly in live stock and meat products. I don't think that the elimination of control of the stockyards will do that all at once, certainly. It probably will open up the way for a gradual reviving of competition by independent packers.

Now, as to the second object stated in the petition, to put an end to the monopolies which the defendants may have created or attained in interstate commerce in "substitute foods"—that is, foods that are used as substitutes for meat. Now, as a matter of common knowledge, when the housewife does not like the price or the quality of meats, or wants a change from meats, her principal reliance is on fish, poultry, eggs, and cheese. Now, of these principal things only fish is included in the decree. It is the only substitute food in this prime list which the packers are prohibited from handling.

Now, among the important animal fats is lard, and oleomargarine is a product largely composed of animal fat. The housewife buys lard compound as a substitute for lard, and oleomargarine she buys, which is itself a substitute for butter. Now, the packer, with his substantial monopoly in lard and oleomargarine, or at least in the raw materials of oleomargarine, also makes and handles the lard compounds and the butter with which lard and oleomargarine compete.

This decree does not in any way prohibit the packers from handling either the lard compound or the butter.

Judge HAINER. Why shouldn't that have been excluded in this decree? The evidence developed here that the packers handle over 51 per cent of the cheese, and yet it was omitted from the decree.

Mr. DURAND. That is true.

Judge HAINER. On what theory was that done?

Mr. DURAND. Well, I think that the Department of Justice can state that better than I. As I understood the theory it was a relationship of poultry, butter, cheese, and eggs to the meat business.

The CHAIRMAN. But to accomplish the desired results, or the results which you people feel should be accomplished, those things should have been included in the prohibition just as well as everything else that is included, shouldn't they?

Mr. DURAND. I don't know that I would make that statement. I do feel—

Judge HAINER (interposing). The decree should have been broader, shouldn't it?

Mr. DURAND. I do feel personally that the decree should have been broader, but the chairman of the commission will state the attitude of the commission on those points.

Judge HAINER. Yes; that thought just occurred to us, and we wanted to make that clear.

The CHAIRMAN. I beg your pardon for interrupting you, Mr. Durand. You may proceed.

Judge HAINER. We hope we have not interrupted your line of thought.

Mr. DURAND. I am glad to be interrupted.

Poultry, butter, eggs, cheese, lard compounds, and other cottonseed-oil products—these are not among the "certain" substitute foods that are prohibited. The packer has a very large degree of control in these commodities, and the decree permits him to keep it.

The decree, therefore, came far short of remedying the condition that the Government set forth in its petition.

Now, what are these "certain" food commodities actually prohibited in the decree? They are the commodities named in paragraph 4 of the decree, and may be generally described as fish, vegetables, fruits, sweets, soft drinks, spices, condiments, etc.; coffee, tea, chocolate, cocoa, and nuts, except peanuts; flour, sugar, and rice; bread, crackers, cereals, grain, and grape juice. Now, that list I am reading from part 4, paragraph 4. If you notice paragraph 5 of the decree the list is shorter. There are 13 items in paragraph 4 which show the commodities which the defendant corporations are prohibited from handling. Only 10 of those classifications are included in paragraph 5, which is the list of commodities that the individual defendants are prohibited from dealing in to a certain extent. I will refer to that later.

In general, it may be said that all these foods compete with meat, for they have their place in satisfying hunger. Yet, as I say, the prime articles that the housewife turns to are the ones that were not touched by the decree. The chief articles here that actually substitute for meats in a nutritional way are probably fish, beans, peas, and grains and grain products.

The CHAIRMAN. That is, the chief among those which are prohibited?

Mr. DURAND. Yes; those are the chief, I should say, among those that are prohibited that would come under the classification of nutritional substitutes for meat. But in general, anything that satisfies hunger is a substitute for meat, and all of these come more or less in that classification.

Another object to be attained in the suit is thus stated in the petition:

"To deprive said defendants of certain instrumental facilities and advantages by which they have been enabled heretofore to more effectively perfect their attempts to monopolize."

This language in part describes the use of the packer refrigerator cars and branch houses in the distribution of groceries and unrelated line. The proposal of modification would eliminate this control over the packers and enable them to continue or to resume effectively to perfect their attempts to monopolize.

Another object set forth in the petition is "to limit in the manner hereinafter set forth the interests which the individual defendants may have in corporations handling certain substitute foods." The decree as it stood was weak in that the "manner" of limitation of stockholders in concerns handling the substitute foods was simply that the individuals could not own as much as 50 per cent of the stock of such corporation. They could own 49 per cent and their friends could own as much more as might be desired, as far as the letter of the decree was concerned. All of which, of course, was subject to the approval of the court. In other words, the decree gave no assurance of real separation of the packer interests from the control of companies handling these "certain" food substitutes.

Now, the modification proposes to eliminate even this restriction and to leave the packers unhampered and unhindered in every respect as regards all the foods that are substitutes for meat. Thus it is proposed to give up altogether any attempt to apply the great principle that the different kinds of foods should really compete with one another, instead of being all under the control of the same interests.

The petition in detail, after having described how the defendants eliminated competition in meat products, thus describes their plan to secure control of substitute foods.

Now, I think I could perhaps just refer to that in the record; that is under the heading of "Control of substitute foods," on pages 28 to 29 of the petition. I will read that if you wish.

Judge HAINER. Well, we have it here. It can go in if you wish to read it.

Mr. DURAND. Well, I think it is very pertinent. This is what the Government said in the petition on "Control of substitute foods":

"Having eliminated competition in the meat products, the defendants next took cognizance of the competition which might be expected from what we here refer to as substitute foods. Their experience has taught them that if meat prices advance out of proportion to that of other substitute foods, the consuming public manifested a tendency to turn to such substitutes. To prevent this, the defendants set about controlling the Nation's supplies of fish, vegetables, either fresh or canned fruits, cereals, milk, poultry, butter, eggs, cheese, and other substitute foods ordinarily handled by wholesale grocers or produce dealers. To accomplish this purpose, the defendants avail themselves of the advantages afforded by the refrigerator cars, route cars, auto trucks, branch houses, and storage warehouses owned or controlled by them. These facilities, intended primarily for the sale of meats, were employed with comparatively no increase of overhead in the distribution of the substitute foods and unrelated commodities. The defendants were enabled thereby to reach remote spots.

"This advantage was also employed temporarily to fix prices so low as to gradually eliminate competition.

"These attempts to monopolize have resulted in complete control in many of the substitute-food lines. They have made substantial headway in others. The control is extensively and rapidly increasing. New fields are gradually being invaded, and unless prevented by a decree of this court the defendants will within the compass of a few years control the quantity and price of each article of food found on the American table."

The petition also sets forth the extent of control acquired by the packer defendants, group and individual, in substitute foods and unrelated commodities, in the language that you have on page 29, and it states the "Number of controlled companies" and the "Extent of industrial control in the substitute foods and unrelated commodities."

I would like to refer to that passage beginning on page 29 and carrying through page 31, including the paragraph regarding "Individual defendants." Perhaps it will not be necessary for me to read that.

I would like, however, to call the attention of the committee especially to the paragraph on page 29 regarding "Financial growth, present net worth, and volume of business." In setting out the extent to which the monopolistic attempts of the packers have been successful in the past, the petition cites these facts, and I think it is worth while to keep them in mind:

"In the 15 years from 1904 to 1919 Swift & Co., Armour & Co., Wilson & Co. (Inc.), and the Cudahy Packing Co."—that omits Morris, you notice—"according to their financial reports, grew from a net worth of approximately \$92,000,000 to a net worth of approximately \$479,000,000, and in this same period they paid in cash dividends \$105,000,000. Only \$89,000,000 of their increased worth represented new capital. Though always asserting a very low rate of profit on sales, the five parent companies have grown so rapidly that their combined net profits for 1917 have equaled nearly the amount of their total net worth in 1904. Sales in 15 years have increased until for the fiscal year 1918 they reached the vast sum of \$3,200,000,000. This was realized from meats, substitute foods, and unrelated lines, as hereinabove set forth. In stating these figures account has been taken only of the profits and sales of the parent companies and subsidiaries included by them upon their books. No account has been taken of the many corporations which are owned or controlled by the same family or financial interest as own or control the parent companies.

"In addition to these profits there have been other vast profits, difficult of ascertainment, realized by the individuals by virtue of either their personal con-

trol of other packing houses and slaughtering companies or their interests in stockyards, terminal railways, rendering companies, cattle-loan institutions and banks, and other corporations, all of which corporations have their inception and depend for their prosperity upon advantages or privileges growing out of the interlocking control of the stockyard and stockyard appurtenances."

Now, the foregoing passages that I have cited to you from the petition of the Attorney General set forth clearly the Government's view of the grounds for seeking relief. The petition was based upon the facts developed in the report of the Federal Trade Commission. In spite of the assaults of the packers on that Federal Trade Commission report, I think those facts remain substantially unchanged. Over a period of two or three years congressional hearings were held, in which the packers were given every opportunity to dispute the truthfulness of the Federal Trade Commission's report and its conclusions of fact. The committees of Congress which conducted these hearings listened to testimony and have reported to Congress their conclusions, and their conclusions support the report of the Federal Trade Commission as substantially true. The Attorney General examined, through his attorneys, the report of the commission and the vast mass of detailed evidence not covered in the report which the commission furnished to the Department of Justice. The department also made certain investigations of its own, and the conclusions of the Attorney General were that the packers were guilty of violation of the Sherman law, and that the commission's report was correct in reaching that conclusion.

In view of this situation, what facts have been presented which in any way justify a modification of this decree or justify giving back to the packers any of the advantages and benefits which they yielded to the public in signing this decree?

The committee has asked again and again the extent of the packer business in unrelated lines.

To get at the proportion which the big packers had in the wholesale grocery business prior to the entry of the consent decree is difficult. In the first place the departmentalization of the packers' branch-house sales; that is, the way they keep their department records in their books in their branch houses, and the way in which departmentalization is handled on the books of their subsidiary companies is not so arranged as to departmentalize the totals that will correspond to these grocery lines. The different packers departmentalize in different ways, and grocery lines are to some extent mixed with other lines in some of the departments. Hence, you can get from the packers' records no clear figure of sales in the grocery line; that is, not in the regular summaries that they carry on their books.

Besides, I think that the Federal Trade Commission did not get all that the books showed for all five companies or for all of the subsidiaries. For various reasons its information on this was very spotty, so that the data that we have, which I will refer you to in part 4, can not be regarded as complete data of the packers. You will see from the face of the report that it is spotty.

Furthermore, there are no adequate statistics of the total wholesale grocery business in the country. The census does not carry any classification that permits of the total for wholesale grocery sales.

With the packers' sales of groceries not accurately available, and with no statistics of the total grocery trade of the country, it is obviously difficult to arrive at the percentage of the grocery business which the packers do.

One important point has been made by the wholesale grocers, that in considering the packer proportion of the trade it is to be remembered that the packers have not as yet dealt in all lines, and that in the lines that they have gone into, they have a higher proportion of the business than they have of the total grocery business.

To follow out the proportion which these big packers have in the various lines or in the total would require a vast amount of schedule inquiry and compilation. It would take, in fact, a young census to get that information for this committee.

Now, I will give such figures as the Trade Commission has, and I will merely say that the amount of work involved in getting those figures was very great. The figures that I give on unrelated lines have never been attacked or controverted, so far as I know, by the packers. They did attack to a very considerable extent the figures we gave on butter, poultry, eggs, and cheese, and some of those items, but I think not on any items regarding these unrelated lines.

May I say I am using the term "unrelated lines" in the sense prohibited by this decree, which I take it is what this committee wants to discuss.

Judge HAINER. Yes; that is proper.

Mr. DURAND. I don't think it is a good term, but that is the sense in which I use it.

As I was trying to point out, it seems to me that all of these things are more or less related. They are related in that they are substitutes, they are part of what is handled together, and by an extension you can go, as has been pointed out, from the beef extract bottle on the shelf in the druggists' prescription section, to a full line of soda-fountain supplies out in the front of the shop, just by a process of relation, because the Armour salesman who comes in and sells the druggist the bottled beef extract to put on his prescription shelf, will by and by get the idea that the druggist might sell a little more if he would put that out on the soda-fountain counter, and that leads to getting it there, and then that leads to putting in soda-fountain sirups and a full line of soda-fountain supplies. And you will find Armour & Co.'s catalogue now carrying a number of pages of soda-fountain supplies, including the glassware and that sort of thing for serving the trade.

On the other hand, butter, poultry, cheese, and eggs are related, I think more closely still. Yet none of them are related to meat, if you take it in the sense of any real by-product connection.

I think that the commission's figures on produce—poultry, butter, eggs, and cheese—can be readily defended. I said that the packers have attacked them. I think that they can be defended, but I will not go into that at this time.

Now, for three of the five packers, total sales of grocery or unrelated lines are not available among any of the figures collected by the commission. We have Armour's sales of the lines canned fish, vegetables, and sundries, canned and dried fruits, fruit preserves, including soda fountain supplies, and grape juice, and those amounted in 1918 to \$39,820,000, or 4.6 per cent of Armour's total business.

Wilson & Co. (Inc.), as stated through Mr. Wilson, has stated that its canned food, preserves, and condiment business was less than 4 per cent of its total sales in 1918. He made that statement in the House hearings before the Committee on Interstate and Foreign Commerce (H. R. 13324, pt. 4, p. 1235). If you figure that out on the basis of the total sales reports for Wilson & Co. in 1918, it would amount to approximately \$16,000,000 for the Wilson canned food, preserves, and condiment business.

For the other three packers, as I say, no figures are available, no total figures are available. We have some figures for Libby, of the Swift interests.

The total sales of the five packers in 1918—you will find those figures in Part V of the commission's report on the meat-packing industry, at page 106—amounted to \$3,250,000,000.

Any figure of the total business handled by the wholesale grocers is an estimate, as I understand. I think there are no satisfactory statistics. But the estimates that I have seen vary from two and one-half billion dollars to three or three and a half billion dollars.

The packers' sales—the five packers—in 1918 were \$3,250,000,000. The total business handled by the wholesale grocers of the United States is estimated anywhere from two and a half billion to three and a half billion dollars.

Judge HAINER. Now, the figures that you give include the sale of meat products and by-products?

Mr. DURAND. The figures that I gave of total sales include meats of all kinds and by-products of all kinds. As I say, we can not segregate the packers' sales of these unrelated lines. We have certain figures for two of the companies, and also some figures for Libby, of the Swift interests, but for the other companies we do not have the figures.

The CHAIRMAN. It would be but a matter then of mathematical calculation to ascertain what proportion, for instance, Armour handled of the wholesale grocery lines, then, wouldn't it?

Mr. DURAND. Yes.

The CHAIRMAN. Have you made such a calculation?

Mr. DURAND. No; I have not made that.

Now, I think that one of the witnesses here made a reference to or quoted Mr. Nash, of the Cleveland Provision Co., as testifying before one of the congressional committees, and the passage that was cited, as I understand, from Mr. Nash, included a statement—this statement by Mr. Nash is on page 139 of the hearings before the Committee on Agriculture, in the Sixty-seventh Congress, first session, on meat-packer legislation, series D.

Mr. Nash said:

"I am not familiar with the grocery articles that the packers handle, except the assertion that I had heard in Washington that the total grocery business of the five big packers combined was less than 5 per cent of the total grocery business of the United States, not over. That came out in the hearings."

Now, I don't know—I think Mr. Nash was probably confused. I don't know of any statement in the hearings to the effect, or showing in any way statistically, or making any assertion that the grocery business of the Big Five packers was 5 per cent of the total grocery business of the country. I think that Mr. Nash may have had in his mind the statement which Mr. Armour made and the statement which Mr. Wilson made—the statement that Mr. Armour made that 4.6 per cent of his total business was in wholesale grocery lines, which is a very different thing from saying that the big packers have 5 per cent or less than 5 per cent of the total wholesale grocery business of the country. Mr. Wilson's statement was that his condiments, preserves, and canned-fruit business, as I just read you a moment ago, was less than 4 per cent of the total of his business; that is, of Wilson & Co.'s business.

I just make that comment because, as I say, so far as I know, except for Mr. Nash's statement here, there is nothing in the record of those congressional hearings that states any such figures of the relative proportion which the Big Five grocery sales bear to total grocery sales of the entire country. That is a sort of a negative statement to make, and maybe Mr. Nash can cite a place where that was testified to; but so far as I can recall there was no such testimony.

The CHAIRMAN. Well, so far as you know, then, Mr. Durand, there has never been any statement in the Congressional hearings or in your investigations, or anywhere else, as to the proportion of the unrelated lines business which the big packers jointly handled or controlled?

Mr. DURAND. No; and, as I say, I think it would take a young census to get that information.

Judge HAINER. Wouldn't that be material in establishing a monopoly—to determine that fact as to what control they had?

Mr. DURAND. I was just going to speak to that point.

Judge HAINER. Very well, Mr. Durand.

Mr. DURAND. And this is my view, Judge, that whether this percentage which your committee is so eager to find out about—

Judge HAINER (interposing). Well, don't you think it is material? Eager—but don't you think it is material?

Mr. DURAND. Well, I was just going to say that I don't think it is material.

Judge HAINER. All right.

Mr. DURAND. I think that whether that per cent is 3 per cent or 5 per cent or 10 per cent, or even if it were 50 per cent, it would not seem to me to be the point. The things that do seem to me to be in point in this matter are the economic and financial power of these packers as a whole in their total business, with their widespread distributing system, and the rapidity of their growth in the wholesale business, and the attitude with which they approach it; those things seem to me more material by far than the question of what proportion of the total business they had when we first stopped and looked at them.

The CHAIRMAN. You might term that their potential power to monopolize.

Mr. DURAND. It is their potential power, which is the menace that I have been speaking of.

Judge HAINER. Well, wouldn't that be a proper subject for the legislative branch of the Government? Suppose this case should go to trial before a judicial tribunal for violation of the antitrust laws, then wouldn't it be material to determine whether or not there was an actual monopoly or a monopoly that may be in the future?

Mr. DURAND. I am not a lawyer, Judge. But may I just throw out this suggestion?

Judge HAINER. You are discussing the economic part of the decree?

Mr. DURAND. Yes. If this case had gone on to trial instead of a consent decree, the charge as set forth in the petition covered the meat business and the unrelated lines—everything that the packers did. It does not seem to me that the court would have been likely, if it had reached the conclusion that the packers had violated the Sherman law as respects meat, as respects butter, as respects cheese, as respects eggs, and perhaps as respects one or two other commodities, to have said, "But we will permit them to continue to handle the

groceries, because they have only got 5 per cent," or whatever the percentage was. I think they would have treated it as a whole, and that the fact that they had only been a few years in this business, just getting started, that they were going fast, would appear to the court as material evidence to lead it to include that along with the others when the fact was clear. But, as I say, I am not a lawyer; perhaps I don't know about that.

Judge HAINER. But, Mr. Durand, what runs through my mind is this—and perhaps I look at it too much from a legal standpoint—I can not see on what theory, if it is established or found that they engage in a monopoly in the meat business, and in the cheese business, and in the poultry business, that they permit these parties to engage in that business, and, as to the unrelated commodities, of course not being established by proper evidence—and you do not seem to have any facts here to establish a monopoly—that the packers would be prohibited from engaging in a business that has not reached the monopolistic stage, but merely may reach that stage some time in the future. It seems to me that they would perpetually enjoin them from engaging in a monopoly and permit them to carry on the business that is not a monopoly until it reaches a stage of monopoly, and of course the courts are always open to restrain them or enjoin them from that, or restrain them and enjoin them from engaging in a monopoly even in this decree, but not absolutely going to the prohibition of carrying on the business. In other words, it is what Chief Justice White declared "the rule of reason as applied to the remedy."

Mr. DURAND. It seems to me that your suggestion is that there is something inconsistent in the application here.

Judge HAINER. Of the doctrine.

Mr. DURAND. Now, as to the prohibiting of entry into these businesses, that is something which I feel is not a matter of law at present; it is more a matter of economics.

Judge HAINER. Well, that is what I mean.

Mr. DURAND. Because this is a decree that has been consented to.

Judge HAINER. Yes.

Mr. DURAND. And the Attorney General is now in a position to recommend its modification or not to recommend its modification.

The Attorney General in reciting before the committees of Congress why he entered this decree laid great emphasis on the economic conditions involved; that he was winning an economic victory for the people of the country in getting the packers to consent to give up something which he said he had considerable doubt whether he could have got them to give up or compel them to give up if he had gone to trial.

Judge HAINER. Yes; but here is a decree that says that you can engage in your monopolistic business of the meat industry or the cheese or the poultry business if you will give up the handling of these unrelated commodities, which has not reached the monopolistic stage. In other words, you can conduct a business that has been found to be unlawful and in violation of the antitrust laws if you will give up something that has not reached the monopolistic stage, but which may in some dim, distant future reach the stage of monopoly. I can not understand on what legal ground or even economic ground that could be based.

Mr. DURAND. Well, I am not in the position of defending this decree, Judge. It seems to me that there is an inconsistency there that you point out, but I don't think that that inconsistency is an argument for modifying this decree further, if there is economic advantage in the condition established by the decree.

Judge HAINER. In other words, whether it was legal or illegal—and there is no law to base it upon, as stated by former Attorney General Palmer—having had the decree entered, therefore it shall stand forever, as he stated it, although there is no law or authority to base it upon, and we will prohibit them from engaging in these unrelated commodities, which many producers who have testified here believe it is to their interest to do, provided it is not monopolized. Of course, you appreciate that it is the law of the land that if any business reaches the stage of monopoly it should be restrained by governmental authority.

Mr. DURAND. Well, if I continue to the end of the—

Judge HAINER (interposing). Well, those things suggest themselves.

Mr. DURAND. I would like to discuss that question of whether the decree ought not to be modified so as to strengthen it instead of weakening it. I think

the thing I am saying is, let us not weaken this decree. I am not opposed to strengthening the decree, and I may in my remarks want to bring in a good many concrete suggestions perhaps with the idea of strengthening this decree. I think I have pointed out some of the weaknesses of it.

Judge HAINER. What I can not understand is why such a decree was ever entered into; upon what theory of law or equity or justice?

Mr. DURAND. Of course, a consent decree, Judge, is what the parties will consent to, and I doubt whether the packers would have consented, possibly, otherwise.

Judge HAINER. And doesn't it have this effect, that if this decree stands it puts all these commodities beyond the control or supervisory control of the Secretary of Agriculture under this Packers' and Stockyards' Act?

Mr. DURAND. As a layman I can not answer that.

The CHAIRMAN. There is this further thought back of that, that Judge Hainer has suggested in a way. A thought has occurred to me that this decree does not enjoin unlawful acts upon the part of the defendants, but puts them out of business entirely in these lines. In other words, it is an entire prohibition as to these particular lines, and is not merely an injunction as to unlawful acts, committing violations of law with respect to handling of these lines, but it entirely removes them and eliminates them from this business. Now, in the first place, is it permissible under our laws, and, in the second place, is it desirable from an economic standpoint? Those are two questions.

Mr. DURAND. It is only the second question that I would wish to discuss.

The CHAIRMAN. Well, if you have any light that you can throw on that question I wish you would.

Judge HAINER. Don't think for a moment that we entertain the thought, or anyone, any department, or any committee, or anyone has the intention to turn the packers loose, unrestrained, in reference to these unrelated commodities. That a decree could be entered, as it has in numerous cases that have gone to the highest courts of the land, to restrain them and enjoin them from monopoly and monopolizing any of these commodities, but not to the extent of absolute prohibition of the unrelated commodities. Or even if it should go so far that there is a monopoly in the cheese business the decree should be modified so that they should not engage in a monopoly of the cheese business, or the poultry business, which this decree does not touch. It is not the purpose to turn them loose unrestrained, as perhaps requested by some of these petitioners. I do not suppose anyone—

The CHAIRMAN. We had better let him finish his statement.

Mr. STEVENS. Judge Hainer, right there: Isn't the whole thing dependent upon the power that the Department of Agriculture has? That has been attacked, as I understand, recently as unconstitutional.

Judge HAINER. Well, no; the constitutionality was attacked so far, up to this time, as to the live-stock industry, the commission men and brokers, whether they are subject to the law, and whether or not Congress had exceeded its constitutional power in declaring something interstate commerce that per se is not interstate commerce, just as the contention here that this is a private business, and it is beyond the reach of Congress to declare something interstate commerce that is not. That is the contention in this Chicago case that was argued a week ago Friday.

Mr. SMITH. I would like to say this, Mr. Chairman, that we will, I hope, be able to show—

Judge HAINER (interposing). I want you to go on, Mr. Durand. I just threw out these suggestions.

Mr. SMITH. I understand that Mr. Durand is only discussing the economic fact.

The CHAIRMAN. Yes; that is right.

Mr. SMITH. I hope we will be able to show you beyond any question the legality of this decree. I haven't any doubt of it myself; I think it was justified by the pleadings.

Judge HAINER. But I was just addressing myself to the economic situation; whether it is even good economics to permit these five packers to carry on the cheese business, the butter business, and poultry, a monopoly, and to apply it to canned fish.

The CHAIRMAN. Well, I think we had better let Mr. Durand finish his statement.

Mr. DURAND. I am trying to say, Judge, in what I am presenting here and will present before I finish, that as a matter of economics, as I look at it,

now that the packers are out of this business by this decree, regardless of the legal questions involved, it would be better for the country and for the public interests if they stayed out, and that the more immediate advantages which those who are asking for a modification of this decree see in the packer distribution are not long-time advantages, and will fail them, I believe, in the long run, and it will be really better for those interests who are seeking the modification of this decree if the packers did not go back into these lines. But if they instead looked to themselves and connected with the methods of distribution that the rest of the business in their various lines are using.

So I say that whatever this percentage is, small or large, it does not seem to me to be so much in point as the question of the total economic and financial power of the packers with their widespread distributing system. In other words, you are not putting into this wholesale grocery field a 5 per cent competitor, if that is the figure, or a 10 per cent competitor, if that is the figure; you are putting in a 100 per cent competitor, because as I have shown you the sales of these five packers are three and one-quarter billions of dollars, which is practically the amount of the total sales of all the wholesale grocers.

Now, that fact means that these five packers have the economic and the financial power that is equivalent to the total of all of these wholesale grocery competitors, and they can be expected, I think, to use that power if they enter upon the purpose of acquiring business in the wholesale grocery line, and the fact of that great economic power means that if they once start they will go rapidly, and in a few months will have a domination, a substantial domination of those lines. I think it is the fact of their power that needs to be considered, rather than the extent which they happen to have acquired in two or three or four years of business in these lines.

Now, I know that a number of witnesses here in this proceeding have cited passages from the Trade Commission Report, and I think they probably cited almost everything that we say on the subject of the extension of the packer in unrelated lines, so that I thought it might be useful if, instead of doing that, I prepared a little table here that would put all of the facts that I could take out of that report into a table where you could look at them.

Now, some of these figures are very small, but the point must be remembered that it is just as we got them. Some of them are spotty. But they are here, and I would like to put them into the record.

Now, it is only in unusual cases that we were able to get any information regarding the percentage of any figure that we had, say of the total of that kind, but I will read you here a column which I have of the per cent of the total business in that particular line; I will read you what we have on that subject in a few instances.

In canned pineapple in 1918 the sales of Libby, McNeill & Libby, which is a Swift interest, were 47,964,549 pounds, which amounted to 27 per cent of the total canned pineapple pack, and that is from pages 238 and 378 of part 4.

Then, on page 239 of part 4, you will find a little table setting forth the amount of canned fruits of various kinds which Armour & Co. had under its contract with the California Packing Corporation, which was the contract which Armour & Co. had for its fruit supplies before it took this contract with Mr. Campbell's organization. And the percentages which Armour could take from the California Packing Corporation under this contract amounted to these percentages of the total pack of the country in each of these various lines.

In peaches it was 4 per cent; in pears it was 3 per cent; in apples it was 1 per cent; in cherries it was 3 per cent; in grapes, 7 per cent; in apricots, very slight; in berries, 7 per cent; in plums and prunes, 3 per cent. That was simply Armour & Co., in his contract with the California Packing Corporation.

There was an estimate, in other words, of how much the National Packing Corporation's pack constituted of the total pack, and Armour's contract called for his taking a certain percentage of the California Packing Corporation's pack in that line. Figuring those two percentages against each other, it figures these percentages that I have just given of the total pack of the country.

The sales of canned salmon of Libby, McNeill & Libby in 1918 were 47,195,682 pounds, or 9.7 per cent of the total world pack. That is on page 247 of part 4.

Asparagus, in 1917, Libby, McNeill & Libby sold 10,690,784 pounds, or 33 per cent of the total pack of asparagus.

Again, Libby, McNeill & Libby sold in kraut in 1917, 8,451,887 pounds of kraut, constituting 11½ per cent of the total pack. That was eight million-odd pounds.

The next year—1918—they packed nearly 90,000,000 pounds, but we do not have the figures as to what proportion that was of the total for the year 1918.

Grain, as I said, is in this list, in paragraph 4, of commodities that the defendant corporations are prohibited from handling. The Armour Grain Corporation is not one of the defendant corporations, so that it is not prohibited from handling grain. And the individual defendants in paragraph 4 are prohibited from owning more than 49 per cent of the stock in corporations handling the first 10 sets of items, but not the last three sets of items. And grain is among those last three, so that the decree does not affect the Armour Grain Co. in any way; it does not affect cereals and grain and miscellaneous articles, except so far as paragraph 3 of the decree is concerned, which pertains to the distribution of those commodities through the branch houses and route cars of the packers.

The CHAIRMAN. Well, is not that same thing true of Libby, McNeill & Libby?

Mr. DURAND. That is also true of Libby, McNeill & Libby, and also of Austin, Nichols & Co. Libby, McNeill & Libby are very large factors, I think, in the wholesale grocery business of this country. The Austin, Nichols Co., before the Wilson grocery interests were turned into it, had the reputation of being the largest wholesale grocery company in this country.

Now, to that is added all the business of Wilson—all the business that Wilson had, in addition to the fruits and other commodities, and all that is controlled in that way.

If I may, I will submit this table, which also, wherever we had the figures for the period it shows, shows the figures for those years and the percentages of the increase during those years. I will refer to that percentage of increase later.

The CHAIRMAN. The table may go in the record.

(The table is as follows:)

Incomplete data on extent of production and of sales of unrelated commodities (defined as commodities prohibited by the decree).

Commodity and company.	Production.			Sales.		
	Year.	Quantity.	Per cent of total.	Year.	Quantity.	Value.
Fruits, canned and dried:						
Pineapple (canned):						
Libby, McNeil & Libby (Swift)	1917	617,798 cases.		1915	<i>Possels.</i> 13,574,739	P. 238, 373, Pt. IV.
Do.				1917	35,145,197	Do.
Do.				1918	47,964,548	Do.
Increase.....				1917	(1)	P. 239, Pt. IV.
per cent.						
Peaches—						
Armour & Co.	1917	6,000 dozens.		1917	(1)	Do.
Libby, McNeil & Libby (Swift)	1917	413,431 cases.				
Pears—						
Armour & Co.	1917	71,717 cases.		1917	(1)	Do.
Libby, McNeil & Libby (Swift)						
Apples—						
Armour & Co.	1917	6,000 dozens.		1917	(1)	Do.
Libby, McNeil & Libby (Swift)	1917	24,415 cases.				
Cherries—						
Armour & Co.	1917	4,000 dozens.		1917	(1)	Do.
Libby, McNeil & Libby (Swift)	1917	132,546 cases.				
Apricots—						
Armour & Co.	1917	168,736 cases.		1917	(1)	
Libby, McNeil & Libby (Swift)						
Grapes—						
Armour & Co.	1917	12,115 cases.		1917	(1)	Do.
Libby, McNeil & Libby (Swift)						
Berries—						
Armour & Co.	1916	1,424,873 pounds.				
Do.	1917	3,500 dozens.		1917	(1)	Do.
Libby, McNeil & Libby (Swift)	1917	1,212 cases.				
Plums, Libby, McNeil & Libby (Swift)	1917	21,632 cases.		1917	(1)	Do.
Plums and prunes, Armour & Co.						
Canned fruit other than pineapple—						
Libby, McNeil & Libby (Swift)	1915			1915	36,424,628	P. 378, Pt. IV.
Do.	1917			1917	36,829,500	P. 238, Pt. IV.
Do.	1918			1918	38,526,219	
Increase.....					60	
per cent.						

¹ Contract with California Packing Corporation.

vinsgar, Libby, McNeil & Libby (Swift).		1915	1916	1917	1918	1919	Do.
Do.	Decrease.	318,330	167,002	167,002	47		
Total condiments.....							
Increase.		1915	1916	1917	1918	1919	
Fish, canned, bulk and cured:							
Salmon (canned) —							
Libby, McNeil & Libby (Swift).		1917	583,240 cases *	6.5	P. 247, Pt. IV.	1915	P. 378, Pt. IV.
Do.	Do.					27,911,491	Do.
Do.	Do.					63,459,242	P. 247.
Increase.		1917	353,704 cases.	4.1	P. 250, Pt. IV.	1915	
Wilson & Co. (Inc.) (including Wakefield plants).						15,274,423	P. 379, Pt. IV.
Canned and dried fish, Armour & Co.		1917				20,846,164	Do.
Do.	Do.					33	P. 246, Pt. IV.
Increase.		1917	212,171 cases.	12.9		30,020,183	
Vegetables:						71,275,996	
Canned and dried, Libby, McNeil & Libby (Swift).		1917				3,976,691	P. 231, Pt. IV.
Do.	Do.					10,675,792	
Increase.		1917	210,024 cases.	15.2		10,690,784	
Asparagus, Libby, McNeil & Libby (Swift), (Pacific coast plants).						9,749,287	
Do.	Do.					145	
Do.	Do.					15,138,355	
Increase.		1917				14,515,110	
Kraut, Libby, McNeil & Libby (Swift), (Pacific coast plants).						8,451,887	
Do.	Do.					18,810,192	
Do.	Do.					24	
Increase.		1917	124,812 cases.	9.0		9,523,034	
Armour & Co. (Fremont Kraut Co.).						653,063	
Do.	Do.					93	
Decrease.		1917				142,444	
Squash, Swift & Co.						567,000	
Do.	Do.					75	
Increase.		1917				502,251	
Sweet potatoes, Swift & Co.						587,615	
Do.	Do.					462,976	
Do.	Do.					423,996	
Decrease.		1917				16	

Branch houses only.

All selling agencies.

Libby, McNeil & Libby, Inc.

This total is exceeded only by three other salmon interests: the European output in 1917 and who dominate the entire industry.

Percentage of total world pack,

Mr. DURAND. Besides what we know of the packers in these unrelated lines, we have, of course, the argument of the country's experience with them in other lines—in poultry, butter, cheese, eggs, lard substitutes, and, primarily, in meats and live-stock products.

Now, if the committee desires and thinks it will be pertinent, I will submit a list of the companies controlled by the packing companies or by individual defendants which were found by the Federal Trade Commission to be handling these various unrelated lines.

The CHAIRMAN. We would like to have it.

Mr. DURAND. I can have that made up. And I can, in that list, indicate the percentage of control of voting stock of those companies which is held by packing interests, indicating how much is held by the corporations defendants, how much is held by the individual defendants, and how much by the nondefendant members of the packer families and nondefendant employees.

Judge HAINER. We would like to have that in the record.

Mr. DURAND. I will prepare it.

Now, on this point of the percentage which the packers control in these unrelated lines, I want to point out the analogy in the rapidity of development, to indicate that that percentage is not material, but that the power is what is material. And I will draw this analogy from the South American packing plants.

In 1907, as you will find from a statement in part 1 of the commission's report on the meat-packing industry, Swift & Co. acquired control of the La Platte Cold Storage Co., with a slaughtering plant in Argentina. That was the first advent of the United States packers in South America. If there had been a consent decree involving that organization in 1907, and its modification had been proposed on the ground that the packers had but one plant in South America, and that there was no danger of monopoly, we would have a situation somewhat similar to the case here proposed of the packers being permitted to go into the wholesale grocery business again, because they now have but a small percentage of the wholesale grocery trade, and on the ground that there is no monopoly.

What happened, however, in South America? Swift having gone in in 1907 and acquired a single plant, by 1900 the packers had 42 per cent of the exports of beef from Argentine and Uruguay, and by 1916 they had 60.4 per cent.

This is what happened within nine years.

The CHAIRMAN. That is merely on exportation?

Mr. DURAND. Yes; we do not have any data on the local trade. But this is the figures on the export of quarters from the Argentine and Uruguay. That is what it amounted to. This was largely export to Europe.

Judge HAINER. They have not been restrained from exporting meats yet, have they?

Mr. DURAND. In South America, you mean, or here?

Judge HAINER. In this country.

Mr. DURAND. I think not. I have not heard of any such restraint.

Judge HAINER. But the decree does cover a prohibition in the exportation of these unrelated lines?

Mr. DURAND. Yes, sir.

Judge HAINER. Is that economically sound? Is that contained in your discussion?

Mr. DURAND. I rather anticipated a question like that, Judge.

Judge HAINER. You are very interesting and we would like to have you discuss it.

Mr. DURAND. You asked that of the other witnesses when they got through, and I rather expected it then.

Judge HAINER. I am a little premature.

Mr. DURAND. That table I have just put in the record, with its incomplete data such as we have on production and sales of unrelated commodities, shows the rapidity of development along those lines. And I will pick out from this little table the percentages of increase shown by the meat packers in a short period of time, as shown by that total, so that you will have them all together. This table shows the company, the commodity, the period of time, the percentage of increase, and the basis on which that percentage was calculated.

Libby, McNeill & Libby, on pineapple, from 1915 to 1918, increased 253 per cent; this is based on sales tonnage.

Libby, McNeill & Libby, on canned fruits other than pineapple, from 1915 to 1918, increased 60 per cent; this is based on sales tonnage.

Libby, McNeill & Libby, on canned and dried fruits, total from 1915 to 1918, increased 113 per cent; based on sales tonnage.

Armour & Co., on canned and dried fruits, total from 1916 to 1918, increased 1,152 per cent; based on money sales.

That probably is not fair without giving what the figures were. The figure in 1916 was nine thousand and odd dollars, and in 1918 it was five million and odd dollars, or 1,152 per cent.

Libby, McNeill & Libby, preserves, 1915 to 1918, increased 195 per cent; based on sales tonnage.

Armour & Co., preserves and soda fountain supplies, from 1916 to 1918, the figures show more than treble in 1918 over 1915, but they are not quite comparable, as explained in a footnote.

Wilson & Co. (Inc.), condiments and preserves, 1915 to 1918, increased 629 per cent; based on sales tonnage.

Libby, McNeill & Libby, condiments, 1915 to 1918; the pickle business increased 64 per cent; the olives 875 per cent; catsup 210 per cent; mustard 247 per cent; and the total increase on condiments was 127 per cent; based on sales tonnage.

Libby, McNeill & Libby, salmon canning, 1915 to 1918, increased 96 per cent; based on sales tonnage.

Armour & Co., canned and dried fish, 1917-18, increased 33 per cent; based on sales tonnage.

Libby, McNeill & Libby, vegetables, canned and dried, total 1915-1918, increased 137 per cent.

Libby, McNeill & Libby, Pacific coast plant, asparagus, 1915 to 1918, increased 145 per cent; based on sales tonnage; kraut, 1915 to 1918, increased 24 per cent; based on sales tonnage.

Swift & Co., squash, 1916-17, increased 75 per cent; based on sales tonnage.

Armour & Co., grape juice, 1916 to 1918, increased 85 per cent; based on sales tonnage.

I will put this table in, if agreeable, Mr. Chairman.

The CHAIRMAN. It may go it, of course.

(The table referred to is as follows:)

Company.	Commodity.	Period.	Percentage of increase.	Basis.
Libby, McNeill & Libby.	Pineapple.....	1915-1918	253	Sales tonnage.
Do.....	Canned fruits other than pineapple.....	1915-1918	60	Do.
Do.....	Canned and dried fruits, total.....	1915-1918	113	Do.
Armour & Co.....	do.....	1916-1918	1,152	Money sales.
Libby, McNeill & Libby.	Preserves.....	1915-1918	195	Sales tonnage.
Armour & Co.....	Preserves and soda-fountain supplies.....	1916-1918	(¹)	Money sales.
Wilson & Co. (Inc.).....	Condiments and preserves.....	1915-1918	629	Sales tonnage.
Libby, McNeill & Libby.	Condiments:			
	Pickles.....	1915-1918	64	Do.
	Olives.....		875	Do.
	Catsup.....		210	Do.
	Mustard.....		247	Do.
	Total.....		127	Do.
Do.....	Salmon canning.....	1915-1918	96	Do.
Armour & Co.....	Canned and dried fish.....	1917-1918	33	Do.
Libby, McNeill & Libby.	Vegetables, canned and dried, total.....	1915-1918	137	Do.
Libby, McNeill & Libby (Pacific coast plant).	Asparagus.....	1915-1918	145	Do.
Do.....	Kraut.....	1915-1918	24	Do.
Swift & Co.....	Squash.....	1916-1917	75	Do.
Armour & Co.....	Grape juice.....	1916-1918	85	Do.

¹ More than treble. Not strictly comparable. Money sales in 1916 for branch houses only; for 1918 sales of all selling agencies.

Mr. DURAND. Now, in the table referred to there, in addition to the above cases of increase, there are certain items in which the reports to the commission showed decreases in the handling of certain articles by some of the packers.

Those are listed here, as follows: We give the company, commodity, period of years covered, percentage of decrease, and the basis.

Libby, McNeill & Libby, condiments, vinegar, in the period of 1915 to 1918, decreased 47 per cent, based on the sales tonnage.

Of course, the tonnage basis is the far fairer way, because that gives you the quantity, and the other changes with the price, which was going up, of course, during the war period.

Swift & Co., peas, 1917-18, decreased 93 per cent, based on the sales tonnage.

Swift & Co., sweet potatoes, 1915-1918, decreased 16 per cent, based on the sales tonnage.

Swift & Co., condiments, 1915-1918, decreased 57 per cent, based on sales tonnage.

Swift & Co., spinach, 1915-1918, decreased 89 per cent, based on sales tonnage.

Swift & Co., corn, 1917-18, decreased 93 per cent, based on sales tonnage.

Now, those are the figures. I do not have any explanation of them. I do not know why the decreases came about, but those are the figures that were turned in to us. If agreeable, I can put this table in the record.

The CHAIRMAN. It may be inserted in the record.

(The table referred to is as follows:)

Company.	Commodity.	Period.	Per cent of decrease.	Basis.
Libby, McNeill & Libby.....	Condiments; vinegar.....	1915-1918	47	Sales tonnage.
Swift & Co.....	Peas.....	1917-18	93	Do.
Do.....	Sweet potato.....	1915-1918	16	Do.
Do.....	Condiments.....	1915-1918	57	Do.
Do.....	Spinach.....	1915-1918	89	Do.
Do.....	Corn.....	1917-18	93	Do.

Mr. FULLER. Now, as to the attitude and purpose of the packers in going into the unrelated lines. In considering the proposal that the decree be modified to permit the packers to reenter into these unrelated foods, it is well to observe the attitude of mind with which the packers were proceeding in this field at the time the Federal Trade Commission made its investigation.

The policy of the packer operations in other lines in the past has been the control of markets, both those in which they buy and those in which they sell, and monopolizing those lines of business, or exerting a preponderating influence therein. "Volume" is their motto, and volume only because volume means control.

Now, to permit the entry of the packer interests into any unrelated lines of business, knowing the methods that they are accustomed to employ, from their history in other lines of business, is equivalent to recognizing, sooner or later, we believe, their monopoly of those lines.

When I say a monopoly I do not mean, of course, 100 per cent. There is no reasonable person who expects that to happen, but a substantial dominance of the trade.

It is safe to say that unless the packers saw some prospect of a large business in those lines, in fact, dominating the business, they would hardly want to go into it. That has been their history. That having been their methods in other lines in the past, there is no other way of judging the future.

Now, how one thing leads to another in their operations you can see from a letter like this, in which Mr. Louis F. Swift makes inquiry about facilities for making macaroni and spaghetti. At this time Swift controlled 99 and a fraction per cent of the stock of Libby, McNeill & Libby.

The latter is dated August 31, 1917, and is as follows (reading):

AUGUST 30, 1917.

Mr. W. F. BURROUGH,

Libby, McNeill & Libby, United States Yards, Chicago.

DEAR SIR: Have you ever considered making macaroni and spaghetti? I suppose it would have to be some place where there is good, clear atmosphere—which would not be the stockyards—and also where there was cheap flour.

I suppose you have plenty of places of this kind at either your milk or vegetable plants.

LOUIS F. SWIFT.

Then, L. F. Swift sends this to his brother, Edward F. Swift, with this notation:

"Do you approve this letter?"

L. F. S."

Another letter, dated Chicago, September 11, 1917, as follows (reading) :

CHICAGO, September 11, 1917.

Mr. L. F. SWIFT,

Swift & Co., United States Yards, Chicago.

DEAR SIR: Referring to your memorandum of the 30th, we have never considered making macaroni and spaghetti, but I am having one of our men investigate it and will report to you later.

Yours truly,

W. F. BURROWS.

Now, among the unrelated commodities that the Swift interests were studying at that time were tuna fish and sardines. Early in 1915 they made a survey of that industry and found it attractive. Some organization work had already been done and an agreement on prices had been reached by those in the industry, if we can believe what they have told us in this correspondence, but the output of that year, 1915, was too large, so it was felt by the Swifts it was better to let it "run along for a year or two," when "some of them may be tired of the business and willing to get out of it cheap."

Then, in the year 1917, as the letters show, the matter was taken up again when the fish-canning industry of southern California alone was estimated at \$12,000,000. That the Swift interests did not enter this tuna fish industry was apparently due to the fact that they wanted to get into the vegetable industry first.

Judge HAINER. Is that from a letter?

Mr. DURAND. Those are my comments. Now I want to read the letter. My comments come before reading the letter. That is what I am basing my remarks on.

Judge HAINER. Oh, yes.

Mr. DURAND. The letter is as follows—this is from W. F. Burrows to Mr. L. F. Swift, of Swift & Co., United States yards, Chicago, on the subject of canning tuna fish.

The letter is as follows [reading] :

"CHICAGO, March 10, 1915.

"Canning tuna fish.

"Mr. L. F. SWIFT,

"Swift & Co., United States Yards, Chicago.

"DEAR SIR: The following report I received yesterday from the American Key Can Co., who keep in close touch with all the canning industries in the country:

"There are in the business:

	Dun quotes.	Bradstreet.
South Coast Canning Co., Long Beach.....	\$25,000, high.....	\$25,000, first.
Los Angeles Tuna Canning Co., Long Beach.....	\$35,000, high.....	\$35,000, second.
Monach Canning Co., San Pablo.....	Do not quote.....	
South California Fish Cannery, San Pablo.....	Do.....	Do not quote.
White Star Canning Co., San Pedro.....	\$25,000, good.....	Do.
Premier Packing Co., San Diego.....	Do not quote.....	Do.
Pacific Tuna Canning Co., San Diego.....	\$5,000, good.....	Do.
Van Camp Sea Food Co., San Pablo.....	Do not quote.....	\$35,000, second.
California Tuna Canning Co., San Diego.....	Do.....	Do not quote.
Lower California Fisheries Co., San Diego.....	Do.....	Do.
United Tuna Canning Co., San Pablo.....	Do.....	Do.
National Tuna Fishing & Packing Co., Long Beach.....	Do.....	Do.
Independent Tuna Packing Co., location not given.....	Do.....	Do.
Halfhill Tuna Packing Co., Long Beach.....	Do.....	Do.

"The latter three companies are new, formed for 1915.

"In 1914 there were 325,000 cases of tuna fish packed, and practically all marketed except a few ones flat in packers' hands and dealers.

"All the tuna packers have formed an association for the selling of their goods, and Mr. Frank Van Camp is the secretary. The new plants are not members.

"The business was started about five years ago, and gradually increased until 1913 when the pack was about 150,000 cases, and 1914, 325,000 cases. The specifications for cans placed this year by all packers amount to 38,600,000 cans or 840,000 cases. This includes potted tuna, to be packed in a quarter-pound can.

"The tuna fish has white and dark meat, in about equal proportions. The white meat is used for the canned tuna, and the dark meat, which has formerly been used as fertilizer, will be utilized for the potted tuna.

"They have been selling four dozen to the case, ones, at \$6 per case, c. i. f., New York, less 5 and 1½ per cent and label allowance; and the half-pound size, four dozen to case, at \$4, same allowance.

"The estimated cost at the factory was given me while there as \$2.25 per case.

"The one-pound flats are the hard sellers, and the bulk of the pack and demand is for half-pound flats. This is occasioned by the fact that the fish is rich and the quantity in the one-pound can is too large. The packers want to sell the large cans, as they show a greater profit, if they can sell."

That is apparently quoted, if I can follow the letter, from the American Key Can Co. This which follows is apparently by Mr. Burrows himself. [Continuing reading:]

"Last year the packers that are now in the business were trying to consolidate"——

Judge HAINER (interposing). Are you reading from a copy of a letter, or some one's statements?

Mr. DURAND. No; it is a copy of the letter. This is a copy of an original letter which we found in the files of Swift & Co., and of which we made a copy, and this is a copy of that copy.

Judge HAINER. This is one whole letter?

Mr. DURAND. Yes; this is one whole letter. [Continuing reading:]

"Last year the packers that are now in the business were trying to consolidate and get some one to back them. Mr. Deming, of Deming & Gould, was asked to come in and furnish the money and he declined. Also a man in Los Angeles (I do not know his name) a friend of Frank Kinsey, of the American Key Can Co., was asked to come in and form a company, and he declined. Now they have Frank Van Camp, who used to be with the Van Camp Co. at Indianapolis, and you will notice he has a small plant. They have formed an agreement on the prices the goods are sold at and the price to be paid for fish. I do not know whether this is legal or not—probably not; they may be called down by the Government.

"You will notice the increased pack this year of 500,000 cases. I would say a large proportion of this will be potted tuna, and I think they will have a hard time to sell it, judging from the experience the Eastport cannery have had trying to put potted sardines on the market.

"I find in looking over the companies that are in this business, their bank accounts do not seem to be increasing, and more or less of them have been wanting to sell out; but if you would like to have us investigate I will send one of our salmon men from Seattle to look into it.

"Judging from the appearance now, it looks to me as though it would be much better to put more money into the salmon business and let the tuna business run along for a year or two. I think with the increased pack this year they are going to have more or less trouble selling it, and some of them may be tired of the business and willing to get out of it cheap.

"Yours truly,

"W. F. BURROWS."

Here is a letter in October 16, 1917, two years later, on the same subject. This is also by W. F. Burrows on the subject of tuna fish, also sardines.

The letter is as follows [reading]:

"CHICAGO, October 16, 1917.

"Tuna fish (also sardines).

"Mr. L. F. SWIFT,

"Mr. EDWARD F. SWIFT,

"Swift & Co., United States Yards, Chicago.

"DEAR SIRS: The total pack of tuna this year will probably exceed (packed in cases, 48 cans to the case) 500,000 cases.

"The pack for the last five years has been as follows:

	Cases.
1916-----	370,000
1915-----	340,000
1914-----	320,000
1913-----	130,000
1912-----	40,000

"Tuna are caught with a hook and line, and it would seem that sooner or later some plan would be devised whereby they could be caught in traps or nets. The supply seems inexhaustible. They are not caught during the spawning season, and only mature fish are taken. The United States Bureau of Fisheries are on record that there is no possible chance of the supply of fish being depleted so long as they are caught with hook and line.

"The supply of tuna is the most dependable in the waters around Long Beach, Wilmington, and San Pedro, Calif., although there are some tuna, also sardine factories, in San Diego.

"An effort is also being made by southern California cannerymen to can yellow-tail mackerel, barracuda, sea bass and rock cod, but the canning of sardines has assumed large proportions, and it is the opinion of our Mr. Fay"—

I think Mr. Fay is R. F. Fay, of Swift & Co., their transportation manager [continuing reading]:

"and it is the opinion of our Mr. Fay that the sardine industry is more important than any of these, including tuna.

"If we should go into the tuna packing business it would be with the idea of also packing sardines in southern California.

"In 1916 about 600,000 cases of sardines were canned. In 1917 the pack will reach 2,000,000 cases, provided they can be sold. The waters abound in sardines and packers feel they will have no difficulty in getting a supply of sardines to take care of all the orders they can get.

"Both the packs of tuna and sardines in southern California need standardizing, as there are many canneries which have sprung up rapidly, and a good many ideas are being expressed in the individual packs. Understand Mr. Gorrell, of the National Cannerymen's Association, is now on his way to California to standardize these packs.

"We had our Mr. Fay investigate the packing of tuna in southern California, and in talking with Mr. Houssels, president of the Long Beach Tuna Packing Co., Mr. Houssels offered to sell his plant and equipment for \$60,000. Upon receipt of Mr. Fay's report I sent Mr. Larmon to investigate further, and I inclose herewith copy of a telegram received from Mr. Larmon.

"Mr. Fay says the value of the products of the fish-canning industry of southern California, including by-products, it is estimated will reach \$12,000,000 this year.

"It seems to me there is an opportunity to make some money in the tuna fish business and sardine business, and I would be perfectly willing to tackle it, if we did not have so many other irons in the fire, and were not spending so much money in other plants.

"Also, Mr. McDougall and I agree that we would like to get into the vegetable business before we go into the tuna or sardine business, but I would like your opinion on this.

"Yours truly,

"W. F. BURROWS."

Here is a letter dated Chicago, October 17, 1917, from Mr. Louis F. Swift to Mr. Burrows, as follows [reading]:

CHICAGO, October 17, 1917.

MR. W. F. BURROWS,

Libby, McNeill & Libby, Union Stock Yards, Chicago.

DEAR SIR: Answering yours of October 16:

I agree with you that the vegetable business comes ahead of the tuna business.

Yours respectfully,

LOUIS F. SWIFT.

The Swift people were already in the salmon canning business and in distributing salmon. A factory not owned by them paid a commission of 10 per cent for handling its output, but this was not enough; they wanted the manufacturer's profit also. And we have a record from this letter that Wilson & Co. were also trying to buy the same plant. This was January 16, 1918. This letter is not signed, but the initials are "W. F. B.," which I take to be W. F. Burrows. The letter is as follows [reading]:

TUNA CANNING AND COLD STORAGE CO. CANNERY.

CHICAGO, January 16, 1918.

Mr. EDWARD F. SWIFT,
Swift & Co., United States Yard, Chicago.

DEAR SIRS: We have been handling the output of this cannery on a 10 per cent commission for the last four or five years, and we have tried from time to time to buy out this cannery, which belongs to Jno. L. Carlson.

They pack principally pinks and chums. We have no plants in that district, and we need pinks and chums to sell along with our red salmon, and we would like to have the manufacturer's profit.

We have the privilege of selling this salmon this year if the Food Administration in Washington will allow us to sell on a 10 per cent commission, but it is a question whether they will allow us to do it. It may be necessary to sell it on a 5 per cent commission, as brokers are not allowed to make such a large profit.

We know there has been enough profit in the business, that it will pay us to buy this plant. We find that we can buy it, that is the cannery, boats, pile driver, equipment, and buildings at \$183,500 or thereabouts. We feel that this may be a little excessive, but it is about the best we can do.

We also know that Wilson Packing Co. has been trying to buy this plant.

I realize that we want to go slow in regard to future investments, but I think, and Mr. Larmon agrees with me, that we should not let this property slip through our hands, as it is one of the best located in Southeastern Alaska and packs 100,000 cases per year.

Yours truly,
 W. F. B.

Then here I have a note to W. F. B. signed E. F. S., which I take it is Edward F. Swift, the note being as follows [reading]:

"W. F. B.: If you think best to buy Salmon Cannery you wrote me about, 100,000 cases capacity, and can buy same at reasonable price, satisfactory to go ahead.

"E. F. S.

"Expect to be away until Thursday, January 21, 1918."

Judge HAINER. Chicago?

Mr. DURAND. There is no place given in the date line.

Judge HAINER. I suppose that is a copy?

Mr. DURAND. It was addressed at Chicago on the 16th, and he answered on the 21st.

Now, W. F. Burrows, writing to the Swifts, indicates that there was real competition among the packers in acquiring an interest in the canning of vegetables in this letter [reading]:

CHICAGO, July 16, 1917.

Mr. L. F. SWIFT,
 Mr. EDWARD F. SWIFT,
Swift & Co., Union Stockyards, Chicago.

DEAR SIRS: Wilson & Co. have bought nine factories from Grafton Johnson Co., vegetable packers, which pack the following: Corn, peas, tomatoes, pumpkin, squash, succotash.

The factories are located at Greenwood, Shelbyville, Franklin, Whiteland, Tipton, and Anderson, Ind.; the others in Michigan and Wisconsin. The consideration was said to be \$500,000.

They seem to be getting into outside business as fast as possible.

I think we shall have to go more into the canning of vegetables right away.

Yours truly,

W. F. BURROWS.

"Copies—LFS, EFS, CHS, GFS, jr., LAC," who was L. A. Carton, treasurer of Swift & Co. And the words "Sants Barbara" is here, presumably referring to Santa Barbara, Calif.

Now, the conclusion "in a nutshell"—I am quoting that from Mr. Burrows—is to go in for big lines, and cover the whole field—Colorado for pickles and Utah for tomatoes and peas. That is shown by this letter. I think I said it was Mr. Burrows's idea. It seems to have been Mr. Larmon's idea. Mr.

Larmon was one of the assistants in Swift & Co.'s office. The letter is as follows [reading]:

SEPTEMBER 4, 1917.

Mr. W. F. BURROWS.

DEAR SIR: I went over Colorado very carefully; also Utah. My conclusions in a nutshell are that we should enter Colorado for next season for a big line of pickles, possibly 12 salting stations, and for the first year ship the pickles East. Heinz is in there this year with seven salting stations, and I think he will get more to the acre than we will in Michigan, although it may be a little early to make this prophecy.

As regards Utah, I feel that we should get in there for next year for tomatoes and peas. In about four weeks we should have somebody in the field in both places making a full investigation and report and signing up acreage for all three commodities.

I have some general detailed information pertaining to these suggestions which is available should you want it.

Yours very truly,

PHILIP LARMON.

LFS

Please note. Have you any suggestions?

W. F. B.

W. F. B.:

Yes; I agree.

L. F. S.

Mr. Louis F. Swift doubts whether they can decrease expenditures at Salt Lake City, and looks out for a more favorable location—Colorado and Utah—the best places for vegetable canneries. That is shown in this letter. Now, where I put my little notations, they do not stand as against what the letter shows.

The letter I refer to is as follows [reading]:

NOVEMBER 22, 1917.

Mr. EDWARD F. SWIFT:

Referring to the attached, there is the question of \$36,000 investment in a fruit and vegetable cannery in Colorado; also the question of \$250,000 investment in a fruit and vegetable cannery in Salt Lake City, which includes a new catchup plant, eventually (100,000).

From the fact that Libby, McNeill & Libby have no vegetable canneries in Colorado or Utah, and it is a well-known fact that they are the coming location of the whole United States of America for this class of business, I am in favor of starting as above outlined, unless it is found practical to decrease the expenditures in some manner of the Salt Lake City one, but I doubt this.

LOUIS F. SWIFT.

Here are a series of letters, showing the Swifts planning to go into the pineapple business on a large scale, which they subsequently did, and you notice they go back to the source, the pineapple plantation. The first letter is as follows [reading]:

"CHICAGO, January 5, 1917.

"Mr. LOUIS F. SWIFT,

"DEAR SIR: Referring to your letter of January 5 in regard to Libby being first in the pineapple business: I agree with you that it is not material whether they are first, second, or third, but I do think it is important that they get their production at as low a cost as anyone, and it looks as if whoever got this island would be able to get much lower cost pineapple than anyone else has obtained up to this time on account of it being peculiarly suited to the pineapple business so far as we can ascertain, and the land being bought at a price around 20 per cent or 30 per cent of what it would cost anywhere else.

"I am favorable to sending a cattleman or anyone else to check up the live stock end of it, and suggest, provided Mr. Burrows approved, that we might send a Mr. Brown who has been ranching in Utah for a good many years and is a brother of Lee Brown, and whom we are talking about hiring as a plantation foreman; or we could send some one Mr. Leavitt recommends."

Mr. Leavitt being the head of their capital buyers. [Continuing:]

"Also I would advise for consideration asking Mr. Burrows if he thought Mr. Dole, of the Hawaiian Pineapple Co., or anyone else, might go in with us 50-50.

"Yours truly,

"EDWARD F. SWIFT."

The next letter is as follows [reading]:

CHICAGO, May 19, 1917.

Messrs. L. F. SWIFT, CHARLES H. SWIFT, G. F. SWIFT, Jr.,

L. A. Carton Building.

DEAR SIR: I inclose you some correspondence and statements from Mr. McDougall, vice president, and Harry Williams, auditor, Libby, McNeill & Libby, who have been to Honolulu looking over the pineapple business.

I understand in a general way they found the Libby business quite satisfactory.

They now come in with a proposition to buy out the Hawaiian Pineapple Co., and then consolidate the Hawaiian Pineapple Co.'s business with the Libby business, with Mr. James D. Dole as manager.

I also inclose a comparative statement of the Libby business and the Hawaiian Co. business, and have no doubt the Hawaiian Pineapple Co. at book value would be a good purchase.

Think the only way to purchase would be to buy it outright, as would not want to deal with such a large number of stockholders.

The book value of the Hawaiian Pineapple Co. as of January 1, 1917, is approximately \$1,845,000, being buildings, plantations, etc., which are a fixed investment of \$969,000, and the balance, consisting of case, finished product, supplies on hand, etc., \$876,000, comprising quick assets.

Yours truly,

(Penciled)

EDWARD F. SWIFT.

(Separate copy to each.)

Did I make that clear, that the book value of the Hawaiian Pineapple Co. as of January 1, 1917, is approximately \$1,845,000, the buildings, plantations, etc., which are a fixed investment, being valued at \$969,000, and the balance, \$876,000, being quick or liquid assets?

The next letter is Chicago, May 26, 1917, and is as follows [reading]:

CHICAGO, May 26, 1917.

LOUIS F. SWIFT,

Mr. EDWARD F. SWIFT:

Referring to yours of May 19, inclosing correspondence and statements from Mr. McDougall, vice president, and Williams, auditor, Libby, McNeill & Libby, regarding pineapple business:

It looks like a pretty good proposition, which seems to me to have some merit, and I would think should have favorable consideration and discussion.

It seems to me the main question is how efficient management we are reasonably sure of, which I presume you are in as good or perhaps better position to judge as any of the rest of us.

CHARLES H. SWIFT.

Then there are notations indicating that copies go to various other persons in the organization.

Now, the report of a Federal Trade Commission examiner on Armour & Co.'s rice business illustrates the power that such an organization as Armour & Co. can exert by breaking into the marketing field in those commodities; and I want to read just some excerpts from this agent's report. The agent was S. W. Tator. He says [reading]:

"The results of Armour & Co. transactions in rice form part of the results of the department known as 'Canned Fish, Canned Vegetables & Miscellaneous Products.' Grouped under this department are found such products as:

"1. Canned vegetables of all kinds.

"2. Table condiments such as chili sauce, horse radish, ketchup, mustard, etc.

"3. Corn sirup.

"4. Olives ripe and cured.

"5. Canned and dried fish.

"6. Sauerkraut.

"7. Rolled oats.

"8. Coffee.

"9. Raw beans.

"The profit or loss of this department results from the sale of all of these products with their many subdivisions, and as a result it would be impossible to determine from this source what are the final net results of rice transactions."

That is, it is mingled with their other goods. He says further (continues reading):

"My experience in matters of this kind leads me to believe that Armour & Co. would not miss the opportunity of acquiring an interest in an industry which has assumed the proportion which involves the handling of nearly 20,000,000 pounds of rice and the expenditure of about \$1,500,000. It must be noted also if their own statements are true that this business has grown from nothing a year ago to the above amount."

That is, about 20,000,000 pounds and \$1,500,000 a year. (Continues reading:)

"It is a good illustration of the power which an organization like Armour & Co. can exert over any industry so that it can break into the marketing field and in a short time become one of the greatest, if not the greatest, distributor direct to the trade of a commodity. Armour & Co. by reason of its branch houses, car routes, and other selling arrangements has ready at hand the machinery to enter almost any field where food products are involved, and to become a serious competitor, if desired, in a short time."

Now, that states the point which was made by the commission in its report regarding Armour in his rice business. Not that Armour's rice business in a single year got to be 30 or 40 or 50 per cent of the rice business; not at all. But that year one dealer in one year could approximate to the stage of handling 20,000,000 pounds, and a million and a half dollars a year, and to become, as I understand they, themselves, are inclined to think, the largest rice dealer in the country. It is that power which enables them to do these things so rapidly that we are emphasizing. It is true that that 20,000,000 is a small proportion of the rice business in the country.

The CHAIRMAN. If that is a good place to discontinue, Mr. Durand, we will adjourn at this time until to-morrow morning at 10 o'clock.

(Whereupon, at 4.05 p. m., the committee adjourned to meet to-morrow, Tuesday, December 13, 1921, at 10 o'clock a. m.)

TUESDAY, DECEMBER 13, 1921.

The committee met at 10 o'clock a. m. in room 704, Department of Commerce, pursuant to adjournment on Saturday, Hon. Herman J. Galloway (chairman) presiding.

The CHAIRMAN. We will come to order. Mr. Durand, we will continue hearing from you.

STATEMENT OF MR. WALTER Y. DURAND—Resumed.

MR. DURAND. Mr. Chairman, when the hearing closed yesterday afternoon we were speaking of the attitude of the packers in going into these unrelated lines. And I wanted at this point to refer to page 207 of part 2 of the commission's report on the meat-packing industry; a section on the effects of bankers' connection with the packing industry—that is, the expansion which was possible for Wilson & Co. (Inc.) following the reorganization of Sulzberger & Sons Co. into Wilson & Co. (Inc.) through the underwriting service of the prominent New York bankers.

The report says [reading]:

"With the support of the banking combination participating in the Wilson deal, the operations of Wilson & Co. (Inc.) can be extended into virtually every line of food production and distribution and into branches of industry which are entirely unrelated. An indication of purpose is given in the following extract from a letter of Thomas E. Wilson to Paul D. Cravath—"he was the attorney for Wilson & Co. in this matter, I think, or for Sulzberger Sons Co.—"dated April 15, 1916,"

That is the extract from the report, and this is the extract from the letter referred to [reading]:

"I feel it would be advisable to make the name Wilson & Co. rather than to use the word 'packing,' and this name would be accessible in Illinois at once."

That is, Mr. Chairman, they were considering what name should be given to the reorganized Sulzberger & Sons Co. They wanted the name "Wilson," and the name "Wilson Packing Co." was suggested, but that name was already in use by an Illinois corporation. Here Mr. Thomas E. Wilson suggests that they practically all dropped it, except the Cudahy people.

in the letter [continuing reading]:

"My chief reason for this recommendation is the fact that we are planning now for the future, and in many of the lines along which we will want to develop there is an objection to the use of the word 'packing' in the corporation name. This has been the experience of other packers and, as you know, they all practically dropped it, except the Cudahy people.

"There is a natural prejudice in many of the lines toward the thought that the articles are manufactured or handled by meat packers."

I have heard it stated by a wholesale grocer that Libby, McNeill & Libby markets its goods through the wholesalers except when it markets through Swift & Co. to retailers; that is, when it markets to Swift & Co., who in turn markets to retailers.

Now, here is a letter from Edward F. Swift to Louis F. Swift, in which there is a pencil memorandum, evidently by Louis F. Swift, and which emphasizes his opinion that a Swift branch house can not sell both to jobbers and to retailers, and can better sell to retailers.

This is dated Chicago, July 24, 1916, and is as follows [reading]:

"CHICAGO, July 24, 1916.

"MR. L. F. SWIFT, *Building*.

"DEAR BROTHER: Spokane is a nice city of about 100,000 people, 313 miles from Seattle and 377 miles from Portland. Is in a good agricultural country, has cheap water power and several lumber mills, and is the principal distributing center for this part of the country."

I omit here a description of two locally owned packing plants and of the railroads that serve them.

The letter then goes on [continuing reading]:

"Swift & Co. have a nice little branch house here, but claim the local competition undersells them to such an extent on pork products that they can not make any money."

That is, the local packing companies undersell them to such an extent that they can not make any money.

The letter continues [continuing reading]:

"There is a new manager here, Mr. Blackburn, transferred from Walla Walla six or eight months ago, who is trying to build the business up on quality and price so that the branch house will pay out. I suppose half his volume is smoked meats; lard, both pure and compound, coming second in volume; sausage, mostly summer sausage, coming third; soap produce and Libby's goods making up the balance.

"It is costing him about 10 per cent to do the business, which looks very high, soap and Libby goods being about the only things he is getting as much as 10 per cent on.

"Looks as if he will have to handle more specialties if he makes the house pay.

"Would like to consider if our Spokane house could be a distributing center for Libby's canned fruits, asparagus, pineapple, salmon, etc., put up on the Pacific coast, shipping in carload lots and selling both to the wholesale, jobbing, and retail trade in this section, covering a territory, say, 100 miles west and north and several hundred miles south and east.

"Yours truly,

"EDWARD F. SWIFT."

Now, on that letter, as we found it in the files, there were these pencil notations, presumably by Mr. Swift. On the phrase "wholesale, jobbing"—that is, on the question of whether they could sell both to the wholesale and jobbing trade, Mr. Swift has an annotation of "no," and on the one "retail" he has added the annotation "yes," and then has added "can't do both."

Now, the last paragraph of that letter has those notations, and those notations are worked out into the following letter of reply from Louis F. Swift to his brother Edward, in which he states the policy of stimulating selling direct the Libby goods by the Swift branch houses in the Northwest.

This letter is dated July 27, 1916, and is as follows [reading]:

"JULY 27, 1916.

"Mr. EDWARD F. SWIFT, *Office*:

"In your letter of July 24, note what you mention on the third page, reading as follows:

"'Would like to consider if our Spokane house could be a distributing center for Libby's canned fruits, asparagus, pineapple, salmon, etc., put up on the Pacific coast, shipping in carload lots and selling both to the wholesale, jobbing, and retail trade in this section, covering a territory, say, 100 miles west and north and several hundred miles south and east.'

"This is, of course, what we are trying very hard to do as regards the retail trade in connection with our beef houses. As you are aware, we have a man by the name of M. Brown working in connection with our beef-house department who has succeeded in getting our sales of Libby goods up to a basis of \$1,103,432 per annum last year. We must stimulate this all we possibly can as regards Spokane; we must do the same at all of our other houses. It is our ultimate object to get this as big as possible, and it is equally as important to do it at every other point there is.

"Now, the question you bring up as to whether they can do a wholesale as well as retail or not is a big question."

Meaning by that, whether the Swift branch houses can sell both to the wholesalers and retailers. That is a big question. The letter goes on [reading]:

"But I do not think it applies to Spokane any more than it does to any other beef house we have. And I do not think it is possible for a beef house to sell the wholesaler, because they are supposed to use all their energy on the retailer, and the two won't mix.

"But this is only my view; and if it can be proved differently, I am open to conviction.

"LOUIS F. SWIFT."

Then there is a note CC, which means copies to Charles H. Swift and G. F. Swift, jr., and this note is addressed and sent to those gentlemen [reading]:

"Will you please take this up with the proper parties and see if we can not make an extra drive on the Libby goods in Spokane? And while we are about it, include Butte and all the northwestern houses, as I know they need the volume badly."

The point that is clear from that letter is that it was planned to sell Libby's goods to branch houses to sell the Libby goods direct to the retailer, and that in this mountain territory, far from packing plants, the addition of a large volume of profitable specialties, such as Libby goods, was the only way that the Swift branch houses could make money, because in their strictly meat business they were losing in competition with the local packers. I shall want to dwell on that point later; the competition of the Chicago meat packers in such territory as this mountain territory, and the question whether they were able to compete successfully with the local packing companies there. And I might say just at this point that it seems to me a little evidence on that point whether they were able to compete successfully or not is found in the fact that Armour & Co., a little while after this letter that I have been reading was written, bought out the E. H. Stanton Packing Co., which was one of those few local packing companies at Spokane which this letter refers to. That means was taken of getting rid of competition, as I interpret it. Also, in Ogden, the Ogden Packing & Provision Co. was furnishing difficult competition to the packers. It was there locally and could undersell them, and while I am not prepared to speak conclusively on the point, it is our understanding that the Ogden Packing & Provision Co. was sold to interests that were rather close to the large packers. As I say, I would like to take that up later, in another connection, if I may.

We were speaking yesterday of the term "unrelated lines," and I wanted to quote or refer to a statement by Mr. Colver, former chairman of the Federal Trade Commission, before one of the committees of Congress. Our report said as to the Big Five packers, in the summary, that they, "together with their subsidiary and affiliated companies, not only have a monopolistic control over the American meat industry, but have secured control, similar in purpose if not yet in extent, over the principal substitutes for meat, such as eggs, cheese, and vegetable-oil products, and are rapidly extending their power to cover fish and nearly every kind of foodstuffs."

Now, of the foods that are unrelated to these main meat products, taking "unrelated" in that sense, the big packers have extended their business to many commodities other than foods so related.

Originally the packer confined his activities to the slaughter of live stock and the sale of meat and animal products. Gradually these activities widened to include the fabrication of the animal products into animal byproducts. With the development of the refrigerator car and of cold storage came the packer's branch house and the packer became the competitor of his customer. His customer was the wholesale dealer, and when the packer developed the branch-house system, back in the eighties and nineties, he became the competitor of his former customer, the wholesaler.

In that way the smoked-meat trade, which was originally a wholesale grocery item, passed entirely to the packers, in their branch houses.

Now, I would like to quote the statement that I referred to which was made by Mr. Colver. He said [reading]:

"First, if, as a meat packer, the meat packer as a meat packer sells his products—the main product or by-product, but principally the by-product—to a second person who stands between him and the consumer, and if that product which he sells for retail yields a second substantial profit in the resale or remanufacture sale, the packer is tempted and does go into that business—that is to say, the tendency is to go into the business of his customers—to go into the business of his customers and become a competitor of his customers."

Mr. Colver then goes on and speaks of the extent of the packers' activities into unrelated lines, and classifies it as follows [reading]:

"Those lines of business from which the packers themselves, as meat packers, are large purchasers; that is to say, after buying a common commodity in large quantity, naturally knowing that each purchase involves a profit to the man who sells it, they tend to go into that business and go one step back, and those things are not related in the sense that they are at all by-products of these live animals; they are unrelated in that sense."

Then he goes on [continuing reading]:

"Businesses which compete with flesh foods, or even with the by-products of live animals * * * having found that cottonseed oil, we will say, furnishes a substitute for the animal foods, the tendency is to go into the cottonseed-oil business. Having found that grains and breadstuffs are in competition with meat as a main food, the tendency is to go into that business."

Then Mr. Colver goes into the question of businesses furnishing articles going into the same markets into which the established lines go, and he says [continuing reading]:

"Let us take an instance of that and we will see the development of it. The drug store goes into the soda-fountain business. As long as I can remember there has been a little soda fountain, which did not amount to much. But now the soda fountain comes to be a very important part of the drug store—comes to be almost a restaurant. About the time that the soda-fountain business started to make its way, with the movies, into public appreciation, one of the by-products that was being recovered was beef extract—bouillon. So, besides selling the beef extract for domestic consumption and consumption in hotels and similarly, you can remember when the signs first came up at the soda fountains, 'Beef extract,' and there was the little hot-water heater and you could go in and get a bouillon cube or the liquid beef extract, and by adding to it a little hot water and celery salt you would have a new, good drink. Fine! The progression from that little start has been—and if this seems a small thing, I give it not because of its magnitude but because it is so easy to appreciate in this instance, and it is a typical thing, although relatively small, and yet the business of purveying to the soda fountains of this country is no longer a small business. Having gotten the introduction through the beef extract to the soda fountain, I said that the tendency was to group around that one thing other similar things, other things that go to the same trade. Assuming that the salesman is going into the soda fountain to sell a bottle of beef extract or a box of bouillon cubes, the tendency is to give him enough additional things to make that business a more profitable business * * *. And very soon we find connected with the selling of this beef extract the 'whips,' as they are called. The whips are the flavoring extracts which are used at the soda fountains, the vanilla, the chocolate, the pineapple, and all of the rest of the fruit sirups. So they have now tied to that a line of fruit sirups. Next comes the nuts, the sirups which they make the sundaes of, the butterscotch sundae, the caramel sundae, the different kinds of cherries, the nut frappé, the

walnut sundae, and, finally, comes what could be called—and I think what is called—'the soda-fountain department.' And having started with simply the beef extract, they go out finally with a line of stuff that furnishes the big soda fountain with all the various things that are served there—a complete line."

That was Mr. Colver's statement, and all the soda-fountain supplies that he refers to you will find listed in Mr. Armour's soda-fountain catalogue.

Judge HAINER. Well, what effect has that on the public; is that injurious to the public?

Mr. DURAND. That is showing the ease and naturalness with which this expansion comes. And it is not going to the question whether the expansion is injurious to the public or not. My general argument is whether it is injurious to the public or not. But I was here showing the general ease and naturalness with which they start, and there is no telling where they will end.

Judge HAINER. That is true of a department store.

Mr. DURAND. Yes.

Judge HAINER. They start out small, and they are constantly adding to that store.

Mr. DURAND. Yes.

Judge HAINER. And they are building the immense department stores and adding to them. How does that affect the public? Would you abolish them?

Mr. DURAND. Is there a monopoly of them?

Judge HAINER. Do you think they have a tendency to—Sears, Roebuck & Co. and these other large stores?

Mr. DURAND. I think that is a question—

Judge HAINER (interposing). Wasn't there a fight made on them?

Mr. DURAND. Yes, sir.

Judge HAINER. If you go back to the principle, once a cobbler, always a cobbler; once a drug store, always a drug store. I remember the fight made on them when they were starting, that they were driving out the restaurants. And yet it becomes beneficial. And yet you say the big department stores, at one time there was a great attack made on them; and it is a question whether it is good economics. Isn't it, whether we should dismember all these things and go back to the former system. I draw the line between. I do not mean to approve an absolute monopoly, but control of them; but driving them out of business, as long as we are talking economics, if you apply the rule to one you have to apply it to the other, do you not?

Mr. DURAND. I think that all of these things are related, and I think we have got to have at some time in this country a showdown as to whether monopoly is efficient or not; and if it is efficient, whether we are going to permit it and regulate it, as whether—

Judge HAINER (interposing). You use the word "monopoly"; what do you mean?

Mr. DURAND. I mean a sufficiently large proportion of the business to enable a concern to dominate the price policies; not a 100 per cent, but it may be 40 per cent only, if sufficient to give control in a dominating way over the price policies.

Judge HAINER. Isn't a monopoly a thing that raises the prices to the consumers and depresses the prices to the producer?

Mr. DURAND. Yes, sir.

Judge HAINER. Those are the two evil effects; one at the source.

Mr. DURAND. Yes, sir.

Judge HAINER. When it rises to the height of bigness, you might say, where it depresses the price to the producer or the source of supply, and where it affects the consumer and raises the price.

Mr. DURAND. Yes; and right in that same connection—

Judge HAINER (interposing). But if it is beneficial to the source, or the great producers, and also beneficial to the consumers, would that be a monopoly?

Mr. DURAND. If it is proven that it is beneficial to the producer and to the consumer, it nevertheless would have a power which would be a potential evil, making it necessary to regulate it.

Judge HAINER. That is the point. Suppose it is under regulation by some commission or department, if you could absolutely regulate it and prevent that.

Mr. DURAND. But the point I make is that we do not have that regulative system now. Whether we want to adopt it or not is a question for Congress and the Nation. We have not come to that yet, but we are getting closer and closer to it. It must at some time be settled. But it does not seem to me this is the proceeding in which to settle it. It is a very large question.

Judge HAINER. Would you put it beyond the reach of Congress to regulate it; would you do it by judicial legislation or by legislative action?

Mr. DURAND. I am not at all in favor of judicial legislation at any time. That was one of the points in this decree.

Judge HAINER. You want it done by Congress?

Mr. DURAND. I want it done by Congress, and I want to raise later that question that you are discussing, and the efficiency of the meat packers. I want to raise that question when I come to the question of the efficiency of the packers.

Judge HAINER. And I want to raise these questions, because you are giving us information on this subject, and these are matters that come to my mind and that I would like to have discussed.

Mr. DURAND. I want to keep away from the expression of opinions as much as I can.

Judge HAINER. Yes; you feel just as we do. You want the facts.

Mr. DURAND. On the purposes of this expansion activity of the packers into these unrelated lines, and of entering unrelated lines, I want to cite you to Part IV of the commission's report, in the first chapter of that report, where those subjects are discussed. It is on page 13, and following in Chapter I, where you have that question discussed, and I do not know that it will be necessary for me to read it.

Judge HAINER. I think a mere reference to it would be sufficient.

Mr. DURAND. Yes. In those first pages of the report, say, pages 13 to 18, you will find this matter set out in general terms, with references to the particular part of the report that supports the general conclusions therein.

Now, on page 18, there, Judge, you will find a considerable list of classified commodities—all kinds of commodities in which the packers are dealing. It is not simply a question of the wide range of commodities in which the packers are dealing, but of the growing extent of control over some of those commodities. That was stated by the commission in its summary of the meat-packing report, which you will find in part 1, pages 36 to 37.

Judge HAINER. I have read that a dozen times.

Mr. DURAND. I can refer you to what is said under the heading of canned fruits, vegetables, and so on, and on staple groceries and vegetables and grain, or I can read it, just as you wish.

The CHAIRMAN. I think the reference will be sufficient.

Mr. DURAND. If I may read just this last paragraph.

The CHAIRMAN. Certainly, if you desire to base some argument upon it.

Mr. DURAND. Speaking of the Armour Grain Co., it shows that company in 1917, handled 75,000,000 bushels, or 23 per cent of all the receipts of grain at Chicago, the greatest market in the world. And that is a merchandising business, and not a commission business, in the main.

Judge HAINER. Was that exported or distributed in this country?

Mr. DURAND. I could not say. I presume both, but that was simply a statistical study of the receipts of grain at Chicago by all the handlers there, showing that this one company handled 23 per cent of all the grain receipts in that great market.

This is what I particularly wanted to call your attention to [reading]:

"In the manufacture of breakfast foods and stock and chicken feeds, the Armour Grain Co. is expanding rapidly in the line of producing retail brands. Within three years it has undertaken the manufacture of Armour's Oats, has taken over the Buffalo Cereal Co., with its many brands of cereal foods and animal foods, and within the present year has taken over the Mapl-Flake Co., of Battle Creek, Mich.

"In connection with its line of country elevators the Armour Grain Co. merchandises fertilizer, feed, coal, fence posts, wire fencing, builders' hardware, binding twine, lumber, millwork, cement, lime and plaster, brick, sand, gravel, and roofing."

It is very natural, as the farmers bring in their wheat to the country elevator, if these supplies that the farmer wants to use are accessible, that he can haul the supplies back in his otherwise empty wagon to the farm.

The CHAIRMAN. What connection is there between the Armour Grain Co. and the Armour Packing Co.?

Mr. DURAND. That is stated on page 1, which I did not read.

The Armour Grain Co. is a close corporation in which J. Ogden Armour owns 64 per cent of the stock, and other members of the family 22.9 per cent. That makes almost 87 per cent. The remainder of that stock is in the name of the

president of the company, George E. Marcey, who, as the matter is reported to us, the Armour & Co. have made Mr. Marcey a loan to the full extent of the value of that stock, so that it is largely an Armour affair.

Judge HAINER. And the decree restrains them from handling grain?

Mr. DURAND. From nothing; the decree does not affect the Armour Grain Co., because it is not a defendant. Armour & Co., a corporation defendant does not handle any of those grains.

Judge HAINER. It restrains the five big packers from handling those commodities?

Mr. DURAND. Yes; paragraph 4. And that lists all these things, and fence posts and those things are listed in paragraph 13.

Judge HAINER. And all these fence posts that were sent out to the farmers, and wire, were they put in these meat cars and sent in that way?

Mr. DURAND. No; I have not supposed so.

Judge HAINER. Well, they were sent in other box cars, were they, the same as any other commodity?

Mr. DURAND. The same as any other freight, I suppose.

Judge HAINER. One of the chief objections that was made here by the wholesalers is because the grocery products were thrown in with the meat cars and given quick facilities for moving. That would not apply to the fenceposts and hardware, and all of that?

Mr. DURAND. No; I think not.

Judge HAINER. Would they have any advantage over any other shipper in that line?

Mr. DURAND. No; this is merely a citation of the extent of their activities, and how naturally they go from one to the other.

Mr. FORD. Let me inquire, if the decree would not apply to the Armour Grain Co., if Armour continued to own 75 per cent of the stock?

Mr. DURAND. No; you take paragraph 4, and the Armour Grain Corporation is not one of the defendant corporations, so that it is not prohibited from handling grain. And the individual defendants in paragraph 4 are prohibited from owning more than 49 per cent of the stock in corporations handling the first 10 sets of items, but not the last 3 sets of items. It is not classified in section 11; that is, in grain. Classification 12 is cereals. And the other classifications are these miscellaneous things, things like cement, building supplies, furniture, coal, and railroad bumping posts, and things of that sort. In other words, the individual defendants may own 100 per cent of the stock of companies in grain, cereals, or breakfast foods, and in these miscellaneous things, and the point I am making is as to the corporation defendants, they do not handle these goods at all in these last three classifications. That is, not to any extent. All of those were handled by other corporations, in which the individuals were controlling stockholders, but the corporations were not defendants in this case, consequently the decree did not affect them.

Mr. SMITH. The restraining order did not apply to them?

Mr. DURAND. The restraining order did not apply to them.

Mr. FORD. May I ask the further question, whether these elevators were owned by the Armour Grain Co.?

Mr. DURAND. Yes; they had about 90 elevators throughout the West.

The CHAIRMAN. Mr. Durand, another question in my mind is this: These individual defendants have the money and the resources; isn't it economically proper for them, if they could invest that and use that money in some industry?

Mr. DURAND. I think the principle, Mr. Chairman, on which the Government petition proceeded, and on which the decree proceeded, was that there should be competition between the handlers of competing commodities, and that the substitute foods should not be in the same hands, and controlled by the same interests, that controlled the meat foods; that to the extent that grain is a substitute for meat, and the cereal foods are a substitute for the meat foods, then, this decree leaves a very substantial interest in cereals and in grain in the hands of the same interests that are—

Judge HAINER (interposing). You mean wheat?

Mr. DURAND. Yes; wheat and oats, and the manufactured products, in the main, are in the same hands as control the meat-packing corporations.

In other words, the price policy and the competition of those things with one another are in the control of the same interests, whether they are individuals or corporations, and I think that is immaterial. The effect would be the same.

The CHAIRMAN. Well, the question that it seems to me is the question, is the policy and propriety of limiting a man in his right to invest his money in

business ventures, merely because he engages at the same time in another line of business. There are no restrictions on other businesses of this kind, and what reasoning is there for applying it to this particular business, which is any more urgent than applying it to other lines of business?

Judge HAINER. Assuming that it is a monopoly?

The CHAIRMAN. Yes.

Mr. DURAND. Well, I think this industry is one in which a tendency toward monopoly and the purpose to dominate has been shown, perhaps, more clearly than in almost any other industry. If any other industry showed the same tendencies, I think the same question would be raised.

Now, as to the question of legality, I do not want to go into that, except this: That this is a matter of a consent decree, which has been consented to and entered because agreed to. It was for the defendants to consider whether it was a constitutional right of theirs which was invaded at that time. It seems to me that they consented to it, and now we are in a position to say whether we will hold them to that, regardless of the legal question, and base it on an economic question.

The CHAIRMAN. But don't you think in that connection, Mr. Durand, that in a business which so vitally affects the interests and the life of the public generally that the public should have a say whether these people should be enjoined from investing their money in these lines?

Mr. DURAND. I think so. In other words, I think that is a question of policy for Congress to consider.

The CHAIRMAN. Yes.

Mr. DURAND. At the same time, when this decree has been entered I think you want to go back to the question of why did the packers consent to this decree, and particularly that there was a prosecution pending; that there was a mass of evidence in the hands of the Attorney General; that they evidently saw that that evidence was of very grave import. And the packers agreed to give up those things in order that they might not face the possibility of the outcome of a trial in court. In other words, there was a quid pro quo. Now that they have received the quid, why should we hand them back the quo.

Judge HAINER. For instance, we have had men like Mr. Morrill, of Michigan, who is a large producer of fruits and vegetables. And he is a member of a farmers' organization of 100,000 people. He says they knew nothing about this consent decree and had no opportunity to be heard. The first thing he knew that there was a decree they were injuriously affected, and their industry is destroyed, and they have no markets. Now, isn't that a matter to be considered? The same complaint is made by the vegetable and fruit growers, the farmers.

Now, suppose here the wholesale grocers and the packers had got together in Chicago, unknown to the Government, and they should have entered into an agreement or contract—and I mean no reflection on the wholesale grocers or any other corporation—but they should have gotten together and entered into an agreement, and the packers had agreed just to confine their business wholly to the meat business, and that they would not handle the cheese or butter or eggs or the canned fish or canned vegetables of the farmers all over the country; and suppose that they had entered into such an agreement and signed it; do you suppose the Government would stand for that; wouldn't they come in and file a bill in equity and say that that is in restraint of trade, and while we will prevent a monopoly we will not absolutely prohibit you—well, we will even require you to handle these goods for the benefit of the public—is that economically sound? I am not talking so much about the law; but do you think, in the interest of the public—I am not overlooking the side of the packers; they need no help or briefs or any consideration, I know—the packers themselves. But what about these hundreds and thousands of fruit growers and berry growers such as Mr. Morrill detailed here? They have absolutely no facilities or means of sending their product to market that they enjoyed prior to that time, and that they have got these cars and facilities to move these products.

Mr. DURAND. If I may answer that, I want to take up the answer in two ways.

Judge HAINER. Yes.

Mr. DURAND. The first point, the point with which you started; and, second, the question of what they can do about the situation in which they find themselves, these Michigan people, and Mr. Campbell's organization, being without a market.

Judge HAINER. I don't care about Mr. Campbell, either. I am using him—

Mr. DURAND (interposing). I am merely using him as an illustration.

Judge HAINER. I am looking at the producer of the products. I have been on a farm, and I know what he has to go up against. And Mr. Campbell and Mr. Gray are wholly immaterial, or what Armour thinks or what Swift thinks. I think we must not get into the narrow position that we are here trying to uphold Mr. Campbell or Mr. Gray or Armour or Swift, but what is to the great interest of the great public, the producers—at one end the great producers who produce these products, and the people who consume them at the other. I can not conceive of a decree that contains a provision that says that you are cut off from a distribution of fresh milk and cream; that is, the people in the cities, the babies and children need fresh milk and cream, and I can not conceive of a public interest of the consumers how anyone can come into court here and say we should cut off the medium of facility for distributing farmers' fresh milk and cream, and cut that off in the interest of the producers and the millions of consumers.

I am not considering Armour or anybody else. But it seems to me that there is a question here, if there is an agency, a great railroad, that should refuse to ship milk and cream to the children and babies, there would be power in the Government or the State to even compel them to take it and ship it, and not to cut that off. And it seems to me that instead of cutting that service off and allowing the tomatoes to rot in the field, and the fruit to rot, and the peaches and the apples and the berries to rot, when there is a great convenience by which it could be transported to the people of the cities and the country, and that if they should refuse to do it, they should be compelled to do it—to use all the agencies in transporting those products. Now, it strikes me that is the great economical principle. And those are the matters that occur in my mind, Mr. Durand, and I feel you are competent to discuss those things, and I believe you have the public interest in mind as much as anyone else. You have made it a great study. And those are the matters that constantly press upon my mind, after hearing this evidence, that we overlook the great public interest, whether it inflicts injury and wrong. If it does, why, of course, we should cut it off.

Mr. DURAND. Certainly, if I thought that the great public interest was—

Judge HAINER (interposing). That is paramount, is it not?

Mr. DURAND. Yes; that is paramount. If I thought that the great public interest was injuriously affected by the failure to modify this decree, I would be for modifying it. It is because I do think that public interest is paramount that I am here.

I think the argument or statement that you have just made has its best place, so to speak, before a committee of Congress, and that comes back to that question that it seems to me this is a matter for legislation. That a question of this sort is of such magnitude that the berry growers who have come before this committee, not having any opportunity of being consulted in the formation of this decree, should have had an opportunity to go before a committee of Congress and have this question discussed. I am just speaking my personal opinion now.

Judge HAINER. Yes; but when you come before Congress, then the Members of Congress and the Senators say, "Why, you are confronted with a court decree." And you know how the Members of Congress think and regard the courts and decisions, and we cut off that discussion.

Mr. DURAND. I think the records of the committees of Congress who heard and reported out the stockyards act kept off the matter, because it was covered by the consent decree.

Judge HAINER. Certainly, and they will keep off.

Mr. DURAND. And I think it was an unfortunate thing, as regards the consent decree, that it was in force, so that legislation which should be framed around it, instead of being framed wholly without regard to a court pronouncement. It seems to me, however, to modify this decree after the legislation was built around it would be unfortunate, and there should not be a modification until Congress has reconsidered this whole matter and has found some way of legislating on this thing de novo without respect to the fact that there is a consent decree here; to proceed on its wisdom, after having heard all parties, and having determined what is right to the public and to the public advantage.

Judge HAINER. Of course, that question will come up more in a legal argument.

Mr. DURAND. Yes.

Judge HAINER. But even to read the prayer of the petition, if you refer to that, counsel did not go so far as to ask for an absolute prohibition and absolute

cessation of transporting these commodities mentioned in paragraphs 4 and 5. As I read the bill in equity, counsel merely asks that they be restrained and enjoined from monopolizing or attempting to monopolize these substitute foods and unrelated products; but the decree goes to an absolute prohibition of it. And the question is: Can the five packers and their attorneys and the attorneys on the other side consent to a prohibition and cessation of using these facilities and this transportation as against the thousands of people that are interested, and can the Government or its counsel bind the public?

Mr. SMITH. It depends on the question as to whether there is a public interest here, and I do not think there has ever been a decree entered that is more to the public interest than this one, so far as it went.

Judge HAINER. Senator, is there an American or English authority that has ever gone that far, prohibiting a matter of this kind, and directing an absolute cessation of a matter that is not per se wrong?

Mr. SMITH. Yes; this case made against these packers, I think, the court could have rendered this decree and could have gone further.

Judge HAINER. Well, is there such a decision?

Mr. SMITH. Yes; there are many decisions in which the danger of evil is enjoined, and I think this is a case which shows that there was danger of harm to the public.

Judge HAINER. With reference to a useful and necessary commodity?

Mr. SMITH. I think this decree is a blessing. I think it is a blessing and has hurt no one. I think these producers, like the Michigan people, should be taken care of, and I think that can be accomplished without turning loose these packers. But I should not argue now. You provoked me to it, Judge.

Judge HAINER. Can a decree be framed that way—

Mr. SMITH (interposing). I think it is a blessing to the public.

Judge HAINER. You think the people who are in the position of Mr. Morrill and some of these others, you think it is a blessing to ruin them?

Mr. SMITH. I don't think it ruins them.

Mr. GRAY. I did not want to interrupt the judge in his statement, but I hope he will not use my name spoken of with Armour's. I am a producer, and am representing the producers.

Judge HAINER. I said that was wholly immaterial.

Mr. GRAY. No, Judge, I am not casting any aspersions on your remarks, but I am a producer.

Judge HAINER. I said that it is immaterial who it is. This is a proposition that I tried to frame, that we are looking at a larger question than the question of individuals. The individual sinks out of sight in considering these big questions.

Mr. STEVENS. Judge, I think it is very good exercise for any of us—

Judge HAINER (interposing). In other words, when you come to try a lawsuit you do not inquire whether it is Bill Jones who is the plaintiff, or John Smith that is the defendant, or whether Senator Smith is counsel, or some one else. We may have great respect for him, but the question of parties should sink out of sight.

Mr. DURAND. In what I started to say I was naming Mr. Campbell and the gentlemen in Michigan who are berry growers, only as illustrations of the producer, so far as I knew that he had appeared here. And that is what I would like to speak of for a moment, on the second aspect of answering the question that you originally asked me. I spoke of the legislative aspect.

Judge HAINER. Yes.

Mr. DURAND. Now, as to the benefit to the public, and whether this decree does do an irreparable injury to the growers. In the first place, I think that there are a large part of the growers who have been represented here that do not feel that they are injured by the decree, and I should presume to be a majority.

As to those who have made complaint that the decree injures them—

Judge HAINER (interposing). How can you answer as to the growers; have you ever been a grower yourself?

Mr. DURAND. It seems of the people who came in to represent the grower, rather more have come that say they are satisfied with the decree.

The CHAIRMAN. I do not know that we have had a single grower here expressing that view.

Mr. DURAND. I think—

Mr. FORD (interposing). I think Mr. Roach said he represented the growers.

The CHAIRMAN. Mr. Roach represented the canners.

Mr. FORD. Yes; he is a canner, too.

Mr. DURAND. That is immaterial. I withdraw that part of my remarks.

But as I understand the complaint that is brought in against the decree by Mr. Campbell's organization of growers, it is that they can not succeed without Armour & Co.'s distributive system; that Armour & Co.'s branch houses and route cars in this country and his distributing agencies abroad are necessary to the development of his cooperative organization. I would like to analyze that a little bit.

In the first place, as I understand Mr. Campbell's efforts at cooperative organization, it taught him the necessity of a distributing system; that distribution is a vital thing; that an association of growers could not get very far unless the question of distribution of the product was taken care of. Consequently, when Mr. Campbell came to San Jose to organize this cooperative fruit growers' association and the cooperative canneries, he took hold of the distribution problem first, and went to Mr. Armour and spent some time in trying to convince Mr. Armour of the desirability of his going in and helping out the distribution of the Cooperative Growers' Association. Now, that was somewhat a new kind of cooperative—

Judge HAINER (interposing). Well, he could get no other parties to finance it, and he went there to get the money. Now, you seem to think that has some insidious influence to bear, and that is—

Mr. DURAND (interposing). That was not the point I was coming to.

Judge HAINER. I say, the witnesses have mentioned the fact that he borrowed \$250,000, and that it is named as an Armour concern.

Mr. DURAND. That is not the point I was coming to. What I wanted to point out was the difference between this kind of a cooperative and the cooperatives that have been formed in California previously and that was operating successfully.

Judge HAINER. I wish you would explain those.

Mr. DURAND. The growers of fruit here in Mr. Campbell's organization, in order to escape any interference with their prosperity and the development of their own business through canners and wholesalers, who are in between them and the retail trade to which they wish to get their produce, developed this plan: The growers of fruit were to take stock in this cooperative cannery, and they were to get their money from Armour & Co., or mortgage, to build canneries, giving an option as preferred purchaser in case of sale of the plant, and a contract for 10 years to supply Armour & Co. with its total canned fruit requirements, forming presumably the major portion of the output of the cannery. And the object was to get Armour & Co. in the position of being a preferred buyer of the output of the cannery.

Now, how does that cooperative compare with the other California cooperatives? What kind of a cannery was this, and what does that kind of a cooperative claim as making it superior, and what is there about it that justifies the claim asserted in these hearings that it is in the public's interest; that it might ask for the setting aside of this consent decree so that it might continue to exist?

Judge HAINER. How many members are in that cooperative association?

Mr. DURAND. I do not remember what the testimony was.

The CHAIRMAN. A thousand members.

Judge HAINER. Now, you are aware, of course, that this company is also borrowing money from the War Finance Corporation, aren't you?

Mr. DURAND. Yes. But the point I was coming to—

Mr. HALL (interposing). You stated that on that morning they had given an option as a preferred purchaser in the case of the sale of the plant to Armour & Co. I do not think that has been stated before. He gave them a prior right to purchase; is that true?

Mr. DURAND. That is my understanding, that in case of the sale of the plant, Armour & Co. was to have the prior right to purchase the plant.

Judge HAINER. Where did you get that information?

Mr. DURAND. It has come to my mind from some place. I do not know just where.

Judge HAINER. Have you seen a copy of that contract?

Mr. DURAND. We have a copy of the contract and I have read it. I can not just exactly recall.

Judge HAINER. I wish you would produce it.

Mr. HALL. That point has not been developed before.

Mr. SMITH. Yes; I would like to see it.

Judge HAINER. I would like to see it. But go on. I did not mean to interrupt you.

Mr. DURAND. I thought the committee had the contract between Armour & Co. and the cooperative canneries.

The CHAIRMAN. We have a copy of it in our files, but it has never been put in here.

Mr. SMITH. I have not seen it.

Mr. DURAND. I understood the committee decided not to put it in the record.

The CHAIRMAN. We have made no decision on that.

Mr. DURAND. If the committee desires, I will request the Federal Trade Commission to furnish a copy of that and put it in the record. I do wish to say about that that this was a case of an application for a complaint before the commission under its law, and a rule of the commission is not to make public—

Judge HAINER (interposing). Did you have a hearing on it?

Mr. DURAND. On this case?

Judge HAINER. Yes.

Mr. DURAND. Yes; there was an investigation.

Judge HAINER. What was the result of that investigation?

The CHAIRMAN. You will come to that later; will you?

Judge HAINER. I was just asking for the result; was the application dismissed, or granted?

Mr. DURAND. It was dismissed. It is the rule of the commission not to give publicity to applications for the issuance of complaints which, upon the commission's preliminary investigation are dismissed. In this case, the commission authorized me to say this much about it: This case was an application for the issuance of a complaint. It was filed by a rival cooperative fruit growers' organization in California against Armour & Co., and against the California Cooperative Canneries, and its connected concerns. The application alleged that the California Cooperative companies was a bogus independent, was not truly cooperative, and was secretly controlled by Armour & Co., and that four of the officers were agents of Armour & Co.

I am not conversant with the minds of the individual commissioners who were in office at the time this application for complaint was entered, and I can not state the grounds on which they voted to dismiss that petition.

Judge HAINER. I did not ask the ground. You can not go into the motives of the commissioners. But what was the result?

Mr. DURAND. The application for complaint was dismissed June 29, 1920, and no complaint was issued. There were certain circumstances surrounding that.

Judge HAINER. I don't think that would be proper to go into.

Mr. DURAND. It seems to me, Judge, that it is pertinent to the questions that were raised here, because it was testified that the dismissal of this complaint constituted a clean bill of health. Now, that is a very broad term, and that kind of thing frequently comes up, and the phrase "clean bill of health" is used in connection with it.

Now, without making any further statement than this, I would say, for example, that one ground was that the complainant withdrew its application for the issuance of a complaint.

The CHAIRMAN. Well, if there had been a violation of law it would have been your duty to have issued a complaint on your own initiative, wouldn't it?

Mr. DURAND. Yes.

The CHAIRMAN. Even if the complainant had withdrawn its application?

Mr. DURAND. Yes. And, second, that while the records showed this \$250,000 Armour mortgage and the contract for Armour's requirements, it was not secret. That is the point of its being a bogus independence, and that this was a secret matter, was not sustained by the records.

The CHAIRMAN. It is safe to assume then that there was no violation of law, or there would have been a complaint issued?

Mr. DURAND. I could not make that statement. I can only give you the assumption that the record showed no reason for proceeding in the public interest.

Judge HAINER. Well, do you mean to infer, and have the committee here to infer, that this is not a cooperative association in good faith; that it is a fictitious and bogus association?

Mr. DURAND. Just the opposite, I think, Judge—from what I have said. If you will permit me I will read these four grounds that, as far as I can judge, were in the minds of the commissioners as reasons for dismissing this application.

The CHAIRMAN. Go ahead and read them. I would like to hear them.

Mr. DURAND (reading): "1. That the complainant withdrew its application.

"2. That while the records showed this \$250,000 Armour mortgage and the contract for Armour's requirements, it was not secret.

"3. There was in the report of the case, so far as then developed, no proof that any of the officers or directors of the company were agents of Armour & Co., besides three of the four alleged agents of Armour & Co. have been removed or have resigned, as a matter of fact, from the board of directors.

"4. That the contract for Armour & Co. to take all its requirements, amounting to a large part of the output of the canneries, had been suspended by virtue of the consent decree. The application was dismissed June 29, 1920, and no complaint was issued."

As to the point that the chairman asked—

Judge HAINER. Do you mean that this consent decree destroyed the contract? Is that the effect of it?

Mr. DURAND. I should assume so.

Judge HAINER. That is the effect of it, isn't it, that it destroyed the contract?

Mr. DURAND. I should assume so, but I don't know as a matter of law.

Judge HAINER. Well, what does the word "suspend" mean? I see they used the word "suspend." Is that the word you use there, "suspend"?

Mr. DURAND. Yes; suspended.

Judge HAINER. Suspended?

Mr. DURAND. Yes.

Judge HAINER. The contract?

Mr. DURAND. Yes.

Judge HAINER. Well, I guess that is all.

Mr. FORD. May I ask a question, Mr. Chairman?

The CHAIRMAN. Yes; what is it?

Mr. FORD. I would like to ask whether the investigation showed any loans made by banks to the California Cooperative Canners on notes which were indorsed by Mr. Armour, or by Armour & Co.?

Mr. DURAND. I don't know; no. I have been over the record of this case rather hastily, and I don't know.

Mr. FORD. Thank you.

The CHAIRMAN. Proceed, Mr. Durand.

Mr. DURAND. Just to clear the record, Mr. Chairman, the Federal Trade Commission law provides that the commission shall issue a complaint; it is mandatory for it to issue a complaint if it feels that a proceeding by it would be in the public interest. Now, that is somewhat different from whether there was a violation of law, as you phrase it.

The CHAIRMAN. There is one thing there. You say this was filed by growers. Is it growers or cannery?

Mr. DURAND. No; growers; a cooperative fruit growers' organization.

Judge HAINER. What cooperative fruit growers? Who was it?

The CHAIRMAN. Well, he didn't name them. He stated "a cooperative."

Mr. DURAND. Any question that the committee wishes to ask of the commission I am sure they would be very glad to consider, and to give you full information, unless they feel that there is some reason why they should not, under their rule and practice.

Judge HAINER. Yes; perhaps we have gone further with you, Mr. Durand, than we should.

Mr. DURAND. But I am sure they have every disposition to give you all the information that you think would be material. I presume that they would be willing to let the record of that case be made available to the committee, if the committee desires, except, I say, it is contrary to their regular practice.

The CHAIRMAN. Well, I believe they would give it to our department if we asked for it, perhaps.

Mr. DURAND. I think so.

So I was asking, in the statement that I was making here, what there was about this new kind of cooperative that would justify the claim asserted in these hearings here that it is in the public interest that this consent decree should be set aside as respects one of its very important provisions in order that this new kind of cooperation between the fruit growers and the meat packers, or with the meat packers there as an essential element in the distribution, might persist and grow.

I would like to compare that kind of cooperative with the successful cooperatives that have already been established in California. What kind of distribut-

ing system do those established cooperatives have? They have a distributing system that takes their product out of the hands of brokers and speculative intermediaries and sells it directly to bona fide wholesalers, who distribute it at a reasonable profit to the retailers of the country.

Now, I say that is the aim, the ideal, that these other cooperatives, the cooperatives of California in general, set up for themselves. They also are building up avenues of export.

The CHAIRMAN. Well, doesn't this cooperative also have the arrangement that one distributor takes it and places their products in the hands of a retailer?

Mr. DURAND. Yes; but I am saying that the other cooperatives get by the broker and the speculative intermediary. That was the original difficulty that the fruit growers of California had, as I understand.

The CHAIRMAN. But doesn't this cooperative get by the broker, too?

Judge HAINER. The brokerage is a very little, infinitesimal amount—Mr. Daily and his representatives here.

Mr. DAILY. I would like Mr. Durand to explain what he means by a broker.

Mr. DURAND. I am not meaning to cast any aspersions on brokers. Perhaps I had better leave out the word "broker" and say "speculators."

Mr. DAILY. The amendment is acceptable, if that is what the gentleman meant. I am sure that he did not mean brokers in the sense that has been defined here by Mr. Duncan, which is simply an intermediary that brings the buyer and seller together and is compensated by a small percentage.

Mr. DURAND. I mean a speculative intermediary. Thank you for that correction.

But, as I understand the history of those cooperatives, they felt that there was between them and the consuming trade a wall, an organization in there, and they wanted to get around it, so that they formed their cooperatives and got around that wall which interfered in the distribution of their product, and they went to the large number of wholesalers in the country saying, "Here, take this and merchandise it to the retailers in a reasonable way, so that we can have our stuff going from us to the consumer in a reasonable way without any monopolistic barrier in between." That was, as I understand it, their problem—what they started out to do and what they succeeded in doing—getting around an intermediate monopolistic barrier.

Now, they, I think, are in a position to practically insist on a proper merchandising of their commodities, and it was to break up that sort of speculative monopoly in between the grower and the consumer that they were formed, and they are very urgent that no monopolistic or speculative toll shall be taken by intermediary distributive agents between them and the consumer.

Judge HAINER. Is that the purpose only of these cooperative marketing producers? Do you think you state their position correctly?

Mr. DURAND. They have a desire to get more for their product than they were able to get under the old régime.

Judge HAINER. Isn't the primary purpose of it to cut out the spread between the producer and the consumer and eliminate as much as possible all the intermediaries—brokers, commission men, wholesalers, retailers, and everybody—if possible?

Mr. DURAND. I think not. I think that they have not gone, so far as I know—

Judge HAINER (interposing). Well, isn't that the purpose of it—to reduce it to the irreducible minimum from the producer to the consumer?

Mr. DURAND. Well, I am not an authority on this subject. I have heard G. Harold Powell, of the California Fruit Growers' Exchange—

Judge HAINER (interposing). I have, too. That is his theory, isn't it?

Mr. DURAND. And, as I understand, they say they want to cut out what is between them and the wholesaler, but to go to the wholesaler and let the wholesaler distribute to the retailer.

Judge HAINER. Well, who is between the producer now and the wholesaler? What remedy would that be? It has been that way for the past 40 or 50 years; you could always do that—go and sell your products to the wholesaler.

Mr. DURAND. As I understand, there were speculative interests in between who did not—

Judge HAINER (interposing). Who do you mean by those speculative interests between the producer and the wholesaler? That is a new species to me.

Mr. HALL. Mr. Durand, isn't the canner in there between them? I might help you out by suggesting that.

Mr. DAILY. And the railroads.

Mr. DURAND. Well, I was thinking of the citrus fruit people. Perhaps I could refresh my memory by getting some article by G. Harold Powell, which would go into the record and show what I had in mind.

Judge HAINER. Well, this proposition is just like what our college president said when we were studying philosophy, "If you have a bushel of apples and pull one off that is rotten, that doesn't prove that they are all rotten, you know." That is not good logic, you know. Now, what I would like to know is what speculators you mean that are in between the producer and the wholesale grocers, and what the purpose of these cooperative is? Is it merely to eliminate some speculators, some unknown speculators, or is there a broader theory than that?

Mr. DURAND. No; there are no particular speculators that I have in mind. If I may answer it by—

Judge HAINER. Of course, the wholesalers are not speculators.

The CHAIRMAN. Well, let us get his answer, Judge.

Mr. DURAND. I might answer it—I would like to put into the record some statements or articles on this subject that I have read that are not definitely enough in my mind to answer your particular question, but which I think would answer your question.

Mr. SMITH. Then, Mr. Chairman, I suppose he means he would like to do it at the close of his statement?

The CHAIRMAN. At the close of your statement?

Mr. DURAND. Yes.

The CHAIRMAN. You may do so.

Mr. DURAND. I think it is, Mr. Chairman, a somewhat vital question here that I am trying to raise, ineffectively perhaps, and not very clearly. But this is the idea that I have personally, that the history of the successful cooperatives of California will show that they took a hard road to work out their plan of distribution, and they have succeeded in working out a plan of distribution which leaves them independent in a sense of their distributors. That is, their distributors are not a wall between them and the consuming trade. They are not so dependent upon their distributors as the distributors are dependent upon them, and I think that that hard road is the road that leads to real success and lasting success in the cooperative organizations, and the point that I am coming to—

Judge HAINER. Now, Mr. Durand, you state a conclusion. I would like to know what the facts are; how it is done. You simply say that they removed the wall.

Mr. SMITH. Mr. Chairman, I would like to suggest that Mr. Durand stated that he wished to obtain and have with him some documents on that subject, and would present it fully then, and we really ought to have the opportunity of having those documents which describe more fully the subject than his present memory seems to indicate.

Judge HAINER. Well, then, I will withdraw that.

The CHAIRMAN. We will suspend that discussion until after Mr. Durand had presented it.

Mr. SMITH. I don't think the judge got him exactly on that.

Judge HAINER. Well, I will, withdraw the question, then. I do not want to interrupt the continuity of your thought, Mr. Durand. Probably you may reach that later.

The CHAIRMAN. When we discuss that I would also like to consider the question—isn't that substantially what this California Cooperative Canneries is doing, that it is eliminating the steps between the producer and the consumer?

Mr. DURAND. The exact point that I was trying to arrive at is that in this California Cooperative Canneries, that cooperative organization of growers has put itself, in my judgment, too much into the power of an organization between it and the consumer, and that in that it is not grounded in sound cooperative principles. That is the point I am trying to make.

The CHAIRMAN. Now, then, in that connection do not the other cooperative associations have to depend upon some distributive system which they do not control and own?

Mr. DURAND. The system of many distributors operating competitively which they do not control and own but which in a sense they are independent of. They are not so dependent upon it, as I think this organization would find itself dependent upon Armour & Co. in the course of a few years. I do not

believe, in other words, that it is a sound plan and safe plan for a cooperative organization of growers to enter into a contract like this with Armour & Co.

Now, if my premise that I have given you here, or tried to give you, of the organization and distributing system of these other California cooperatives is not correct, that will show when I present the articles that I wish to present by Mr. Powell or others, and you can gather from those articles what the facts are and modify my statement accordingly.

The CHAIRMAN. All right, then, go ahead, Mr. Durand, and we will discuss that later when you have your full data before you.

Mr. DURAND. Now, as to the attitude of the other cooperative concerns of California toward Armour & Co., to support my conclusion that they have not thought it a safe plan to depend upon Armour & Co., I would like to refer you to Part IV of the commission's report on the meat-packing industry, page 244. Here is a passage which shows that Armour & Co. also tried to become the chief, or one of the chief, buyers from some of these other California corporations; tried to buy an unduly large proportion of the peaches and of the raisins controlled by two of those cooperative associations. This is the passage that I refer to. [Reading:]

"Armour & Co. has begun to be a large distributor of dried fruit and has caused the wholesale grocer to fear that here also he would soon find his source of supply shut off. Although it has handled large amounts, Armour & Co. has not yet succeeded in this conquest, and the strong cooperative marketing organizations of California may prevent it.

"In 1917 Armour secured 10 carloads of dried peaches from the California peach growers, but only two carloads in 1918. When he asked for 10 additional cars the order was refused. During the year ending October 1, 1918, Armour & Co. purchased \$102,783.60 of raisins direct from the California Associated Raisin Co., and secured \$154,368.13 of raisins, which were supplied by the California Associated Raisin Co., but sold and shipped to Armour & Co. by other packers of raisins. Armour & Co. expressed to a representative of the California Associated Raisin Co. the desire to buy 800 carloads of raisins of the 1918 crop, about 20 per cent of the total marketed by this company, which controls about 88 per cent of the entire crop of the country. These raisins were to be put up under Armour's own brand. As the company feared that any such arrangement would make it easy for Armour & Co. to get control of the distribution of this crop the California Associated Raisin Co. at once adopted a policy, which had been under consideration, by which it would no longer put up its raisins under the private labels of distributors. Because of this Armour & Co. did not make the large purchase contemplated. It did, however, buy 609 tons of raisins. The attitude of independence of these and other growers' organizations indicates that there may be a few lines of foodstuffs of which even the enormous power of the meat packers can not gain control."

Then there is another passage on pages 264 to 265 of this same report which I would like to read:

"Thus Armour & Co., while not among the customers of the California Almond Growers' Exchange in 1917, bought 2,095 bags of almonds from them in 1918 and apparently would have taken twice or three times this amount if the exchange would have accepted its orders."

The CHAIRMAN. Well, now, where do they get that "apparently"?

Mr. DURAND. From the records in our files.

The CHAIRMAN. Well, I mean, how do they arrive at such conclusions as those? They say, "Apparently would have taken twice or three times this amount," and they said with reference to the 800 carloads, "They would have bought this." Now, what are those assertions based on, Mr. Durand?

Mr. DURAND. Those are based on the records of reports, interviews, documents, etc.; that is, all of the statements in one of these reports are based that way on material of that kind. What is behind this particular statement I am not sure, but I can produce it, if you desire it. It is in our files and you can then see what the basis for the word "apparently" was. I have no knowledge of it myself.

The CHAIRMAN. Just make that as an instance, to clarify the record. We would like to see what is behind it. You know it has been charged by the meat packers that many of these are indefinite assertions that are not substantiated in any way.

Judge HAINER. Yes; based on rumor and hearsay statement.

The CHAIRMAN. Yes; and we want that as an instance.

Judge HAINER. I think, in justice to the Federal Trade Commission, this ought to be put in.

Mr. DURAND. We will put that in.

Judge HAINER. It has been criticized along that line.

Mr. DURAND. Yes; well, we will put into the record just what we have.

If you will note the paragraph on the last half of page 244, and the bottom of page 264 and the top of page 265, Mr. Barrett.

The CHAIRMAN. Go ahead.

Mr. DURAND. I will continue to read from where I left off. [Reading:] "and apparently would have taken twice or three times this amount if the exchange would have accepted its orders. Except for one concern, which bought 3,000 bags in 1917 and 5,000 bags in 1918, no other customer handles so large a quantity as Armour & Co. purchased during its first year."

Judge HAINER. Now, right in that connection. What price did they pay to the producer? Does your report show that?

Mr. DURAND. I am not sure, Judge. I will look that up.

Judge HAINER. I wish you would look that up and see when they depressed the price or enhanced it.

The CHAIRMAN. To the producer?

Judge HAINER. Yes.

The CHAIRMAN. There is another thought in that connection, too, Mr. Durand. if you could give us some information on it: How far out of proportion are these purchases by Armour & Co. to their general wholesale grocery business, as compared with the general wholesale grocery businesses of other companies? I don't know that I make my thought clear?

Judge HAINER. Yes; what is that big one in Chicago?

The CHAIRMAN. Say, Reid, Murdock & Co., or Austin-Nichols, or Sprague Warner, or any of those.

Mr. DURAND. Well, one of those big wholesale grocers will ordinarily buy such and such a proportion of its wholesale grocery business in the form of raisins. Such a proportion of its grocery business will be raisins. And you want to know whether what Armour bought was a comparable proportion of its business?

The CHAIRMAN. That is my notion; yes. In other words, Armour & Co. had been engaged in this line of business for some months or years, perhaps, and was entitled, perhaps, to an ordinary increase on its business and to an ordinary proportion of the various lines handled, as compared with the business done by other wholesale grocers. And was it an abnormal situation in that respect?

Mr. DURAND. Yes. Well, now, if you would ask the reporter to give us a copy of that question as you have stated it, I would be very glad to look it up and submit it.

The CHAIRMAN. Yes.

Mr. DURAND. I may not be able to furnish that information.

Mr. NEWMAN. In this particular case, as I understood him to say, the California Raisin Association packed 88 per cent of all the raisins packed, and that Armour offered to purchase 20 per cent of the total of 88 per cent, which is 17.6 per cent of the total pack, and do you want to know if any one grocer handled that per cent of raisins?

The CHAIRMAN. Yes.

Mr. NEWMAN. We will be glad to furnish that.

Judge HAINER. Will you furnish that data on which that statement is based?

The CHAIRMAN. All of this?

Mr. DURAND. Yes.

Judge HAINER. The percentage.

Mr. DURAND. As I say, I am not sure that we have data to answer your question.

The CHAIRMAN. If you have, we would be interested in it, Mr. Durand.

Mr. DURAND. To continue the reading of that passage on pages 264 and 265:

"Armour & Co. is also a large purchaser of both shelled and unshelled walnuts for its grocery business, and especially its soda-fountain supply. In 1918 Armour & Co. attempted to buy 25 carloads, about 300 tons, of unshelled walnuts from the California Walnut Growers' Association. That association, however, sold the company only 11 carloads. During the same year Armour & Co. offered to buy 50,000 pounds of shelled walnuts, but had not secured them at the time the last reports were received by the commission. Armour & Co. is naturally regarded by the producers' organizations as a particularly desirable

customer, not only because of its excellent credit rating, but because its soda-fountain business permits the acceptance of nuts which, while of sufficiently good quality for this use, are unattractive to the general trade."

That is the end of the quotation. Now, the point that I was making in reading those extracts was that according to this record the cooperative associations in California—the other cooperative associations in California—appear to somewhat fight shy of giving the large meat packers a large portion of their supply. And as I say, I think personally that that is a safer course.

Judge HAINER. Well, the decree prohibits the meat packers from handling the almonds and pecans and walnuts, doesn't it?

The CHAIRMAN. Absolutely prohibits them from handling them.

Mr. DURAND. Yes; I think nuts, except peanuts, are included in this.

Judge HAINER. Everything except peanuts.

Mr. GRAY. May I ask Mr. Durand one question in regard to the dried-fruits interests?

The CHAIRMAN. What is it?

Mr. GRAY. And that is this: Is it his knowledge that the Prune & Apricot Association have sold to the meat packers, the Big Five, large quantities of prunes, and even as late as last year?

Mr. DURAND. I have no information on that, Mr. Gray. There may be information in the files of the commission, but I do not personally know.

Mr. GRAY. That was just to correct that, Mr. Chairman.

Judge HAINER. Do you know how these walnuts and almonds from Sacramento, Calif., district, for instance, are transported, or were transported before this decree was entered?

Mr. DURAND. I do not.

Judge HAINER. Would they be transported in these refrigerator cars?

Mr. DURAND. I don't think so.

Judge HAINER. They would not be transported that way?

Mr. DURAND. I don't think so; but I don't know.

Judge HAINER. Then would there be any special advantage about the refrigerator cars; would they afford any special facilities?

Mr. DURAND. I think, Judge, that one of the most important advantages that the packers had over the wholesale grocers was in the refrigerator-car service that they had.

Judge HAINER. Well, you discuss that matter later, do you, Mr. Durand?

Mr. DURAND. But I don't think that that is by any means the only advantage which the packers had. Consequently I do not feel that prohibiting the use of the refrigerator cars or even the use of the branch houses of the meat packer for distributing these products cures the whole situation. I think there are other advantages.

Judge HAINER. What would be the economic theory on which that would be based, prohibiting them absolutely from transporting almonds and walnuts and pecans?

Mr. DURAND. I don't think you will take this by pieces, so to speak, but you will take the whole proposition.

Judge HAINER. All right.

Mr. DURAND. I do not mean by that that I am treating it elsewhere, but that it is not simply almonds and pecans, but it is almonds as a part of this entire list.

If I could go somewhat further on this idea—

Judge HAINER (interposing). What I had in mind was this: I was wondering why they excluded peanuts, but put these in.

Mr. DURAND. Oh, peanuts, Judge, are excluded here because they are a very important source of vegetable oils which the packers use in the making of lard compounds and various vegetable fats which compete with the butter and with the lard, etc.

Judge HAINER. That is what I wanted to know.

Mr. DURAND. So it is because lard compounds are exempted from the decree that peanuts are also exempted. Because that is going to be a very important source of vegetable oil as a substitute for the cottonseed oil in various of these products?

Mr. FORD. They use the peanuts for the purpose of making oil rather than for the sale of the nuts.

Mr. SMITH. It is now about 12 o'clock, Mr. Chairman.

Judge HAINER. Let us run a little while longer.

Mr. DURAND. Well, I can finish this thought that I had here in just a couple of minutes, I think.

The CHAIRMAN. If we let you alone.

Mr. DURAND. I think that there is no one who would deny that the entry of this decree did create a temporary hardship, and a very important hardship, for this organization of Mr. Campbell's and for some of these other organizations that have complained. But that hardship was in part, I think, due to the business conditions of this past year. And I think that we ought not to ascribe the full effect of the difficulty which has been testified to as being the effect of this consent decree. A very considerable part of it I should think is the effect of the general business depression. If the consent decree had gone into operation, in other words, in a normal business year, I think that these organizations who have complained would not have had nearly the difficulty that they did have.

Now, that suggests that if there is a large proportion of the fruit-growing interests of the country that are distributing their products successfully, that, given a normal year and a resumption of normal times, the distribution of Mr. Campbell's organization and these other organizations can be resumed and it is not necessary to modify the decree in order to insure their prosperity. That their prosperity in the long run would be greater if they tie in their organization to the methods of distribution that other and similar organizations are using, and that the disadvantage of the packer control, or the extent to which the packers are in these industries, is illustrated by the very fact that when they are cut off from distributing by this consent decree it leaves the growers, too, helpless. They should not depend so greatly on any one organization as to be helpless when that organization fails them.

Now, to give a rather broader application to this whole matter in one paragraph. With credit arrangements provided for cooperation—and I feel that that will certainly be brought to pass before very long, from the present deep-seated demand for it and from the fact that the War Finance Corporation is already aiding these cooperatives—with credit arrangements provided them and with the terminal markets open to them and provided with every facility, and with the private cars made available to anyone as a part of the railroad system of the country, I think the way will be clear for the distribution of the future—a distribution that will be free of such monopolistic control as the packers' ideal would almost certainly develop—a distribution that would be in accord with the genius of the American people with the competitive idea, and one in which men of large vision will have every opportunity to function.

Now, to be sure, to free the private cars and to make them available to everyone would not thereby ipso facto create a distributive organization to sell and distribute stuff, but if those private cars are free—common carriers available to everyone—I think that a distributing system is going to develop that will provide the opportunity for sending canned fruits and vegetables into the remote corners of the country economically and without a monopolistic control of them or the danger of a monopolistic control.

That was all I wanted to say on that point.

The CHAIRMAN. Well, that is a good point at which to stop, is it?

Mr. DURAND. Yes.

The CHAIRMAN. We will adjourn until 1.30 this afternoon.

(Thereupon, at 12 o'clock noon, a recess was taken until 1.30 o'clock p. m. of the same day, Tuesday, December 13, 1921.)

AFTER RECESS.

The committee resumed its session at 1.30 o'clock p. m., pursuant to the taking of recess.

The CHAIRMAN. Gentlemen, let us proceed with our hearing. Proceed, Mr. Durand.

STATEMENT OF MR. WALTER Y. DURAND—Resumed.

Mr. DURAND. Mr. Chairman and gentlemen of the committee. I was discussing these unrelated lines and the extent to which the packers have gone into them. I have here two advertisements, one by Swift & Co., which appeared in the *Cosmopolitan* for December, 1919, and one by Armour & Co. in *Good Housekeeping* just the month before, November, 1919. Both of them

concern unrelated lines. But Armour's advertisement, unfortunately, rather kills the point of Swift's advertisement, and I wanted to read both of them.

The CHAIRMAN. They had not apparently gotten together on that?

Mr. DURAND. Apparently, as I see, the theory of combination and harmony is somewhat shattered by these two ads. This is Swift's advertisement:

"DO YOU WANT LEGISLATION BASED ON 'FACTS' LIKE THESE?

"The Federal Trade Commission, it seems, would like to show that the packers are getting control of the food supply of the Nation.

"If it were true, the commission ought to have no trouble in proving it. Every detail of the packing business has been open to them.

"But the idea is absurd, and an absurdity can not be proved.

"The commission has published a list of some 640 articles said to be sold by the packers.

"This list is a gross exaggeration; 90 of the items listed are not sold to the outside trade by Swift & Co., but are supply and repair materials, such as brick, cement, etc., used in construction and maintenance.

"Glaring duplications appear also. Sausage was listed 37 times under different varieties. Strictly beef products and by-products were classified as over 60 different items.

"As a matter of real fact, aside from meat and meat by-products, Swift & Co. regularly handles only butter, eggs, cheese, poultry, canned goods, lard substitutes, soap, and, to a very small extent, dried and salt fish. And it handles only a small percentage of the volume of these sold to the trade.

"It is natural and logical, of course, that Swift & Co. should handle these auxiliary articles.

"Practically all of them are sold to retail shops. And plus this is the matter of plain economy. Swift & Co. by handling these auxiliary products reduces overhead costs all down the line and gives cheaper meat and better service to the public.

"That Swift & Co. can serve the public at a profit of only a fraction of a cent per pound from all sources is possible in large part because of these products.

"We do not believe that intelligent, fair-minded American citizens want legislation based on the kind of 'facts' the Federal Trade Commission is using to fight the packers.

"Such 'facts' are vicious and grossly unfair, and can do nothing but harm to everybody concerned."

That is what the Swift advertisement said December, 1919. And Armour's story the month before was of a different character. I will read the pertinent part of the advertisement:

"ARMOUR CONDIMENTS AND FLAVORINGS.

"Armour condiments and flavorings—ground for your convenience in buying and using—afford another example of Armour's complete service. * * * With few exceptions, every food item needed for the American family is included in the wide scope of the Armour oval label line. In other words, whether it be a complete full course meal, a quickly prepared emergency lunch, or the separate ingredients necessary to prepare substantial dishes you can obtain them with the guaranty of Armour's oval label."

So, while Swift is objecting to the Trade Commission's "facts" about the packers going in for all kinds of foods, Armour is boasting of that very thing—of the complete service, practically everything needed.

The CHAIRMAN. Perhaps there is a difference between the practice of these two defendants.

Mr. DURAND. Oh, that is quite true. I was just going to say that all these 90 items that Swift & Co. object to, such as brick and cement, etc., which are not sold to the outside trade by Swift & Co., that is very true, but our report did not say that they were sold to the outside trade by Swift & Co. I think I put in the record here the paragraph which told of the Armour Grain Co.'s selling of these articles, like cement and millwork and lumber and brick and sand and gravel at its country elevators.

The CHAIRMAN. As a matter of fact, did you find that these Big Five, the various members of these Big Five packers, acted on any uniform plan with respect to their unrelated lines?

Mr. DURAND. That is a question that I would like to discuss, and to say this, that apart from any evidence that may be given in the report, I do not recall any evidence of that character. I don't know of evidence of the proceeding by the five packers in a harmonious and uniform plan in the unrelated lines. May I add, the point was made in the report that there is a certain indication of the field of these unrelated lines being more or less divided; that is, Armour goes in for cereals and a line of things like that, and Swift goes in for certain other things.

Judge HAINER. Butter and cheese?

Mr. DURAND. Yes; more; and he is the biggest butter dealer; Armour is the biggest cheese dealer; and Wilson has gone in for condiments and preserves especially, and there is just a sort of a broad indication there that anybody can see that they are not all working in just the same lines. Sort of specializing.

The CHAIRMAN. Well, don't all five of the packers handle cheese and butter and eggs?

Mr. DURAND. Yes; but one rather specializes more in one list, and another specializes more in another.

The CHAIRMAN. Yes; and don't Armour, Wilson, and Libby handle condiments and canned goods, all of them?

Mr. DURAND. Yes.

The CHAIRMAN. Did you have any evidence of a combination among the Big Five with reference to these unrelated lines?

Mr. DURAND. No. As I said, there was no evidence which we secured of a combination among them as regards these unrelated lines.

The CHAIRMAN. Or a conspiracy in restraint of trade among the Big Five themselves?

Mr. DURAND. No. I wish to add to that statement, however, this general statement, that the investigation by the commission of unrelated lines, as respects the packers, was not nearly as extensive as its investigation was in respect to the meat business.

The CHAIRMAN. Meat was your primary purpose, the investigation of meat?

Mr. DURAND. That was what we were primarily asked to investigate, and that was the burden of the complaint. In the course of that investigation we found the fact that the packers were in these many other lines, and we got a good deal of information about that, but we didn't—in the time we were investigating the files, or that we were making our investigations by sending our agents to various informants throughout the country, from whom we could gather information—we did not particularly go into the question of any combination in unrelated lines. So I say we have no evidence of it.

The CHAIRMAN. Now, your statement that there was an appearance of a division of those various lines among the Big Five packers is not founded on any concrete evidence of an agreement by them to do that?

Mr. DURAND. Not at all.

The CHAIRMAN. But merely upon the fact that there seems to be that indication?

Mr. DURAND. It is just what anybody can see by looking at the figures that we got of the extent that these different packers are in the different lines. It is a mere inference.

Mr. HALL. Is there anything inconsistent between those two ads., Mr. Durand? I did not quite get it.

Mr. DURAND. Well, Swift & Co. says that the commission has published a list of a great many items, and that Swift & Co. regularly handles only a few things here, and that it does not handle other things, and gives an impression certainly that the packers are not so widely in the business of supplying of foods as the Trade Commission had said. The first statement is:

"The Federal Trade Commission, it seems, would like to show that the packers are getting control of the food supply of the Nation."

They speak of their own company.

Mr. HALL. Then they go on to state what they handle themselves?

Mr. DURAND. Yes.

Mr. HALL. And then Armour goes on to show what he handles?

Mr. DURAND. Yes.

Judge HAINER. It is not the spread, but it is the volume or quantity that they are controlling.

Mr. DURAND. Yes. But sometimes, you know, when a general statement is made the man to whom it does not apply rises and speaks. The man to whom

it does apply keeps still. I think this is a case of that sort. Except that Armour did not keep still, but was here advertising the complete service that he furnished.

Mr. HALL. Well, what I meant to say was: Do you think that Swift also handled other lines than what he advertised?

Mr. DURAND. No; not at all; but the Trade Commission did not make such statements as those as regards Swift & Co. It made generalizations as to the five taken as a whole, and made specific statements as to the Armour Grain Co. Swift & Co. replies that that statement, which is a statement merely as to the Armour Grain Co., does not apply to Swift & Co., and the commission did not at any time say that it did.

There were, no doubt, duplications in that published list that the commission gave. It was intended to give an impression of the extensiveness of the business, and Mr. Colver, who was at that time a member of the Trade Commission, in an address before the National Coffee Roasters' Association at Atlantic City, on November 14, 1919, spoke on that point, and I would rather like to read a couple of paragraphs out of his remarks at that time. He said:

"Five of the great meat packers now operate in scores of related and unrelated lines of business through 574 separate corporations and trade names. They went into canned tomatoes and progressed through vegetables to fruit, winding up not only as the owners of pineapple plantations in Hawaii but as the manufacturers of canner's machinery at home.

"I have been charged with padding when I said that these gentlemen dealt in 639 products, and it has been shown that 52 of the articles enumerated were duplications. Well, I copied the table of contents from their own catalogues, cutting out duplications as between catalogues. But I am willing to withdraw the 52 complained of and will substitute the 434 articles shown in the index of the new 1919-20 sporting-goods catalogue of one of the five. There may be duplications in that list—there are a lot of things. There are nose guards and umpire protectors; sweaters and phonographs; bloomers and hand grenades. There are dufflebags, and there may be duplications."

The Trade Commission's list of packer commodities was only intended to give, from their catalogues, their year books, and their schedules that they reported to us, a concrete picture of the variety of things they handle. And it is true that there were what we probably would call "glaring duplications" in the list, if you would look at it from that point of view.

May I add—perhaps at the risk of digressing—an illustration of these non-food lines that come under classification 13, I think, of paragraph 5 of the decree.

Judge HAINER. Miscellaneous articles.

Mr. DURAND. On page 5 here, miscellaneous articles, classification 13. Among other items there is listed "bumping posts for railroads." Now, I wanted to speak of that for a moment. Now, that "bumping posts for railroads" refers to the Ellis bumping post. That is the post that is at the end of a piece of railroad track in the yards, with a bumper on it, so as to stop the car when it gets to that point, to keep it from running off the rail on to the ground.

Now, that Ellis bumping post is a product of the Mechanical Manufacturing Co., which is a company 55 per cent of whose voting stock is held by members of the Swift family, not by Swift & Co. And I wanted to read from our private car line report, page 191, the statement there made as to this Ellis bumping post:

"The packers' influence on the carriers is also used as a means of pushing the sale of some of the products of their affiliated companies. An example is found in the Ellis bumping post, a product of the Mechanical Manufacturing Co., which is controlled by the Swift interests. The sale of this product for the fiscal year ending March 31, 1918, was \$249,715.60."

That is put in there to show that while this was a substantial, it was not an extremely large, item. [Continuing reading:]

"Correspondence found in the files of Swift & Co. indicates that the packing company uses its traffic influence to induce the carriers to buy this post. The following letters passing between officials of Swift & Co. show the disposition to push the sale of the Ellis post through enlisting the aid of A. R. Fay, transportation manager of Swift & Co., who has charge of routing its traffic:

"APRIL 14, 1915.

"Mr. GEO. L. CHATFIELD: I noticed all along the Michigan Central road that they are using some kind of a steel bumper. Would like to know if they have

discontinued using the Ellis entirely and using only the steel, and if there is not some way we can get them to buy the Ellis.'

"That has the initials of the man who dictated it, 'NBH,' who I understand to be N. B. Higbie, and it has the notation, 'C. C.-A. R. Fay,' meaning copies sent to A. R. Fay.

"The next letter is:

" 'MAY 4, 1915.

" 'MR. N. B. HIGBIE, *Fourth Floor.*

" 'DEAR SIR: Replying to your note of April 14 and referring to conversation with you regarding bumping posts on the Michigan Central Railroad, wish to advise that I have been checking up this matter and have not been able to get as much information as I would like, but it is evident from what I have that they have been buying a number of Gibraltar, Hercules. and Buda bumping posts. Also understand they are fitted up at their Jackson shops for making repairs for our bumping posts, some of which have been in service a number of years. Have not been able to learn that they have made any complete posts. I am also advised by one of their representatives that they have not bought any new posts for a long time, but he thought they would need some within a few months. I am taking this matter up with Mr. A. R. Fay.

" 'As to the bumping posts on the Illinois Central—their business runs along even, and I have been assured by their purchasing agent that we are getting all of their business and have not been buying any other posts.

" 'Yours respectfully,

" 'GEO. L. CHATFIELD.'

"Fay was apparently able to induce the Michigan Central Railroad to buy the Ellis post, for he reported at Chatfield about two months later as follows:

" 'CHICAGO, July 30, 1915.

" 'MR. G. L. CHATFIELD, *Fourth Floor:*

" 'The Michigan Central have promised that they will purchase Ellis bumping posts, and they will buy more posts in the next year on their line than they have in the past 10 years.

" 'A. R. FAY.'

"There is no direct statement in this correspondence to the effect that Swift & Co. told the Michigan Central Railroad Co. that it must buy the Ellis bumping post or suffer a loss of traffic. It is within the limits of reasonable inference, however, that the 'traffic club' was brought into play and that Swift & Co.'s traffic, rather than the worth of the product, was the controlling factor in the Michigan Central's decision to use the Ellis bumping post."

Now, I was coming to the subject of the efficiency of the meat packers. The efficiency of the big packers is much talked about.

The CHAIRMAN. Was that practice an unfair practice there?

Mr. DURAND. Well, I couldn't pass on that.

Judge HAINER. Who did it affect? In whose interest was that prohibited from being handled by the Big Five?

Mr. DURAND. I don't quite get your question.

Judge HAINER. I say, what was the purpose of inserting that in this decree, to prohibit the Big Five from handling these bumping posts? They were not handled by, the wholesale grocers, were they?

Mr. DURAND. I couldn't say what the purpose was.

Judge HAINER. Well, was it an unfair practice? Does your report show that?

Mr. DURAND. I think that the passage that I have read is all that is said in the report on that subject, unless there is perhaps a general statement somewhere else inferring that practices of that kind might come within the classification of rebates under the Hepburn Act.

The CHAIRMAN. Well, that would not be for the Department of Justice to handle under the antitrust laws.

Mr. DURAND. No; under the interstate commerce act, which, I think, is ordinarily regarded as one of the antitrust acts.

The efficiency of the big packers is much talked about. For years we have heard that, as big butchers, they "save everything but the squeal," and they tell us of their great efficiency in all lines of production and merchandising.

Judge HAINER. Since then they have canned the squeal, haven't they?

Mr. DURAND. I have heard that also. It is no wonder, also, that we tend to take it for granted that the big packers will be the most economical and effi-

ent agencies in handling these nonmeat foods and that the public will get lower prices if the packers are permitted to do the work. I say it is no wonder we take that for granted. But have we ever stopped to ask whether the big packers have offered us any real proof of their efficiency? They have asserted continually. They have told of their large scale production. They have described their improved technical processes, their equipment, their selling methods, etc., all of which are elements in efficiency of great importance, I admit, but none of these things, nor all of them combined, prove efficiency.

Efficiency can be proved only by a comparative statement of the different types of business organization, which will strike a balance of the advantages and disadvantages of each type, and give you a net figure of the final result for each type in comparison with others. For do not forget that big-scale operations have disadvantages as well as advantages; that small-scale operations have many good points to offset the difficulties due to smallness. It is the net result of advantages and disadvantages that tells the real story of efficiency.

And a judgment of efficiency, moreover, ought to be based on fairness in methods. If an organization is ruthless and unfair in its business practices and thereby makes a success, that should not be counted to it as efficiency.

I know of no actual proof of this kind—that is, of a comparative statement, balancing advantages and disadvantages, to get a net result, and comparing that net result with a similar net result of other types of organization—I know of no actual proof of this kind offered by the packers. They can point to their great growth, but if there is a question of that being obtained by unfair methods, or by combination, or by restraint of trade, we can not credit it to efficiency until that question is settled.

I say they have submitted no real proof, no comparative facts. I don't know that they could be expected to, because it would be difficult for them to get the information and the figures to make the comparison. We would naturally look to the Government to make such comparison, and properly. But I don't think that the Government has published any comprehensive study of efficiency.

Some years ago the general question of efficiency of trusts was much discussed. Many ideas were developed on the subject. One was that "up to a certain point" combinations of capital are efficient, but beyond that point the combinations become too bulky, too unmanageable, and fail to produce the economies at which they aim. At that time, early in the first Wilson administration, a rather ambitious investigation of the efficiency of trusts was undertaken by the Bureau of Corporations, but for various reasons was never completed. Consequently we do not have anywhere in any comprehensive sense an ordered body of facts and argument bearing on this very important question of public policy as to the efficiency of large combinations of capital. In some industries investigations made by the Government have established certain facts, in others no facts bearing in any large way on the question have been officially gathered. In the meat-packing industry, particularly, there has been no sufficient marshaling of the facts to show in any conclusive way whether the five large packers have any proper title to the "efficiency" which they claim.

We incline to think that the contention of the big packers and of their supporters is not true. And we insist that the burden of proof is upon them, so long as the law of the land is what it is—a law of competition instead of a law of monopoly.

Now, I want to read one striking thing on this point of the question of their efficiency, from Part V of the Report of the Federal Trade Commission of the Meat Packing Industry, pages 95 to 96:

"To summarize, the deduction to be made from the comparative figures already tabulated would seem to be that either the great packers are less efficient, from the standpoint of profits, in the production of meats than the larger independents, or else, granting an equal or greater profitableness in the meat business, their continual invasion of new fields is a source of burden in the shape of losses on the current earnings. In other words, high profits on meat may be used to finance new activities pending the establishment of the latter on a firm basis, meanwhile keeping down the average return on the total business to a level less than that shown for the larger independent companies."

And then, a little later, the report says:

"In connection with the comparative figures two other interesting points are seen." These are the comparative figures of profits of the Big Five and of the larger independent meat packers. "Swift & Co. has repeatedly contended that it is necessary for the great packers to enter new fields, often unrelated to the

meat business, in order to keep up the efficiency of the organization. It would appear from the above tabulations and the deductions drawn therefrom that, contrary to this contention, it has cost the great packers a lower rate of profitableness than that enjoyed by the larger independent companies as the price of entering new fields. Had they remained strictly in the meat business their efficiency, measured in terms of profitableness, would perhaps have been greater.

"Again, it has been extensively claimed by Swift & Co. that their rate of return on the basis of sales is low, only averaging from 2 to 3 cents for each dollar of products sold. Only the wide extent of the great packers' organization, they claim, can enable the company to sell at such a low rate and give the consumer the resulting benefit in reasonable prices. If this contention were true, it would follow that the independent packer, with his limited organization, could not exist on a return of only 2 or 3 cents per dollar of sales.

"Table 26 indicates that the rate of return for the independent beef packers averages 2.2 cents, for the pork packers 2.4 cents, for the mixed packers 1.7 cents, and for the 117 companies combined"—that is, independent companies combined—"2.2 cents per dollar of sales. Thus it appears that the independent companies, as a class, while making about the same profit on sales as do the great companies, reap a high rate on investment (18.1 per cent), and the contention of the great packers that only a large organization can exist on these rates is not sustained by the facts."

I will add here the tables from the commission's report giving the actual figures of these comparisons that have just been summarized and deductions drawn therefrom in what I have read.

Table 26, page 85 of Part V, gives the profits of 117 independent packers in 1918.

Table 35, page 92 of Part V, gives a comparison of profits of these independent companies by size groups with the profits of the five big packers.

Table 37, page 94 of Part V, gives comparison of profits of 65 independent packers in 1914, 1915, and 1916, with the profits of the Big Five.

Now, if you wish, I will read the entire table, or I could simply read the percentage of profits shown for the independent packers and the five great packers, which is the point of the table. And I have given the reference by pages for the complete table.

Table 26, for the year 1918, covers 117 independent packers.

Judge HAINER. That means meat packers?

Mr. DURAND. Meat packers. Of which 70 are packers of pork, 18 are packers of beef, and 29 are mixed packers.

The rate of profit of these on their net worth was: For the pork packers, 18.1 per cent; beef packers, 18.4 per cent; mixed packers, 17.8 per cent; the average for the 117 companies being 18.1 per cent of the net worth.

On sales the rate of profit of the pork packers, 2.4 per cent per dollar of sales; beef packers, 2.2 per cent; mixed packers, 1.7 per cent; grand total, 2.2 per cent.

Now, comparing that with the five great packers: Table 35 gives the comparison between the five great packers and the 117 independent packers for the fiscal year 1918.

The five great packers, with sales of \$3,250,000,000 and over, made 15 per cent on their net worth.

The independent packers of over \$25,000,000 sales made 19.3 per cent on their net worth.

The independent packers from \$10,000,000 to \$25,000,000 sales made 23.6 per cent on their worth.

The independent packers under \$10,000,000 of sales made 14.1 per cent.

The average for the 117 being again 18.1 per cent.

This is a classification of them by size instead of by the character of business they did.

The rate of profit on sales for those independents is here compared with the rate for the Big Five: The Big Five was 2.2 per cent on sales; the independent packers of over \$25,000,000 was 2.5 per cent; the next smaller group, independent packers, \$10,000,000 to \$25,000,000, 2.1 per cent; and the smallest group, independent packers under \$10,000,000, 2 per cent; average, 2.2 per cent. Which is exactly the average of the big packers; so that on the dollar of sales they did the business as cheaply to the consumer as the big packers did. Where the big packers made 15 per cent on their net worth these 117 independents averaged

18.1 per cent on their net worth, and the little group, those from \$10,000,000 to \$25,000,000 of sales, made 23.6 per cent on their net worth.

That comparison which I have just given is shown in Table 37 for 65 independent packers for the years 1914, 1915, and 1916. In other words, in those years we had only 65 companies whose figures were available in usable form. We took those 65 and compared them with the five great packers.

In 1914 the rate of profit of the five great packers on net worth was 8.3 per cent; that of the 65 independent packers was 12.6 per cent.

In 1915 the five great packers' rate of profit was 12.8 per cent; in 1915 the 65 independent packers' rate, 13.1 per cent; in 1916 the five great packers, 18.5 per cent; the 65 independent packers, 22.1 per cent.

The average for the three years: The five packers, 13.5 per cent; the 65 independent packers, 16.3 per cent.

The fact that the independent packers, according to these tables, appear on the whole to be making a higher rate of return on the investment without charging the public any more for the service per dollar of sales, would seem to point toward the greater efficiency of the independents.

The figures are not to be taken as conclusive or as final proof, but they are indicative. They are indicative not of the efficiency of the big packers as compared with the independent packers; indeed, they tend to indicate the opposite. If anything, they tend to show that the small packers do better and are more efficient.

Now, being profit figures—that is, the profits, the total net profits of the business—being profit figures these figures are not results of the various advantages and disadvantages of the respective types of business. But they are not conclusive; I wish to repeat that. To be conclusive they need to be supplemented with detailed comparative studies of costs. Such studies can not be satisfactorily made until sound and uniform cost systems have been installed by the packers, large and small. It is to be hoped that the Secretary of Agriculture, under the new law, in time can establish such accounting systems in the industry as will enable us to get some real proof of relative efficiency.

Besides the figures of packers' profits just cited are on the total business. And I am not using them here as applying to the unrelated lines, because they do not. They are the total business.

The thing that you are particularly interested in is efficiency in the unrelated lines, and on that we have still less basis for making a correct judgment. There are no satisfactory comparative figures for packers and wholesale grocers compiled by the Government, and a study of that kind would have certain difficulties.

Now, the Trade Commission in its report, part 4, did cite some comparative data as between the wholesale grocers and the packers in grocery lines, but I want to say that it is not at all conclusive and it is inadequate information. But this is what the report says on page 44 of part 4. Now, there is a statement there on that page which I would like to put in connection with the testimony, as I recall, of one of the witnesses here before this committee to the effect that wholesale grocers in general get about 10 per cent gross margin, and that 2 per cent of that is net profit. That that is the statement that was made, as I recall hearing that statement here.

Judge HAINER. Substantially that.

Mr. DURAND. Well, with that statement, whatever it was—and the record will show what it was—I wanted to compare this statement on page 44 of the report, part 4.

The Table 4 shows for six branch houses, comprising one eastern district of one of the big packers for six months ending April 30, 1919, certain figures of cost of operation. Those are unaudited figures that we simply received here, giving them as they were furnished. They cover one of the packers, only six branch houses, and for six months. So that they are obviously not of any great validity. They are too small and simple probably to be of very representative value.

But the table goes down to the expense per dollar of sales for each of these six branch houses, and that expense changes from 2.9 cents for one of the branch houses to 6 cents for another, and the average is 3.9 cents for the six branches.

Now, just below that is this sentence regarding the figures of Armour & Co. These figures are for a whole year and for the entire company, and therefore have more validity as to representativeness:

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"After all allowances are made, however, the facts if fully known might well show that on the average a given volume of sales can be made at less expense by the packer than by the wholesale grocer; but even so, the efficiency of the packers in handling nonmeat products is not established. The packers do not keep cost figures for handling specific lines of goods in their branch houses. The cost of handling meats is doubtless lower than that for other lines. The prices at which they sell groceries have frequently caused the jobbers to raise the question whether the packers load their meat with much more than its proper proportion of expense. No statistical information has been secured on this point, but it is clearly implied in a recent statement by the president of Morris & Co. that the jobbers are right in their surmise. He says:

"It is a fact, if that be an offense, that the packers have an efficient means of distribution, and as they already have a fixed carrying charge at their branch houses, additional lines of goods can be carried and sold very cheaply."

"This and similar utterances from other packers seem to show that they do not rely upon their efficiency in handling groceries to win for them a footing in the marketing of these foods, but upon the organization built up for marketing products which naturally appeal for favorable treatment from the carriers and over which they exercise a more or less monopolistic control.

"Low prices to the consumer made possible in such ways are not a social advantage, but may readily be made the instrument for securing a dominating control of successive lines of goods, after which it may be confidently expected that such lines will be made to bear at least their proper marketing expense and that prices will be raised accordingly. But aside from that no lowering of price has been found to result from the adventure of the packers, from time to time, into new lines of manufacturing and merchandising. The manufacturers of foods and of food and other specialties and their purveyors are, generally speaking, determining price levels through competition. As their positions are undermined, monopoly looms."

That is the conclusion there that I wanted to read.

In this same volume, Part IV, on page 22, there is another statement bearing on this subject of efficiency of the packers. At the top of the page. [Reading:]

"Packer activity and the public interest. The extent to which the packer should be permitted to enter these unrelated food lines (even assuming legitimate competitive methods) is a matter which the public interest alone should determine. Two questions, primarily economic, are involved: Does this widening of activity result in additional economies of production and distribution? Does it result and will it continue to result to the public in lower prices and better quality of product and service? A third question, not here discussed, relates to the ultimate effect of such case and powerful organizations on the political and social fabric of American institutions.

"It is probable that a centralized control over an entire industry with full coordination of all its parts would, assuming equal efficiency of labor and equipment, show results in the production and distribution of goods superior to the results flowing from a control widely distributed, such as is characteristic of the competitive system. But it is also probable that unless in some way a considerable element of the tonic of compensation could be infused into such a system a certain flabbiness of industrial tissue would result. Furthermore, unless this control rested in those responsible to the public at large, not only would any advantage in cheaper production resulting from centralized control be likely not to go to the consumer but the consumer would always be in danger of an actually higher monopolistic price.

"Adequate and comparable cost records of production and distribution have not been kept by the packers nor by their competitors in these unrelated food lines, and without these records relative efficiency can not well be conclusively determined."

Now these two incomplete studies that I have here cited by the commission are not sufficient to prove inefficiency of the big packers, not at all; but I think they are a flag of warning against accepting packer claims of efficiency without proof. We are put on notice.

The testimony of the heads of the big packing companies before congressional committees is interesting in showing their view of comparative efficiency. And the interesting thing is that they admit—Mr. Armour and Mr. Swift personally testifying before committees of Congress admit the greater efficiency of the small packer—"up to a certain point."

And here are extracts from their testimony, if that would interest the committee, in which Mr. Armour and Mr. Swift have testified that "up to a

certain point," up to a certain extent the smaller packer has an advantage and is more efficient than the large packer. I think this is very important material, and while it is a little long I would like to read it.

Judge HAINER. You may read it.

Mr. DURAND. This is from the testimony of J. Ogden Armour before the House Committee on Interstate and Foreign Commerce.

Judge HAINER. What year?

Mr. DURAND. That was in the winter of 1918-19.

Judge HAINER. Prior to the consent decree.

Mr. DURAND. Yes; it was the first hearing held on this packer question after the reports of the Federal Trade Commission started to come out. It is the hearing on H. R. 13324.

Judge HAINER. Had volume 1 been issued at that time—the summary?

Mr. DURAND. The summary had been issued, and Part II has been issued, but Part I in its final form had not then been issued, and the other parts had not yet come out.

Judge HAINER. But the summary had been issued?

Mr. DURAND. The summary and Part II, the evidence of combination, had been issued and were before the gentlemen of the committee. I will read from the testimony of J. Ogden Armour before the House Committee on Interstate and Foreign Commerce. [Reading:]

"The CHAIRMAN (Mr. SIMS). All the large packers, as you have just stated"—

He is talking to Mr. Armour; examining him—

"All the large packers, as you have just stated, are watching each other and striving not only to do as well as the others but better if they can. They having already the field, and having the capital, and having the machinery for distribution, the markets, banks, stockyards, private cars, and everything of that sort, they are fighting each other for volume of business. Now, if with that great power they have to make such an effort, how is any individual small packer to get into the field with any promise of success?

"Mr. ARMOUR. There are a great many independent packers in the field and they all make more money than we do.

"The CHAIRMAN. At one time when the five great packers began the war on each other as to volume of business, or, I mean, if at any time the five great packers were to begin a war on each other as to volume, and that war should lead to sharp competition, then the little fellows have got to get close to the shore, haven't they?

"Mr. ARMOUR. Not necessarily, because the expenses of the big packers are a great deal more in proportion to his size than the little packer.

"The CHAIRMAN. A great deal more as to the unit of profits?

"Mr. ARMOUR. No; in size.

"The CHAIRMAN. The unit of profit is what you make your money on, is it not?

"Mr. ARMOUR. Yes; and in the volume or size of business. But the little packer doesn't have the expense of the big packers. The little packer to-day will make more money in proportion than the big packer will make. I do not think there is a little packer in the room now who wouldn't say that.

"The CHAIRMAN. Then you gentlemen ought to split up, and then you could do better than you do now.

"Mr. ARMOUR. No; while there is a greater percentage it is not so large in the aggregate as the big packer will make.

"The CHAIRMAN. The overhead of the small packer, if he hasn't cars of his own, would add a great deal more to his unit of profit.

"Mr. ARMOUR. No, sir; I don't think so.

"The CHAIRMAN. You large packers then are not doing your business economically if you can not conduct it at as little cost as anybody else.

"Mr. ARMOUR. No; I think in any business that the small man's overhead up to a certain point is always smaller than that of the big man. When the small man goes past that point, of course, it rises.

"The CHAIRMAN. Then the fact that the public, inasmuch as it has to procure from the large packers a very large percentage of their purchases of such meat as they handle, have to pay you that much more therefor; and if the big packers can not serve the public as economically as the little packers can it is a very good reason why, in the public interest, they should cease to exist.

"Mr. ARMOUR. That does not exist only up to a certain point. It can not exist beyond a certain point where the little man gets big.

The CHAIRMAN. With the fierce competition that you say exists between the big packers, say, Swift & Co. and the others, in every respect—and it is not competition unless it is real and genuine—I can not see how the little packers without the established trade that you have and the capital that you have can possibly make more money per unit of product out of his investment than you can.

“Mr. ARMOUR. They do.

“The CHAIRMAN. Then the public is interested in having the cheapest production?

“Mr. ARMOUR. Well, but you understand that only goes to a certain point, as I say, and when you pass that point you can not do it.

“The CHAIRMAN. And if you gentlemen, on account of your size, have ceased to be economical—that is, in the sense that the public is interested in it—that is, that you shall furnish at the lowest possible cost these meats, why, then, it seems to me it is good reason why we should do something to stop their growth instead of increasing it.

“Mr. ARMOUR. That won't work out. The smaller packers have a local sphere or a limited territory only, and when they go beyond this their range of expense increases beyond the pro rata unit that exists within their limited territory. And upon a national basis the smaller packer's expense would increase and would be at least as big, if not bigger, than ours—probably bigger—because of our great, widespread volume of business, our very efficient system of distribution, and the consequent economies in our costs of doing business.”

That was on January 21, 1919, Mr. Chairman, that Mr. Armour was speaking, and it appears on pages 673 to 674 of these hearings on H. R. 13324, Part IV.

The CHAIRMAN. Mr. Durand, in that connection isn't there a difference between the service that the big packer renders and the service that the little packer renders?

Mr. DURAND. I am not saying at all that there is not a service and place for the big packer in this country or for a very large-scale operation of the packing business, and a little later I wanted to come to a statement on that point, because I think there is no question about it.

The CHAIRMAN. So that really the profits which the little packer makes and the profits which the big packer makes are not made upon a business which is in all respects comparable; is that right?

Mr. DURAND. That is very true. That is one of your elements that you have got to consider in trying to make a comparison of efficiency.

The CHAIRMAN. And further than that, in the question of efficiency, doesn't the actual service that they render to the public count for more than the profits which the packers themselves put into their pockets?

Mr. DURAND. That is also another element that is a part of your problem. I would like very much to see a thorough-going governmental study of this question, so that we could have it settled as regards the packing industry, or settled as regards a number of these other large industries. All of these elements need to be taken into account, and that is a part of the reason why I say these figures are not conclusive.

Judge HAINER. Would you favor a decree absolutely prohibiting the big packers from conducting the business?

Mr. DURAND. Judge, I understood that I was going to come over here and give facts, and let the commission make suggestions.

Judge HAINER. Well, would it be advisable from an economic standpoint?

Mr. DURAND. Our commission is not only a legal but an economic commission, and I would like to let our chairman speak on that.

Judge HAINER. It is not a legal question; it is an economic question, as suggested by Mr. Sims there.

Mr. DURAND. I think that my opinion would be of little value as compared to the opinion that Chairman Gaskill might suggest.

Now, here is the testimony by Mr. Armour before the Senate Committee on Agriculture. And I think this was in the first Senate hearings. I do not have the exact reference; but it is much to the same point.

Mr. Heney, who was cross-examining Mr. Armour before the Senate Committee on Agriculture, asked the question:

“Mr. HENEY. You do not think the small fellow in the packing business has the advantage, do you, over these large units?

“Mr. ARMOUR. In a small way, they make more money, relatively, than we do. Their percentage of profit is greater than that of the big packers.

“Mr. HENEY. So that if the country as a whole could get proper distribution of the products, you think it would be more economical to have them handled by small dealers?

"Mr. ARMOUR. No; I do not.

"Mr. HENRY. How do you figure that out, then? I draw that inference from your answer."

And I am omitting a few passages here and there. Mr. Armour then said:

"Mr. ARMOUR. No; I say it is a matter of record that the small packers always make more money than the big packers, because they only do a limited business, and that is recognized. Every small packer will tell you that he makes more money than the large packers, in a percentage way."

And I omit several other passages. Then, later, the chairman [Senator Gore] was examining Mr. Armour. This was in the same hearing:

"The CHAIRMAN (Senator Gore). You stated the other day that the small packing houses paid better than the big ones?

"Mr. ARMOUR. In a percentage way; yes, sir.

"The CHAIRMAN. That is the best test, I take it, in a percentage way?

"Mr. ARMOUR. Yes, sir.

"The CHAIRMAN. Notwithstanding these economies and efficiency brought about by the big packing establishments, still, the small packing establishments realize a better profit on their investments?

"Mr. ARMOUR. Yes, sir.

"The CHAIRMAN. Is not that, then, a strong economic reason why other packing houses should spring up?

"Mr. ARMOUR. They could only do that by doing a limited business. Theoretically that goes to a certain point, and then it stops, as any small business can only do, or always does, make a larger percentage of profit than a large business.

"The CHAIRMAN. If the small packing houses located near the originating supply of cattle and hogs can realize a better percentage than the big packing houses, notwithstanding the economies and efficiencies brought about by the big packing houses, why is it that they do not multiply?

"Mr. ARMOUR. I do not know. There are a great many of them. They are increasing, I think. But a small packing house will make a bigger percentage of profit up to a certain point. The minute they pass that point, then they put themselves right in the class of a big packer. The can not possibly do the business at the same margin of profit."

That is, after they pass this point.

"The CHAIRMAN. Would they incur the disfavor of the big packers if they did that?

"Mr. ARMOUR. No, sir; not at all.

"The CHAIRMAN. In view of the fact that there is every economic reason looking at it generally, for their coming into existence, do you suppose the fear that the big packers should pay so much more for cattle than they could afford to, or could take less for meat than they could take, or that the banking institutions would refuse them credit, could have anything to do with their not coming into existence?

"Mr. ARMOUR. No, sir. It is a matter of individualism, to a large extent.

"The CHAIRMAN. Do you not think that if we could encourage the establishment of smaller units nearer the sources of supply of raw material, that would largely solve this problem?

"Mr. ARMOUR. Not wholly, because there have to be enough people in a certain zone that this small packer can reach. The farther west he goes the smaller that percentage of people is.

"The CHAIRMAN. You do not know anything about the letter of Swift, I suppose, in regard to the Hurni plant?

"Mr. ARMOUR. No, sir; I never heard of it."

That plant, the Hurni plant, was a plant at Sioux City that was bought out by Swift & Co., or by the Sioux City Stockyards Co., and then turned over to Swift & Co.

Judge HAINER. Is that the big plant that was recently built there?

Mr. DURAND. No; that was the Midland.

The CHAIRMAN. Swift just rents that, doesn't he?

Mr. DURAND. I don't know, Mr. Chairman, what the arrangement is. I think I read something in the trade papers about that Midland company—

The CHAIRMAN (interposing). I mean Swift & Co. just rent that plant at the stockyards at Sioux City.

Mr. DURAND. The Hurni?

The CHAIRMAN. Yes. He doesn't own that?

Mr. DURAND. I don't know what the present arrangement of that is. I thought Swift & Co. owned it. First, it was taken by the stockyards company and leased to Swift & Co.

The CHAIRMAN. I think that is the arrangement now.

Mr. DURAND. What happened after that I don't know. At any rate, it was the chairman asking Mr. Armour about the buying out of an independent plant under more or less of compulsion—taking advantage of him—that is the idea.

The CHAIRMAN. That is comparatively a very small plant, isn't it?

Mr. DURAND. That is comparatively a very small plant; yes, a small packer at the Sioux City stockyards. The story of that, I may say, is in part 3 of the commission's report. I could give you the page reference to that.

The CHAIRMAN. Well I happen to be quite familiar with that, because I happened to be in it.

Mr. DURAND. Continuing, Mr. Armour said: "No, sir; I never heard of it.

"The CHAIRMAN. To buy away his supplies so that he could not supply his wants?

"Mr. ARMOUR. No, sir.

"The CHAIRMAN. That is a weapon that could be resorted to by big packers to destroy others?

"Mr. ARMOUR. Apparently. But I never heard of it before.

"The CHAIRMAN. Then a new concern coming into Fort Worth or Denver would meet this stubborn resistance if they undertook to invade your 50 per cent, as Swift would if he undertook to invade it, would it not?

"Mr. ARMOUR. Yes; except that a new concern that does a local business stands a greater chance of doing a local business, for the reason that, as a rule, the people who own the business usually work themselves, and there is a certain amount of expense that they do not have that a big packer has."

Now, Mr. Louis F. Swift in these same hearings testified somewhat to the same effect. I have some page references here, but I am afraid they are in the wrong volume. The page reference that I have to what I just read from Mr. Armour's testimony before the Senate committee was page 631, and that was on January 24, 1919.

I will now read from Mr. Swift's testimony before the same committee, my page reference being page 866. This is in the hearings on S. 5305, part 2:

"The CHAIRMAN (Senator Gore) speaking:

"You remarked this morning, in connection with the rendering plants, that some small institutions paid a larger profit because they were small, where they were efficiently managed. Is that how you explain the existence of small packing plants? How do the smaller packing plants exist despite the increased economies and efficiencies of the big packers?

"Mr. SWIFT. There are a good many of them that have more or less of an advantage from location. Take, for instance, the pork business. There is not the benefit of doing the pork business on a big volume, on account of the pork not having much by-product, that there is in the meat business, and small packers around the country could participate in the advantage in killing pork to perhaps more advantage than they could cattle.

"The CHAIRMAN. And that does characterize the business pretty generally?

"Mr. SWIFT. To some extent; and even a certain amount of cattle, if you are going to buy the cattle right in a small local town and are going to kill them and sell them in a local town; that all helps in the way of advantage.

"The CHAIRMAN. There are advantages of which small plants can avail themselves which, to a certain extent, offset the increased economies and efficiency of the big plants?

"Mr. SWIFT. To a certain extent.

"The CHAIRMAN. It is true that some of the small plants have larger profits than the big establishments?

"Mr. SWIFT. I think some of them have; yes, sir."

That was from page 866 of the Senate hearings on S. 5305, part 2.

The CHAIRMAN. Well, the point I am interested in, Mr. Durand, is this: Do you think that profits are necessarily indicative of efficiency?

Mr. DURAND. They are certainly a part of the indication of efficiency, because a concern could not well continue to operate at a loss, and there would not be the stimulus to continue if the operations were paying a very, very small profit or were losing money.

The CHAIRMAN. But wouldn't the quality of service enter into it?

Mr. DURAND. It seems to me that this is the point that is being made here. If the avenues were entirely open so that everyone could go in on a fair basis into this industry, the fact that the smaller packers can make more money than the larger packers would be an incentive which would induce a number of them to go into the business, and the question that is being raised by Senator Gore, or who ever is interrogating here, is: "Why is it that there is not more of the business done locally?" And I think that is a very pertinent question.

The CHAIRMAN. I thought you were reading this for the purpose of raising the question as to whether the packers were really as efficient as they claim.

Mr. DURAND. Yes.

The CHAIRMAN. And in that connection—

Mr. DURAND (interposing). This is their admission that they are not as efficient in one respect—as respects profits.

The CHAIRMAN. As respects profits.

Mr. DURAND. Yes. As I say, that is one of the important elements. Not the only element.

The CHAIRMAN. But at the same time the question of a difference in service enters into this question of efficiency.

Mr. DURAND. Yes; that is another element. We have not the measure of that here.

The CHAIRMAN. No. Well, isn't it very apparent that the smaller packer who confines himself largely to a local trade, or perhaps not entirely local to his own town, but local to that community—

Mr. DURAND. Yes.

The CHAIRMAN (continuing). Renders an entirely different service from the big packer who distributes from coast to coast?

Mr. DURAND. That is the point I want to develop just a little later.

The CHAIRMAN. All right; pardon me for interrupting you.

Mr. DURAND. And I think you will find yourself in agreement with me on it.

The CHAIRMAN. Very well; proceed, Mr. Durand.

Mr. DURAND. I would like to read also from the House hearings. This is from the testimony of Mr. L. D. H. Weld, of Swift & Co., before the House Committee on Interstate and Foreign Commerce, H. R. 13324, part 4, page 952. This, again, was in January, 1919.

Mr. Weld says:

"In this connection I would like to speak of the large packer versus the small packer.

"This is a matter which has been discussed very frequently here in the committee, and the question has been asked, How can the small packer compete? I believe the point has been made that the costs for the small packer must be as low, if not lower, than for the large packer.

"In many cases their operating costs undoubtedly are lower than for the large packer, but this is because principally they do a local business.

"They do not have branch-house organizations in distant markets."

That is, the independents, the small packers.

"They do not do a long-distance business. The large packer, for instance, Swift & Co., has a large and expensive selling organization, which reaches out all over the country. There have got to be large packers to do that kind of a business, because some two-thirds of the live stock is produced west of the Mississippi and two-thirds of the consumers are in the eastern part of the country, and the packing industry has got to be so organized that there are large units which take the surplus of the West in carloads and trainloads to distributing depots in the consuming centers of the East, and distribute from those distributing depots or branch houses, even delivering to the retailer."

I think that is a very good point that Mr. Weld has there taken. The cattle are here and the people who want the meat are here, and there has got to be a large-scale organization to handle that great bulk of demand. Now, that still, however, leaves room for independent packers all over the region where there is a supply of cattle and a population that wants that supply of cattle transmuted into meat form. And the question that comes up here is, Why it is that a large portion of the country is not supplied by the small packers instead of the large packers? Why the large packer should not keep to the big-scale job that he is organized particularly for, and leave the small packer to do what he is organized for?

Mr. Armour, in one of the statements that I read, said he thought that the small packers were increasing. And Mr. Wilson in his testimony in House hearings, part 4, here, testified that the independent packers in Chicago over a

period of years were killing a larger share of the receipts of live stock at Chicago than the big packers were. That is, those independent packers in Chicago were growing over a period of years, were doing a larger share of the business, were increasing their proportion of the total business of the Chicago market; and those facts are undoubtedly true.

But over against that I want to say that in the country as a whole, for a nine-year period, from 1907 to 1916, the figures of the Bureau of Markets show that the independent packers in the country as a whole were losing ground very materially. In Chicago they were gaining, but in the country as a whole they were losing. And I will refer you to part 1, pages 128 to 129 and 130, for the tables showing that fact, that the independents have been losing out.

If these facts are true, as admitted by the large packers, as to superior efficiency, why are they losing out in business? I don't think that the difference in service is the whole explanation, by any means. I think that that question of difference in service is subject to a great deal of argument; that is, you would want to find a great many facts about it before you would conclude that the advantages in service are all with the packers, because there is a considerable body of sentiment throughout the country that likes the home-killed beef, and that sort of thing. That is an element, but I don't think that all of the weight of that element is on the side of the big packers. Part of it is on the side of the smaller packers.

This passage from Mr. Wilson's testimony that I have referred to is on pages 1234 to 1235 of part 4 of the House hearings on H. R. 13324.

In part 2 of the commission's report there is a letter printed from Mr. Joseph M. Cudahy, of the Cudahy Packing Co., to William C. Potter, of the Guaranty Trust Co., New York, dated February 19, 1916. This is a letter which was exchanged at the time when the reorganization of Sulzberger & Sons Co. was going on, and various mergers were under contemplation, and one of the mergers that was under consideration was the merger of Sulzberger and Cudahy. And this letter which Mr. Joseph M. Cudahy wrote to Mr. Potter in connection with the question of the possible merger, had this to say about the combining of those two companies [reading]:

"The combined output could be marketed through a less number of branch houses than both companies now operate. The cost of selling through these expensive branch houses is one of the curses of the business."

Now, that is pretty strong language from one of the big packers on the expense of their selling system. "The cost of selling through these expensive branch houses is one of the curses of the business."

That letter is found on pages 188 to 189 of part 2 of the commission's report on the heat-packing industry.

In a statement that the commission made in one of the hearings, in the form of a reply to Swift & Co.'s answer to the report on "profiteering" by the Federal Trade Commission, this statement was made public by the Federal Trade Commission:

"While granting efficiency in the physical operations of slaughter and by-product preparation, it is by no means sure that economies here are not more than offset by extra freight hauls, shrinkage in weight of live stock in shipment, large overhead, and expenditures not properly chargeable to costs. It may well be that smaller packers, located more favorably, could do the work more cheaply than the big packers if free to do it. It is certain that the big packers have used unfair competition in securing dominance. The facts in respect to relative efficiency can be proved definitely only after the installation of a uniform accounting system."

Judge HAINER. Who makes that statement?

Mr. DURAND. That is a statement of the Federal Trade Commission.

Judge HAINER. Well, what did that unfair practice consist of that they refer to there? What is that based on?

Mr. DURAND. That was with reference to unfair practices in the meat industry by which the packers gained the dominance that they have in the meat industry.

Judge HAINER. What are those specific acts, or some of them?

The CHAIRMAN. Let us not go into that at this time, Judge.

Mr. DURAND. Well, I would be glad to take that up, Mr. Chairman.

The CHAIRMAN. We have tried to keep away from the meat end of this question.

Mr. DURAND. In general, I would cite you to part 2 of the report, but I have a great deal in addition to that. And the Department of Justice has had a

very large volume of material. What they judged as to the quality of it, I will leave it for them to say.

There is testimony that Mr. Armour and Mr. Swift gave before the Senate Committee on Agriculture regarding the independent manufacturer of oleomargarine, Mr. Jelke, and I will not read that, but I will refer to it. Senate hearings on S. 5305, pages 624 to 625, testimony of Mr. Armour, and pages 1065 to 1066, the testimony of Mr. Swift.

The point there in that testimony being that Jelke, the oleomargarine manufacturing company, secures its raw supplies from the big packers, and yet was able to build up the biggest business in oleomargarine of any company in the country. And the question was raised: How could he do that if he had to buy his supplies from the packers, and then compete with the packers in the sale of that same material?

In Mr. Swift's testimony on that point I will read the following:

"Mr. HENEY. One of the things this committee is considering, I apprehend, is whether or not it is in the public interest, by reason of the economies which you people claim you are able to make by reason of the tremendous volume and large variety of commodities you handle, which enables you to cut your overhead expense and to transport a dozen different articles in the same car where a carload will not be needed of each one of them; that by reason of that fact you are able to cut down the price to the consumer. And now you say that people doing a smaller volume of business and who do not handle all these different products, but who handle only one product, can make a larger profit at the same price than you do, although they buy their raw material from you to start with. Is not that correct?"

"Mr. SWIFT. Mr. Jelke makes a larger volume—he does a larger volume of the butterine business than Swift & Co. do, and the profits of his business and the volume of his business show that he is a very successful merchant, much more successful than Swift & Co. is in their butterine business.

"Mr. HENEY. Is not that for this reason, Mr. Swift, that he has only one line to look after and can give his personal attention to details, which you could not possibly do with the large number of different things that you have to handle, with the tremendous volume that you have?"

"Mr. SWIFT. If that is true, the large packers have a handicap with all their different departments.

"Mr. HENEY. Exactly; therefore, they do depend on volume, and that means a deterioration in quality and weight in economical methods, so that the handler of each one of these separate things is able to compete successfully with you and make a bigger profit than you do. Is that correct?"

"Mr. SWIFT. No, sir; no packer can build up his volume by deterioration in quality; he can only do that by an improvement in the quality."

The CHAIRMAN. Well, wasn't the fact that Jelke was able to build up such a big business and buy his raw supplies from the packers an indication that they were not attempting to suppress competition?

Mr. DURAND. That was the dilemma, I think, in which these witnesses found themselves. That is the claim of greater efficiency, and the claim of lack of any unfair practices did not go together with the demonstrated fact such a business as Jelke's existed; such a business as the small independent packers existed.

It is interesting that the theory that I referred to of some persons in their views of the efficiency of trusts, namely, that up to a certain point the large combination is efficient, but after that it becomes too unwieldy—that theory is interesting when set over against Mr. Armour's theory here that up to a certain point the small man is more efficient than the big man, and beyond that point the palm of efficiency passes to the bigger concern.

Now, if both of these theories are correct, with reference to the zone of efficiency below, and the zone of efficiency at the top, then the zone of real efficiency would be somewhere in between—large scale, but not the largest scale. And that is just what these tables I cited you show. You remember that the packers in the intermediary group of ten to twenty-five million are so as to further profits than any other group.

Now, as I say, those figures are not satisfactory in all respects, but they are an indication.

I could develop that subject of efficiency to a considerable extent with letters from the packers' files, which bear on the subject, and which I have here, if you would be interested.

Incidentally, there was a very interesting suggestion in President Harding's address to Congress last week, in which, speaking of the subject, "Civilization rests on soil," he makes this comment [reading]:

"The existing scheme of adjusting freight rates has been favoring the basing points, until industries are attracted to some centers and repelled from others. A great volume of uneconomic and wasteful transportation has attended, and the cost increased accordingly. The grain-milling and meat-packing industries afford ample illustration, and the attending concentration is readily apparent.

"The menaces in concentration are not limited to the retarding influences on agriculture. Manifestly the conditions and terms of railway transportation ought not be permitted to increase this undesirable tendency."

I think I referred, Mr. Chairman, under my discussion of the attitude of the packers toward going into unrelated lines, to the case of the local packer at Ogden, Utah, in connection with what was said of the Spokane local plant of E. H. Stanton Co., that was bought by Armour & Co. You remember that the letters I cited showed that the local packers were underselling them and that they could not make money in the face of that competition, and that subsequently Armour & Co. bought out one of those local packers. Here is the Ogden Packing and Provision Co. case, at Ogden, Utah. I would like to read two or three letters on that subject.

The first letter is dated Salt Lake City, Utah, November 26, 1915, to the Cudahy Packing Co., San Francisco, Calif., and is signed by F. S. H., which is interpreted here to be Hatch, the confidential field agent of the Cudahy Packing Co.

The letter is as follows [reading]:

SALT LAKE CITY, UTAH, November 26, 1915.

THE CUDAHY PACKING CO.,

San Francisco, Calif.

GENTLEMEN: This will acknowledge receipt of your letter of the 23d.

The Ogden Packing & Provision Co. are extremely active in Utah and Idaho. They have spread out and their sales force now covers every portion of Utah, Idaho and southwestern Montana, Nevada and southwestern Wyoming territory. These people for the past few years have been making headway and at the present time, I understand, are running their plant practically full capacity. During the year 1914 they enlarged their plant, increasing capacity of old plant approximately 200 per cent. I am not in position at this writing to give exact number of hogs they are killing daily, but six or eight months ago they were running ten to fifteen hundred head per week.

I understand they are selling quite a little stuff in Los Angeles and San Francisco and have recently been advised by Mr. Scott, of Los Angeles plant, something of what they are doing in that market.

They have in the past year opened a branch in Butte and have been quite active in that market on fresh as well as cured meats.

In regard to general conditions in this section with reference to the production of hogs: There has been a tremendous increase in the last five years. When you were in Salt Lake, or rather the last year you had charge of the Salt Lake branch, 1911, I secured from the OSL a record of the number of cars of live hogs shipped through the yards at Salt Lake, which was 620. During the year 1914 the Salt Lake yards cleared for points outside of the State and within the State 2,762 cars of hogs. So you see the industry has grown immensely in the last five years.

We are meeting with some very severe competition in this section from Ogden Packing & Provision Co., also Nuckola Packing Co., of Pueblo, who have recently opened a branch house in Salt Lake and are selling from 1 to 1½ cents under our price. The Ogden Packing & Provision Co. have always been low on this market. Their product sells from 1½ to 2 cents under ours and has ever since the writer had anything to do with this market. We have, to a certain extent, in years gone by ignored them, but they are getting stronger every year and are eating into us gradually. We can feel it more and more as years advance, but it is absolutely impossible for us to attempt to meet this competition, as in the event of our reducing prices they would go just a little lower for the purpose of moving their output. Therefore figure the best thing we can do is sell our goods on basis of cost, adding profit, and do the best we can.

Personally believe you will have the Ogden Packing and Provision Co. to figure with from this time on regularly and they will constitute an important factor in San Francisco and Los Angeles.

Yours truly,

F. S. HATCH.

That letter shows the Cudahy agent admitting that the independent was more efficient. What did Cudahy do? It tried to buy out the Ogden plant, and, failing that, arranged to get a plant at Salt Lake City, and thus put itself in a position to fight the independent in his local territory—the Ogden territory. This is told in the following letter, written by the Ogden Packing & Provision Co. to Mr. Heney, of the Federal Trade Commission staff, in 1918. This letter is dated January 8, 1918, and is addressed to Mr. Heney, and is signed by the Ogden Packing & Provision Co., by S. S. Jensen, secretary. The letter is as follows [reading]:

OGDEN PACKING & PROVISION CO.,
Ogden, Utah, January 8, 1918.

MR. F. J. HENEY,
Special Investigator Federal Trade Commission, St. Paul, Minn.:

DEAR SIR: We note by the newspaper dispatches that you are continuing your investigation in St. Paul as to the meat-packers' combine in that city.

To the best of our recollection, when one of the big packers wanted to enter the St. Paul field several years ago, they asked for a bonus, which was given to them, amounting to several hundred thousand dollars, probably in the shape of a site, as well as a cash donation. Such bonuses give a big packer an upper hand over the smaller packers, and in our opinion legislation should be enacted making such transactions illegal.

About two years ago the Cudahy Packing Co. approached us wanting to buy our plant. We believe that, to a great extent, this was for the reason that we had entered the Los Angeles market, and that our prices were there interfering with the profits which their plant in Los Angeles previously had been making. The price which we were asking for our plant was, however, not satisfactory to them and nothing came out of the deal.

We were at the same time endeavoring to put our Los Angeles business on a more permanent basis by having a building built there, and this we believe was the motive for them finally determining entering this field. It was reported to us by certain Los Angeles parties that somebody of the Cudahy Co. had made the remark that they would keep us from growing. At any rate they sent some of their head men from Chicago out this way, going to Pocatello, Idaho, and to Ogden and Salt Lake City, endeavoring to interest the commercial organizations to make donations to them for the purpose of establishing a plant in either one of these cities, attempting to have the one city outbid the other. Salt Lake City offered them, free of charge, a plant which had been standing idle for some time, and which had originally cost more than \$200,000 to build, and in addition to that gave them \$25,000 in cash and one-fourth interest in the stockyards. They slightly remodeled the plant and started business there about a year ago.

Since that time they have been carrying on a cutthroat business, making such prices in selling their products that no one has been able to compete with them.

You can therefore see how such bonuses work in favor of the big packers. As far as they can they will endeavor to put their competitors out of business, and when they have put their competitors out of business make the consumers pay the cost of doing this.

It is, of course, apparent that the packers are able to undersell their competitors, because of such bonuses, as they have no returns to make on their investment. While the smaller packer pays for everything he invests in his plant, and that unless he can make a profit on such an investment, it is not a paying proposition. Undoubtedly after the big packers, who accept such bonuses, have accomplished their work of putting their competitors out of business and again have smooth sailing and have made the public pay the cost of same, the bonuses finally find their way into the coffers of the stockholders of the big packers, by them raising the value of their plant or declaring a dividend or letting it go to surplus. After which time the public must pay dividends even on what was given them as bonus.

The practice is entirely wrong, and if anything could be accomplished through your investigation toward stopping same, it would be of great benefit

to the smaller packers and make competition with the big packers much more feasible. It is their method of getting something for nothing and use same to manipulate to the detriment of the small packers, which mean to the detriment of the public.

Respectfully yours,

OGDEN PACKING & PROVISION CO.,
S. S. JENSEN, *Secretary*.

The CHAIRMAN. Now, that deals entirely with meat packing, does it not?

Mr. DURAND. Yes; it deals with the question of the efficiency of the packers. Now, I am simply arguing by analogy here as to their claim of efficiency in general. We have more information on the question of their efficiency in the meat-packing business, and it is simply argument by analogy that I am here giving.

Now, as I suggested, here is a letter from Mr. W. P. Dickey to Mr. Lars Hansen, president of the Ogden Packing & Provision Co., Ogden, Utah, dated June 1, 1915.

The CHAIRMAN. Who is Mr. Dickey?

Mr. DURAND. Mr. Dickey is connected with the Portland Cattle Loan Co.; president of the Portland Cattle Loan Co., a company rather closely connected with the Swift interests.

The CHAIRMAN. Does that have to do entirely with the meat-packing industry?

Mr. DURAND. That has to do with the interests of Swift & Co. through the Cattle Loan Co. trying to bring pressure on the Ogden Packing & Provision Co. in this manner to stock going into the Portland market with his pork products. The point I am using this for, Mr. Chairman, is simply to show that when the Ogden Packing & Provision Co. had established to the satisfaction of the packers that it was an efficient competitor, more efficient than they were, first Cudahy went about it to buy a plant there; and second, Swift attempted to bring some pressure to bear on the president of the company through loans on his cattle, because the president of the company was also engaged in the cattle-raising business in a separate concern. This is just an attempt to show that instead of efficiency, of which they speak so much, the packers bring pressure to bear upon their competitors; that therefore, in the light of those facts, it is not necessarily a mark of efficiency. And having established that sort of thing with reference to some of these big meat situations, I shall argue that their claims of efficiency in the grocery lines may not be any better founded than the claims they make in the meat line. That is the reason I was introducing this material.

The CHAIRMAN. I do not believe we care to go into that meat-packing business any further, Mr. Durand. You understand we are trying to confine it just as much as possible to these unrelated lines, and I think your theory has been made plain already.

Mr. DURAND. Yes. The point was made in the report of the Federal Trade Commission that the packers appear to use gains in an established department to finance losses in a new field; that is, they use their gains in an established department like beef, butter, or cheese, or poultry and eggs, to finance losses in a new field.

Now, here is an extract from a letter of 1917 showing that up to that time Armour in one of his branch houses had not segregated the costs of marketing fertilizer and provisions. With fertilizer included, the cost of selling had been 12 cents per hundredweight, whereas when fertilizer was excluded the cost of selling provisions was found to be 32 cents per hundredweight in this particular house. If that is pertinent, I would like to read this short extract from this letter. This is signed "E. Wilson," manager of the beef department of Armour & Co. It is as follows [reading]:

MAY 10, 1917.

Mr. J. C. ARMOUR:

Re your talk with Mr. Younie, * * *, you will recall at the beginning of the fiscal year it was determined that our results on provisions and fertilizer should be separated. The only connection our provision business has to our fertilizer business is the accounting through the office. It was felt that this expense could be estimated in such a way that we could apply what was proper to the provision end as well as what was proper to the fertilizer end, and in this way give the departments a fairly true record of what it was costing us to handle the provision business. It should be obvious to anyone that where we handle such an enormous quantity of fertilizer as we do there that to apply this

tonnage to the sales of our provisions it would bring down the cost to market to an abnormal point, and they could on this basis sell lard and provisions below what it was really costing and yet have their results on their synopsis sheet look in order. As an illustration, last year their cost to market per hundredweight on the total business was 12 cents, but when the fertilizer business was eliminated it brought the provision cost to market up to around 32 cents. * * *

E. WILSON.

The CHAIRMAN. Mr. Durand, in that connection, would the cost of marketing a commodity that was worth, say, a dollar a pound, be any greater than the cost of marketing a commodity that was worth 10 cents a pound?

Mr. DURAND. Well, I think a great deal would depend upon the commodities and the methods of sale necessary. That they are all handled in the same way, and moved with the same rapidity, and so on. It is sort of hypothetical question.

The CHAIRMAN. And also, how long had the packers been in this provision business at the time this letter was written?

Mr. DURAND. This was written in 1917. The things that he refers to are provisions. I am not sure that this term "provisions" here covers their grocery line. It may be it does not. If you remember, the packers have a term "provisions" dealt in on the board of trade. I think that term includes smoked meat, and hams, and lard, and things of that sort. Possibly it does not include this wholesale grocery item, like canned fruits. Possibly I am giving you a letter that does not bear on canned fruits, but lard and smoked meats.

The CHAIRMAN. The thought I had, if it was a new line that they were pressing and trying to establish themselves in, the cost of selling would naturally be higher than an old established line.

Mr. DURAND. Yes; it naturally would be higher, and the theory of it is that if the cost of introducing a new line is actually higher, the packers tend to throw that cost on their meat lines and sell at a low price, and make a profit on the total business.

The CHAIRMAN. Do you know how that cost, as stated in that letter, compares with their competitors in the same business?

Mr. DURAND. No; I do not. I am just giving you the letter for what you can see in it. I do not have any further information. I do not even know what branch house is referred to. It is one of Armour & Co.'s branch houses.

I think that is all I care to say on the subject of efficiency, but I do want to add the point that I spoke of a little time ago, when you were inquiring regarding the service which the large packer supplies, and I want to speak on the point of the necessity for a large scale packer.

In questioning the efficiency of the big packer, and calling for proof before accepting the idea, I do not for a moment wish to say that the large scale packer—the big packer, is not a necessary instrument in the meat trade, and probably efficient for doing certain work that has to be done in the feeding of the Nation, whose great centers of population are far distant from the centers of live-stock production.

The indications as to relative efficiency, as I read them, would point to a place in the sun for the relatively small local packer in a live-stock producing region. The big packer, with freight to pay on the live stock to more distant slaughtering places, with shrinkage in live weight to reckon on, and with return freight on the meat, in addition to his large overhead is probably at a disadvantage as compared with the local packer who gets his supplies right at hand, has little freight on live stock or meats, whose overhead is light and who can give personal attention to his business. In the absence of intimidation or unfair practices, such a local packer would presumably live and undersell the big packer, for in addition to these important advantages he has the advantage of local good will.

There is, on the other hand, a great amount of business necessarily done in handling meats and meat products from the western point of production to the great cities of the East. For this business the big packer and large independent concerns, such as Kingan's are necessary. If the business of the big packers in this large movement of their products from west to east were segregated so that its financial results could be separately studied, it would probably be found that the big packer was as efficient in this field as the large independents, but that his efficiency in this type of business is beclouded by his lack of efficiency in other territories.

For example, in the outlying Rocky Mountain countries, far from their packing plants, the big packers are at a disadvantage in competition with small local packers with plants in the neighborhood. In such regions as this the effort appears to be to relieve the branch house losses on meats by increasing the sales of outside lines which are more profitable.

On the other hand, in the great cities of the East, where the packers are presumably especially efficient in the meat business, the tendency appears to be to make the meat business carry the losses brought about by the extension of the outside food lines. Whatever the facts that might be developed by an exhaustive study of relative efficiency, it is to be observed that wholesale grocers almost to a man express themselves as not afraid of big packer competition, provided they are on an even keel as respects transportation, except that there is some fear of the use of unfair practices by the big packers and the fear that through their large capital they will buy out and remove from competitors sources of supply previously relied on.

Now, I was about to take up another subject, the subject of unfair or questionable practices and undue advantages.

Judge HAINER. How long would that take?

Mr. DURAND. I would like to perhaps state my explanation of the character of material I have, and get a ruling from the committee as to whether that would be desirable to introduce it, and, if so, I can then begin introducing it to-morrow.

The CHAIRMAN. Very well.

Mr. DURAND. When the investigation of the packers was started by the Federal Trade Commission, the full scope of the operation of the big packers was by no means suspected. Charges of unfair practices by those engaged in the meat-packing business had been freely made, and it was thought that much time would be required to investigate the charges. This proved to be true, and it was during this examination into the meat business proper that the wide interest of the five packers in the unrelated lines was discovered. This was sufficient to justify an investigation by itself, had time and money been available, but by the time it was possible to take up the packers' interests in these lines, the special appropriation for an investigation into this subject was nearly exhausted and the investigation into this phase of the packer business had to be made as a part of the regular work of the commission, and was necessarily much less complete on that account than the investigation of the meat phases of the packer activities.

We have a number of cases of alleged unfair procedure or practices in regard to the unrelated lines, in some of which the facts were testified to by more than one witness, and we have others in which the statements were made by the individual complainant and not verified by other evidence.

Not long after the completion of the commission's report of Part IV, dealing with the packers in grocery foods, the Department of Justice announced its intention to prosecute the packers, out of which in a few months grew this consent decree, eliminating the packers from grocery foods. For this reason the commission has had no occasion to sift the many instances of unfair practices alleged by wholesale grocers. It had not had the examiner of its legal staff probe the alleged circumstances of unfairness, and it has not taken any testimony by the packers in rebuttal.

In citing alleged instances of this kind, therefore, I do not wish to suggest to the committee that these are proven and tested matters. I would simply suggest that where there is much smoke there is usually some fire, and I would suggest these instances to put the committee on guard. Those urging modification of the decree certainly can not say that there is no complaint against the packers on the ground of unfairness in these grocery lines. There is plenty of complaint, but in the circumstances surrounding the matter those complaints have not been brought to a show-down.

So that if the committee desires, I would read first such instances of alleged unfair practices as were mentioned in the reports of the commission dealing with these unrelated or grocery lines, and then I would read from these files here of our agents' reports in the investigation other instances that were not put into the report of alleged unfair practices.

I wish to say, however, that before I would embark on that, if the committee desires to hear these cases, I feel that we ought to have some expression of opinion from the representatives of the wholesale grocers here whether they think that the wholesale grocers who furnished this information and

made the complaints would object to having their names given as the parties who made the complaints to the agents of the commission.

You will understand these complaints are not formal complaints at all, in such shape as that the commission would act on them, but as our agents went about and got this information which resulted in this Part IV, the wholesale grocers talked to our men and gave them facts and figures from their own experiences, and our agents have reported those facts and here they are.

The CHAIRMAN. Do the wholesale grocers feel that they would be willing to have their names used in this connection?

Mr. SMITH. So far as any I represent are concerned, they would be willing to have their names used.

Mr. FORD. So far as any we represent, I think they are willing.

Mr. SMITH. They ought to be willing to stand up to it.

The CHAIRMAN. With that statement are you willing to proceed, Mr. Durand?

Mr. DURAND. Yes; but I would say that if any of these gentlemen made the request of the agent at the time the information was given not to have his name used I would not read such statement.

The CHAIRMAN. The committee will be very glad to hear you, Mr. Durand, in any such statement as you desire to give. However, we do desire to know the name of the person giving the information if the information is offered.

Mr. FORD. I think Mr. Durand had made a perfectly proper statement as to the manner in which the information was obtained and as to his attitude toward it.

The CHAIRMAN. So do I, but I think the committee should know the source of the information if the information is given.

Mr. FORD. Yes.

The CHAIRMAN. Then the committee will adjourn at this time until 10 o'clock to-morrow morning, at which time we will proceed along the lines suggested.

(Whereupon, at 3.55 p. m., the committee adjourned until to-morrow, Wednesday, December 14, 1921, at 10 o'clock a. m.)

WEDNESDAY, DECEMBER 14, 1921.

The committee met at 10 o'clock a. m. in room 704, Department of Commerce, pursuant to adjournment on yesterday, Hon. Herman J. Galloway (chairman) presiding.

The CHAIRMAN. Let us proceed with our hearing.

STATEMENT OF MR. WALTER Y. DURAND—Resumed.

Mr. DURAND. Mr. Chairman, you were asking yesterday with reference to what I had said about an apparent division or tendency toward division in the specialty fields. One of the large packers going more into one line and another into another line of these wholesale specialties. I just wish to cite two very short passages here on that point from the testimony of Mr. Smith and of Mr. Wilson before the congressional committees.

In Mr. Swift's statement, in the first House hearings, page 2105, he said: [Reading:]

"I want to say that Swift & Co. do not handle any coffee nor any rice nor any cereals, and they do not intend to do so."

As you know, some of the other large packers are going quite extensively into those three lines. Mr. Swift says he does not handle them and does not intend to.

Mr. Wilson, in the same House hearings, says at page 3081—

Mr. BREED. Mr. Durand, does that statement apply to Swift & Co., or does it go any further than that, into subsidiaries; other corporations controlled by Mr. Swift or family?

Mr. DURAND. The statement is: "I want to say that Swift & Co. do not handle."

Mr. Wilson's statement was this:

"We have handled a little rice and beans, but that I have cut out. We are not handling them now, and I do not propose to handle them again."

Rice and beans, as we know, are largely handled by Armour & Co., for example. Mr. Wilson expresses the intention not to handle rice or beans again.

Those page references, Mr. Chairman, may be to another edition in the bound edition, and I want to have Mr. Barrett, if he will, verify them so as to get the correct page references into your hearing.

Yesterday we were intending to resume this morning with the question of instances of unfair or questionable practices, alleged unfair or questionable practices, and undue advantages that the big packers are said to have over the wholesale grocers in these unrelated lines, and I explained yesterday the nature of this material, and the limitations of it, and the spirit in which we presented it.

The CHAIRMAN. And the committee indicated that it would be glad to receive that information, considering it, of course, as *ex parte* allegations.

Mr. DURAND. Yes.

The CHAIRMAN. And it also wishes the source of the information?

Mr. DURAND. Yes. Well, that will be given.

The CHAIRMAN. And the committee, of course, will give it such consideration, such weight, as it feels it is entitled to.

Mr. DURAND. There are some instances in the published reports, and just to save time, Mr. Chairman, I think I would simply wish to refer to them by page number without reading.

The CHAIRMAN. That will be quite satisfactory.

Mr. DURAND. In Part IV of the commission's report, pages 21 and the lower part of 22, is a general summary of the packers' undue advantages and unfair practices in competition, with references to detail in a later part of the report. On page 27, at the bottom of the page, is a paragraph on the packer activity in food specialties reaching out from distribution to manufacture. Coming back from the distributive to the producing activity.

In more detail in the latter part of Part IV of the commission's report, on pages 215 to 216, are some statements with reference to the methods followed by Armour & Co. in the introduction of cereals.

On pages 234 to 236 is a discussion of the methods of the packers—that is, the competitive methods of the packers in canned vegetables.

Pages 243 to 244 is a discussion of the methods of the packers in the distribution and handling of fruits—that is, canned and dried fruits.

Pages 250 to 252, a corresponding statement as to the methods of the packers in the canning and distribution of fish.

In the report of the Federal Trade Commission on the wholesale marketing of food, on pages 89 to 90 of that report, beginning about the middle of page 89, there is a reference to the discrimination that was felt particularly by potato growers in the distribution of the refrigerator cars.

Mr. BREED. By whom, the railroads?

Mr. DURAND. Well, with reference to the privately owned refrigerator cars; the advantage of the packers in having their privately owned refrigerator cars.

Mr. BREED. You have referred, Mr. Durand, to certain pages of the report with respect to unfair practices, without characterizing them. In any way.

Mr. DURAND. If I may explain, Mr. Breed, at the end of the hearing yesterday I stated the general character of the material that I was to refer to or cite to-day. And this morning I did not repeat that statement.

Mr. BREED. Do you contend that these reference show instances of unfair practices?

Mr. DURAND. Instances of alleged unfair practices.

Mr. BREED. Yes.

Mr. DURAND. Practices, however, which were not sifted by the commission under its regular procedure under its law. The reason for these cases not having been sifted being that shortly after the reports were made the Department of Justice announced its intention of bringing a Sherman law case against the packers, and shortly after that the consent-decree arrangement was entered into, which removed these things from the field of inquiry.

Mr. SMITH. Mr. Durand, I just wanted to remind you that part of your statement yesterday afternoon was after adjournment. The Chair announced adjournment, and it was not reported. And I just wanted to suggest that in connection with your statement you give here the statement you gave after the announcement of the adjournment, that did not go into the record.

Mr. BREED. With respect to what, Senator?

Mr. DURAND. Well, I think that can be taken up a little later. I will have that in mind, Senator.

The CHAIRMAN. Mr. Durand, those references, then, to alleged unfair practices in the printed reports of the Federal Trade Commission, to which you have just referred, are, as you say, statements based upon complaints that have been made to the Commission, but have not been investigated by the Commission any further than that?

Mr. DURAND. In any formal way.

The CHAIRMAN. Oh, I see.

Mr. DURAND. Under its procedure.

The CHAIRMAN. In other words, they are ex parte statements.

Mr. DURAND. Our agents who were in the field made such investigation as they could, and of course would not report instances that seemed to have no merits. They would use every effort that they could to substantiate the claims that were made, and I would say that these cases have varying degrees of merit; that is, merit as to the extent of evidence that has been produced. Some of them have a very considerable amount of evidence behind them. Others have not.

The CHAIRMAN. But they are largely ex parte complaints. In other words, the other side has never—

Mr. DURAND (interposing). The other side has usually not been heard. As it would be in a regular procedure.

The CHAIRMAN. Before your commission.

Mr. DURAND. Yes; before our commission. On the other hand, some of them are based on—

Mr. HALL (interposing). Mr. Durand, are these the cases in which the names are given of those filing the complaints?

Mr. DURAND. I think they are generalizations from the detail, but when I get to the detail you will find the names are given. They may not all be given in the cases in the printed report, and I should not think that the committee would feel it necessary to have us supply those names. We would be glad to.

Mr. HALL. Wasn't that the understanding, Mr. Chairman?

Mr. DURAND. This is a printed report, if that would make a difference.

The CHAIRMAN. That is a printed report which has already been distributed to the public.

Mr. DURAND. Yes.

The CHAIRMAN. And has gone before the public in that way.

Mr. DURAND. In these others of the same character, which have not been put in the report, however, we will furnish the names.

The CHAIRMAN. Yes.

Mr. DURAND. If in any given case that I have cited the statement in the book shows to the contrary of my statement, of course the statement in the book is correct as against my rather broad generalization, to which there are probably exceptions.

On that matter I might read here on page 137 of the report on the wholesale marketing of food, the last paragraph on the page. [Reading:]

"Another case brought to the attention of the commission's representatives, wherein an artificial shortage of storage"—that is, of cold storage—"is created, is that at Waterbury, Conn. The only public cold-storage plant in Waterbury was owned by Valentine Bohl & Co., 594 West Main Street. It is a good-sized plant, not far from the railroad, and reached by a spur track. The firm had financial difficulties, becoming insolvent, and the Waterbury National Bank took over the plant and sought a purchaser. As Armour & Co.'s branch house had no railroad connection, this property was desirable enough for it to make the highest offer and obtain the plant. When Armour & Co. purchased this property on April 13, 1918, parts of the plant were occupied by the Cudahy Packing Co., which had a lease running to June, 1921. When warm weather came and the usual requests for the use of the vacant storage space were made by local produce dealers, all accommodations were refused, and those who needed cold storage must get it in other cities. As a result, the dealers are greatly handicapped and under extra cost of doing business. It can not be claimed that Armour & Co. and the Cudahy Packing Co. use all the space for their own needs, since on July 31, 1918, Armour & Co. was using approximately 5,000 cubic feet and Cudahy's leased space amounted to 38,993 cubic feet, while the plant has in all 161,380 cubic feet of space."

There is another reference in this same report on page 181 to page 182.

The CHAIRMAN. In connection with that practice, Mr. Durand, that you have just—

Judge HAINER. What is the use of referring to these? Can you not sum them up and not cumber up the record?

Mr. DURAND. I have not read any of these cases until now; I have read none except that one. The others I cite the pages.

The CHAIRMAN. In connection with that one that you just read, was there anything illegal or unfair in the meat packers obtaining that?

Mr. DURAND. That was introduced as a case of the disadvantage to which local dealers are put by the control of cold-storage facilities.

The CHAIRMAN. But the point I am getting at is, wasn't it legitimately acquired in the first place?

Mr. DURAND. Oh, yes; there is no question about that.

The CHAIRMAN. And wasn't it legitimately used, in the second place?

Mr. DURAND. Well, that question would be a question of fact that would have to be developed by more extensive investigation than was here made. The Waterbury people had to go many miles to other cities to get cold storage for their produce. Armour & Co. controlling that space there would need to show, I should think, that they had good reason for not leasing it to these other people, or else there would be the inference that they were trying to take an unfair advantage of them for the time being.

The CHAIRMAN. Well, is it an unfair advantage for a competitor to refuse to lease his facilities to his competitors?

Mr. DURAND. Well, I should say that the cold-storage facility there, there being only one in the city, was, regardless of what it might be legally, as a practical matter, a sort of public utility there. Everybody had need of it that was in that business, and that if Armour & Co. acquired it they ought in good morals or in good faith continue to allow the other people to make use of those facilities instead of to keep them unused.

Now, the evidence is not, of course, conclusive as to whether they did keep them empty or not at the time. When their report was made to the commission as to what they had in there and what the space was, there was a large amount of the space unused.

The CHAIRMAN. Well, the point I felt was this: Is it customary or usual for people engaged in one line of business to invest their money in facilities for carrying on that business, and then to lease the premises in which they have so invested to other competitors in order to accommodate them?

Mr. DURAND. As I was saying, the only point there, Mr. Chairman, would be as to whether it was in the nature of a public utility. If it is an actual public utility then a competitor has no right, as I understand, to hold a public utility for his own service and deny it to others who have an equally good claim upon that facility. It is only that suggested analogy that I am making.

The CHAIRMAN. Well, is it a public utility?

Mr. DURAND. But we are not citing it here, Mr. Chairman, as a case of anything unlawful. I just take it out of—

Judge HAINER (interposing). You just stated that it ought to be a law; if it is a public utility it ought to be open for all persons?

Mr. DURAND. In that connection, Mr. Chairman, may I simply refer to the table in part 4 of the Meat Report on Cold Storage, which show that these five large packers operate approximately 45 per cent of the cold-storage facilities of the country. Now, that is on pages 85 to 131 of part 4, and the conclusion that I just stated, as to the 45 per cent, is included in that reference.

Mr. SMITH. Mr. Durand, doesn't this purchase by Armour & Co. also illustrate the effect of their domination upon their business in that they excluded it from the use of many others, when before they obtained it, it was used by all?

Mr. DURAND. I think that is the point of this illustration, the practical point.

Mr. SMITH. Isn't there evidence of an injury to the public?

Mr. BREED. Mr. Durand, the instance you have given was only illustrative of others contained in the book to which you have referred?

Mr. DURAND. I don't know that there are many illustrations given in the book. There may have been one or two. I don't recall, Mr. Breed. The book will be the best evidence on that.

Mr. BREED. You are aware, however, that the petition by the Attorney General of the United States, in the action of the United States against the packers, in which this consent decree was given, makes allegation with respect to the large control by the packers of cold-storage warehouses, and the use of them for both meat products and unrelated products?

Mr. DURAND. I believe so.

If I may refer now to the last passage in this Report on the Wholesale Marketing of Food that I wish to cite, page 181, a paragraph at the bottom, and going on through the middle of 182:

"Similar in effect on the consumer is the practice of certain large firms, especially some of the big meat packers, who attempt to control all or a large part of certain lines of canned goods. To do this, they purchase the canneries

or secure their entire output on whatever terms may be necessary. As a result, wholesalers often find it difficult, if not impossible, to secure the usual line of goods for their trade, through the regular channels, and are compelled either to turn to these concerns, paying the price they demand, or to give up handling the goods.

"Similarly their practice of offering whatever price is necessary to secure a shipper's entire shipment of poultry, eggs, etc., takes away the usual source of supply of the dealer who can not afford to meet such offers when he can not expect to make his own selling price and must at least break even. Such speculative dealers often monopolize, or attempt to monopolize, the greater part of the crop in some kind of food, eliminate long-established brands from the market because of the artificially created shortage of raw materials, and then, then everyone is wondering what has become of the crop, these dealers bring forth some new line practically compelling the dealers to handle this new brand or handle none. Such speculative cornering of crops is reported in the matter of peanuts, by which the price of peanut butter to the consumer was greatly increased; also in tomatoes, beans, and rice.

"In 1918 Armour & Co. attempted to buy from the producers' organization about one-third of the entire crop of seeded raisins to be put up under its private brand. Had this attempt been successful, Armour & Co. would have performed no extra service, merely handling these under its own brand, duplicating the distributing agencies of the producers, and furnishing identically the same goods as those under the producers' brand. Withdrawal of so huge a quantity, as was here attempted, of any product from the usual channels of trade necessarily produces an apparent shortage of supply and an increased market price."

In the Report on Private Car Lines, page 20, the paragraphs at the top of the page.

Page 164 of the Report on Private Car Lines, the paragraph regarding an exclusive contract for the furnishing of refrigerator cars and refrigeration service.

And on page 180 to 181, the paragraph on the topic of rates.

Now, Mr. Chairman. I have here these agents' reports from which I would like to cite a few passages here and there. This is not so formidable as it appears.

Judge HAINER. Who were those complaints against?

Mr. DURAND. These are statements made to our agents who were investigating this subject in the field, by various wholesale grocers, stating the difficulties with the big packers in the way of competition, and while there are a great many here which deal with butter, eggs, cheese, and poultry. I am not touching those in the selection I have made here, but trying to confine this to the cases that are alleged as regards these unrelated lines.

I wish to say I will just read as many as you will care to hear and then stop, if you desire, except there may be one or two that are rather specially interesting.

Judge HAINER. Can you not put them in as references, without reading them?

The CHAIRMAN. Well, he is just going to read excerpts from them, Judge.

Mr. STEVENS. Mr. Durand, I wanted to ask you why you omit the complaints as to butter, cheese, and eggs?

Mr. DURAND. I am trying to respond to the request of the Attorney General to the Federal Trade Commission with respect to this appearance of the Trade Commission at this hearing. The letter of the Attorney General requested that we should especially furnish any information which we had regarding the monopoly, or any alleged monopoly, in unrelated lines, or any unfair practices or unlawful practices in unrelated lines.

Judge HAINER. Either the packers or wholesale grocers; either one?

Mr. DURAND. No; of the packers, the defendants.

Judge HAINER. The packers?

Mr. DURAND. Yes.

Mr. STEVENS. Well, Mr. Chairman, you will recall there has been quite a little testimony on the butter, cheese, and egg business, and that seems to me to be pretty pertinent.

The CHAIRMAN. Well, the decree does not cover butter, cheese, and eggs.

Judge HAINER. It permits them to engage in that business, you know.

The CHAIRMAN. This committee is not considering that question at this time, and therefore we do not feel that we should go into it any further than has already been injected in the record.

Mr. BREED. We would be glad, Mr. Chairman, if the Trade Commission has the facts, that Mr. Durand before he leaves should make the statement showing the progress of the packers going into the butter, cheese, and eggs business, in connection with obtaining a control or lack of control in those lines. Our reason for asking this is merely—

Judge HAINER (interposing). Would you want us to recommend a modification of that?

Mr. BREED. No; but I take it the argument is that if—

Judge HAINER (interposing). Or the strengthening of it?

Mr. BREED (continuing). That if they went into the cheese business, and in a few years acquired control of it, that that would be an indication of what might happen if they went in, we will say, to the coffee business or to the tea business or any other. I do not want him to go extensively into it, but would be pleased if the chairman would authorize him to make a statement as to the amount of control obtained in the cheese, butter, and egg business, if the commission has these facts.

Mr. SMITH. I understood the committee to say that he could generally state his conclusion with reference to their treatment of this, but not to go into details.

The CHAIRMAN. That was the idea, Senator.

Mr. SMITH. That that general expression of opinion that they had monopolized those lines when they went into them could be used, but that you were not called upon to hear details.

The CHAIRMAN. We are not going into the evidence stating any such conclusions.

Mr. SMITH. Not shown by the reports.

The CHAIRMAN. Yes.

Mr. SMITH. That he could generally state his conclusions, and then show his particular instances regarding the unrelated lines.

The CHAIRMAN. Yes.

Mr. SMITH. That was the position, as I understand.

Mr. STEVENS. That may be done, as I understand?

The CHAIRMAN. Yes.

Mr. DAILY. That was my understanding, too.

Mr. STEVENS. I didn't understand that Mr. Durand was going to do that.

The CHAIRMAN. Yes; he is going to state his general conclusions, but not specific instances.

Mr. DURAND. I am now on the subject of these practices in unrelated lines.

The CHAIRMAN. Yes.

Mr. DURAND. The general statement of analogy from what has happened in other lines should come later.

The CHAIRMAN. All right. Proceed, then, Mr. Durand.

Mr. DURAND. This is an interview by the commission's agent with H. H. Fairbanks, treasurer of Andrews-Fairbanks Co., Waterbury, Conn., September 27, 1918.

The CHAIRMAN. What are they, wholesale grocers?

Mr. DURAND. Yes.

Judge HAINER. Did you give the number of the case?

Mr. DURAND. I could give the file number. File, Perishable Foods, Unf. 7—Pa. 5, Pt. I. This is Barrett Report No. 64.

"Mr. H. H. Fairbanks, treasurer of the Andrews-Fairbanks Co., Waterbury, Conn., was seen at his office on Meadow Street on September 27, 1918. This firm has the benefits of a spur track running directly into their warehouse, so all their receipts are handled directly without trucking. Mr. Fairbanks criticized Armour for buying the only public cold-storage plant there was in the city from a Waterbury bank acting as receiver, and then denying the public the use of the space vacant for cold storage. This left the city without any public cold-storage facilities whatever."

That is a reference to the same point that I read from the book.

"Mr. Fairbanks had another grievance against the packers, or one of them. He said at the earnest solicitation of the State manager of Libby, McNeill & Libby, Mr. L. M. Bennett, 61 Edgewood Street, Hartford, his firm and the E. L. Hall Co. undertook to get Libby's canned goods established in the retail trade in Waterbury and vicinity. They succeeded in doing so, whereupon along came Swift & Co. and undersold them with Libby's goods. This was discovered, and Libby's manager at first denied it, but later was convinced by documentary evidence furnished by Mr. Fairbanks and Mr. W. L. Hall that it was true. Mr.

Bennett has never returned these papers. He told the complainants that he would see what could be done about it, but nothing has been done. This discovery was made about a year ago.

"To cite some specific instances, the Andrews-Fairbanks people bought of Libby canned beans at \$1.65 a case. Swift & Co., after learning who the Andrews-Fairbanks customers were, sold them the same Libby product at \$1.50 a case. Naturally the beans remained in Andrews-Fairbanks' hands.

"Another instance is condensed milk. Libby sold to Andrews-Fairbanks Co. at \$5 a case, and soon after Swift & Co. offered milk to the Andrews-Fairbanks customers at the same \$5 a case. Of course Andrews-Fairbanks could not meet that price except at a loss, as the expense of handling is considerable. Knowing that Libby, McNeill & Libby is a Swift concern, Mr. Fairbanks could not but believe that it was a piece of collusion—a coup to be sprung after Libby's goods were well introduced into Waterbury territory. The fear of such tactics leads some grocers to hesitate to handle canned goods at all.

"Mr. W. L. Hall, who was seen later, confirmed the above in every particular."

The CHAIRMAN. Well, now, what was wrong about Swift selling this stuff cheaper than the other people?

Mr. DURAND. Well, I would think, Mr. Chairman, that if we could let these speak for themselves and let the committee judge of them—anything that I could say in the matter is only my personal comment—I think we would get along faster.

The CHAIRMAN. Well, the point I wanted to make is: Did the consumer suffer any by that?

Mr. DURAND. The point that I made in introducing this material—I thought it explained the general character of the material, and I then simply wanted to leave it with the committee to judge.

The CHAIRMAN. For whatever it is worth.

Judge HAINER. Draw their own deductions.

Mr. DURAND. Yes. If the Trade Commission were to go ahead with this it would consider each of these cases reported here; say to itself, "Is this case worthy of further inquiry? Would a proceeding about it be to the public interest?" And then proceed with it.

Judge HAINER. Is that case pending? Is that one of the pending cases?

Mr. DURAND. No; nothing has been done about a case like this. In none of the cases that I shall read has anything been done about it. As I explained, the consent decree came along before any action was taken.

The CHAIRMAN. Then we will just let them go in for whatever they may be worth.

Mr. DURAND. Yes; just as the Trade Commission would look at them; it would look at them for whatever they might be worth, and I would not pass judgment on them here. I would like to leave that to the committee.

Mr. BREED. I take it, Mr. Durand, that you also conceive that these particular cases involve construction of law—say, the Clayton Act—and the question of what is or is not unfair competition under the antitrust laws.

Mr. DURAND. Yes. I am not equipped to pass on questions of that sort.

This passage is one that was referred to in something that I read yesterday. This report is in this same file. Interview No. 7 of Donald D. Sells, examiner of the Trade Commission, with Mr. R. A. Keys, president of Franklin MacVeagh & Co., wholesale grocers, Chicago, Ill., on August 21, 1918:

"While hesitating to admit it. Mr. Keys said the competition of the packers was very strong. The cheese business now seems to be practically monopolized by the packers. Competition between the large city wholesale grocers and the packers does not take place to any great extent, however, outside of the cities, for the wholesale grocers, being unable to compete with local wholesalers except in the territory to which they can ship in carload lots are held from the local markets; but the packer by filling the bottom of his beef cars with groceries can ship in less than carload lots and at the beef rate, and carry a stock of goods to sell against the local wholesaler. For this reason the packer has a national market for his groceries but has to meet in each case only local competition. The local wholesaler, whose capital is smaller than the city wholesaler, may therefore meet even stronger competition than the grocer in the city.

"The packer has also the further advantage of making a 3½ per cent net profit against a normal 2 to 2½ per cent profit by the grocer. This extra 1 to 1½ per cent can be used as a lever against the grocer, and the overhead charge of the

packer can be so shifted to meat products as to make it appear that he is selling groceries at a profit. Of course, he has the advantage of greater volume and a less overhead cost per unit, because beef pays part of the overhead."

Now, in so far as that refers to the advantage or supposed advantage of the packer in the private car, that matter, of course, was covered in the Interstate Commerce Commission case.

This is file perishable foods, Who 7-Or 5, Part I:

"REPORT NO. 44 OF SPECIAL AGENT BARRETT.

"Interview with Eben M. Somers, manager F. C. Bushnell Co., at New Haven, September 21, 1918:

"Mr. Somers was very bitter against the packers, especially Armour. He was glad to see the recommendation of the commission in regard to taking over the packer branch houses in the interest of equal opportunity to all. He has had to give up handling cheese altogether on account of packer competition. The packers are crowding the grocers more and more, particularly in the lines of canned goods, rice, cereals, beans, and tea and coffee. He used to handle Armour's canned goods, but has given it up.

"Armour would get him loaded up and then undersell him. He now handles Libby's canned goods, which he considers of better quality than Armour's, but he is fearing every day that Libby will pursue the same tactics, especially as he has heard of it being done at other places. Armour can undersell because of the advantage he has in getting tin and other canning materials, and secondly, because he is not above putting poor quality stuff, which is less expensive, in with his first-class material. Mr. Somers says the latter scheme is also true of some of Wilson's canned goods, as jam, for instance. The sample which it is sold by is invariably all right, and some of the jam delivered is, too, but a part of it is often of poor quality. In canned goods Armour goes in for sauerkraut, fish, vegetables. Wilson for jam, fruits, and vegetables. Morris, peas, beans, and corn. And Libby, meats, fruits, and vegetables.

"The packers take the cream of the trade and leave the slow payers and those particular about quality to the independents.

"He cited an occasion of unfair practices"—

I want to say, of course, that the commission would not accept any of this material as conclusive evidence. It is subject all to the general qualifications that I have made here.

"He cited an occasion of unfair practices, telling about a New York broker whom the packers hired to visit the independents and find out what kinds and brands of canned goods were in most demand among the retailers. Having acquired this information, the packer representatives then visited the retailers, asked them what they paid for this kind of canned goods, and offered them at 15 to 20 cents a case cheaper. In return for this concession in price the retailers were supposed to take other articles which the packers handled, so that the lack of profit on the canned goods could be made up.

"Mr. Somers thinks that in the public interest the packers ought to be restricted to meats and meat products. Controlling that they control quite enough. He cited in support of that the case of the Kellogg Corn Flakes Co., of Battle Creek, Mich."

This reference is to control of refrigerator cars. In support of his statement about that he cited the case of the Kellogg Corn Flakes Co., of Battle Creek, Mich.:

"Most people prefer the Kellogg corn flakes on account of their superior quality. Armour also makes corn flakes. At times the Kellogg people can not get cars to ship their product East. Armour can always get car space. He covers the floor of refrigerator cars in which other articles, like beef, are carried with boxes of corn flakes. They do not need refrigeration, but are not injured by it.

"Mr. Somers favors equal freight facilities for all."

In this same file, report No. 45, also by Mr. Barrett:

"Interview with Le Grand Cannon, president of Stoddard-Gilbert Co., at New Haven, Conn., September 21, 1918.

"Mr. Cannon says they feel keenly the packer competition. This is felt particularly in canned goods, cereals, rice, and cheese. Due to packer inroads their cheese business is not more than one-fifth of what it used to be. Due to economies in buying material, and more complete and favorable distributing

facilities, they can and do undersell the grocers who have to depend on more generous credit arrangements and high qualities of products offered to hold their customers."

File meat investigation Agef. Lo 5, part 16.

Report by Byford E. Long, an examiner of the commission. No. 181, of an interview with C. H. Beauchamp, 269 South Main Street, Los Angeles, Calif., December 24 and 26, 1917.

Mr. Beauchamp was formerly in the employ of some of the packing companies—of the National Packing Co., and he states—this is what Mr. Long writes:

"He states that he firmly believes that the big packing house interests, namely, Armour & Co., Swift & Co., Cudahy Packing Co., Morris & Co., and Wilson & Co., have since said time"—that is, since the time when he was in the employ of the National Packing Co.—"continued to and are now fixing prices for fresh meat of all kinds, as well as all kinds of pork and pork products, and everything they sell, in order to maintain uniform prices.

"Having been away from Chicago for the past few years, Mr. Beauchamp could give no information as to the parties who represent these companies now in price fixing, but stated that from his experience and observation of the uniformity of prices for various kinds of meat, as well as by-products, he is satisfied that the same system is being operated to-day as was operative when he was a representative assisting the packing house interests in price fixing a few years ago."

Now, here is a man who states that he was in the employ of the National Packing Co., having been in the employ of other of the large packing interests from 1889, and that during a long period of years up to the dissolution of the National Packing Co. in 1912 he sat weekly in price-fixing meetings with other members of the five packing companies to fix the prices on cured meats. That there were similar meetings by their representatives each week to fix the price on fresh meats, and he now, after having passed out of the employ of these companies, states it is his opinion, based on his experience and observation of prices, that they are continuing, as he says, "They have since that time continued to and are now fixing prices for fresh meat of all kinds, as well as all kinds of pork and pork products and everything they sell."

The CHAIRMAN. But he does not state any facts upon which he can get at it?

Mr. DURAND. Well, the facts are, on the meat business, and I have not read them. I think they ought to be read to this committee, because I think that they would help this committee in feeling that there is something in the proposition that the Trade Commission is here making, namely, that there is a menace of monopoly, and that the experience which we have with these in the other lines, including the meat lines, is pertinent testimony as to what can be expected if we admit them into the unrelated lines.

I would like to read another report of Mr. Long's which appears in this record.

Judge HAINER. That is the purport of all your testimony, is it, from the reports, that which you have detailed from this report with reference to monopolistic tendencies and a monopolizing of the meat trade and meat industry?

Mr. DURAND. Yes, sir.

Judge HAINER. And from that conduct you draw the conclusion that you think is irresistible, in your mind, that if they are permitted to go on unrestrained into these unrelated commodities that they will ultimately monopolize these unrelated commodities?

Mr. DURAND. Yes. Now, I don't know what the views of the committee are as to the weight of the evidence with reference to monopoly or combination or agreement.

Judge HAINER. What I supposed you were bringing out in these complaints was that if there were any specific acts of monopoly in the unrelated commodities at the time the decree was signed, or prior thereto, that you would show them. I suppose that was the purpose of reading these things.

Mr. DURAND. Yes; these which I have referred to use the phrase "everything they sell," and that is pretty conclusive; and that is why I bring them in here.

Judge HAINER. Is there anything more in that report as to definite and specific acts as to a monopoly in the unrelated commodities except what you have read?

Mr. DURAND. No, sir.

Judge HAINER. Except simply the statement of Mr. Beauchant "everything they sell" ?

Mr. DURAND. Yes, sir.

The CHAIRMAN. That is his opinion.

Judge HAINER. Yes; that is his opinion.

Mr. DURAND. His report goes to the meat and meat by-products, and as to those it was his knowledge, from participating in the price-fixing meetings that the prices were fixed weekly. But what Mr. Beauchant would be able to tell you as to the unrelated lines, I would not be able to say. His expression is "everything they sell," and that is inclusive.

This is perishable foods file Who 7-Or5, Pt. 2.

This is a report by Byford E. Long, report No. 3, an interview with Lewis de Groff & Son, wholesale grocers, 386 Washington Street, New York City, dated August 6, 1918. This was his interview with Jesse D. Smith, vice president of that concern [reading]:

"Mr. Smith says his salesmen have for months been reporting from time to time that some articles of canned fruits, vegetables, grape juice, breakfast food, or coffee have been sold by some one of the big meat packers at a less price than Lewis de Groff & Son were selling them, and in consequence many customers on these particular articles have been lost. When asked by Mr. Dodd"—

Mr. Dodd was the treasurer of the company. [Continuing reading:]

"If he considered the meat packers like Armour & Co. and Swift & Co. (through Libby, McNeill & Libby) a menace to the business of wholesale grocers"—

Judge HAINER. That is a conclusion. Let him state the facts. If he would state the facts, it would be better; that is a conclusion that would not be permitted in any court. Does he detail any facts of what they were doing or what they said they were doing?

Mr. DURAND. I simply marked the passage where he made his complaint, and I was reading it. I can go on and go through with this—

Judge HAINER (interposing). I am just calling your attention to that.

Mr. DURAND. I could go through this and strike out those passages.

Judge HAINER. No; go on, I did not want to interrupt you.

Mr. DURAND (continuing reading):

"And the Lewis De Groff & Son, especially, Mr. Smith answered in the affirmative and stated that they were taking the trade away on articles in which the best profits were made by the wholesaler, and if they made as rapid progress in the next two years as they have in the past two the firm of Lewis De Groff & Son would have no customers in the food products and would have to close up."

His interview with Mr. Dodd is as follows:

"After hearing Mr. Smith's statement Mr. Dodd said that he had no idea that Armour & Co. and Swift & Co. and the other three big meat packers were so extensively engaged in the fruit, vegetable, canned goods, and foods as to become dangerous to the wholesale business in general. He then became very much in earnest and said it did not seem right to have the Big Five meat packers to go outside of their line of meat business and invade another field like packing and canning all kinds of food products and distributing them to the retailers. He believed they would be able to undersell the wholesale merchants, because through their branch house organization for distribution of meats they are able to handle the canned goods and groceries without much additional expenses, and therefore lower than can the wholesaler. He says the Government might say that was all right because the consumer could buy the foods cheaper. But after other distributors are all eliminated from the business and the Big Five have complete control of the wholesaling of food products, as they have of the meats, such prices could then be gotten for the controlled article as the Big Five desired."

Judge HAINER. That is in your report?

Mr. DURAND. The printed report?

Judge HAINER. Yes; the substance of it.

Mr. DURAND. No; I don't think so. I don't recall that case in the report.

Judge HAINER. I thought it was.

Mr. DURAND. It is practically an expression of opinion, but the opinion that within two years their firm would be put out of business if things went on as they were going is what I wanted to call attention to.

This is from report No. 7, report of Byford E. Long, of an interview with Killan & Clark (Ltd.), 100 Hudson Street, New York, brokers in canned fruits and vegetables, dated August 9, 1918. Mr. Long was interviewing Mr. Clark. Mr. Clark says [reading]:

"The competition is very active in this business, Mr. Clark says, but it is open and fair, and he knows of no unfair dealings or practices of his competitors. He states that the prices are made by the packer or manufacturer, for he finally decides what he will sell for when goods are sold through a broker.

"He says speculation in food products has been eliminated by the rules of the Food Administration as profits are limited, and that it is a good thing and prevents the unnecessary rise in the prices thereof."

Then he goes on with some other practices of the Big Five. I think that statement that they make prices and are guilty of unfair dealings and practices in this line is important.

Judge HAINER. Why do you put that in?

Mr. DURAND. Because in the latter part of his report here he says "The entry of the big meat packers into the field of food supplies, such as all kinds of canned fruits, vegetables, canned meats, fish, etc., as well as fresh fruits, meats, fish, etc., will in a short time doom the business of the wholesalers and the brokers in that line."

This is from Mr. Long's report, No. 14, August 19, 1918, of an interview with Hall, Wedge & Carter, commission merchants, Chicago, Ill. Mr. Hall says [reading]:

"*Competition.*—Mr. Hall says this business is a very worrying one, and there is but little in it after expenses are all paid. Competition is very strong and keen, but there are no unfair practices on the part of his competitors, so far as he knows. All try to sell their goods at a profit, but sometimes they can not, so must make that up next time. The meat packers, Swift, Armour & Wilson, are strong competitors against the jobber and they have a big advantage over the small dealer because they can ship in carload lots, a 'mixed' shipment, consisting of meats, lard, butter, eggs, cheese, or other food products, direct to a branch house, who will then sell same to the retail dealers of that city. By their branch-house system the Big Five meat packers distribute not only meat but all other products handled by them, and therefore can deliver the goods cheaper than a one-line commission merchant. They can take a loss on perishable goods or food products in a city and make up the loss on meat. They also have buying stations for eggs all over the country, own creameries, contract with growers and packers of vegetables for their output, so are in a position to control the markets in many places. He says they are a menace to the trade in food products, and unless curbed may gain control of the markets in food products in a few years."

Now, I will continue this if the committee desires.

Judge HAINER. They are along the same lines, are they?

Mr. DURAND. They are along the same line.

Mr. BREED. Can we have the principal ones related?

Mr. DURAND. Well, I have not selected them. Mr. Breed. I would be glad to continue reading them. They are what the Attorney General and the committee asked for. I do not want to be tedious nor encumber the record if the committee thinks there is sufficient of this to give an indication.

Judge HAINER. We could not express an opinion with reference to that.

Mr. SMITH. Couldn't he simply name the places from which he has reports without reading them?

The CHAIRMAN. The proposition so far is that it consists largely of opinions of the persons who are interviewed as to the effects; as to the actual facts there are very few, if any, instances where they have experienced any such conditions as they describe.

Judge HAINER. Specific acts.

The CHAIRMAN. Yes; specific overt acts. Of course, none of these would be competent in a court, and would not be such evidence as anybody could go to court with or get any action upon. But upon the hope that there may be something of a different nature develop, and in order that we may see the widespread feeling in that direction, I believe we ought to continue with this.

Judge HAINER. We do not want to curtail you at all, Mr. Durand.

Mr. DURAND. If I could have taken more time I could have taken out some of these matters, but I did not know whether I should do this.

Here is another report of Byford E. Long, report No. 35, dated December 6, 1918, of an interview with D. Canale & Co., wholesale and commission merchants in food products.

Mr. BREED. Where?

Mr. DURAND. Memphis, Tenn. [Reading:]

"Mr. Canale says while the competition is keen, it is fair in most instances. He says the Big Five meat packers are gradually sewing up the business of the wholesale grocer. They have within the past few years practically taken the cheese business away from them by buying the factories and buying up the supply where same is made, putting it in storage, and regulating the distribution so as to make big profits and control the market. They have a big hold on the egg and butter business, and within the past three years have been very active in all kinds of canned fruits and vegetables, buying up the output of many factories. In all of these things in the Memphis territory they are competitors of the wholesale grocers, and D. Canale & Co. meets them in these products which are handled by the firm. Mr. Canale says that he believes the war and the orders made by the Food Administration to regulate food sales has halted the meat packers' activities and kept the wholesale grocers from losing their canned goods business to the Big Five. They simply can go into a territory and take the business away from a wholesale grocer by making delivery from 'pool cars' (being cars where shipments to many customers are made along a railroad at each station through a branch house of the packer). It gives them a big advantage on rates and deliveries. Mr. Canale says that if the Government does not continue to regulate the Big Five after the war, they will in a short time control the distribution of food products, especially canned goods of all kinds, and have a monopoly of the business. Mr. Canale says they have never had a cut-price campaign in Memphis or this territory on canned goods, but that they just make the prices lower on these goods than a wholesale grocer can handle them for, and naturally take the customers away from the grocer. The packers claim they can distribute cheaper than the grocer on account of having own car lines and having own branch-house selling organization."

This is report No. 55 of Byford E. Long, dated September 16, 1918, of an interview with Nicholas Burke Co. (Inc.), wholesale grocers, New Orleans, La. This is an interview with George Swarbrick, secretary and treasurer [reading]:

"Mr. Swarbrick says competition is very keen; that there are 16 wholesale grocers in New Orleans handling a very full line of all goods and several more with good stocks of partial lines, and that all are out to get business. Then in out-of-town business they constantly run into competitors from New Orleans, Memphis, and other centers, and the Big Five meat packers (Swift, Armour, Wilson, Morris, and Cudahy) all have branch houses here, and as they also carry a full line of canned and bottled food products, cheese, poultry, eggs, provisions, rice, beans, as well as meats, the wholesale grocer has very strong competition. He says competition is fair ordinarily. The Big Five do have an undue advantage over the wholesale grocer by reason of running his route meat cars and own private refrigerator cars to carry meat to various towns from his branch house, and then also carrying cheese, eggs, poultry, and canned goods, also to various customers in these 'routes' towns. He thinks that should be stopped by the Government. He says the salesmen at times report low sales prices by some one of the Big Five in various territories on some canned goods, but that it is not a serious condition in the New Orleans district. He says that it is a common knowledge that the Big Five usually control any market they go into on any commodity, and that they go buy up the supply to get this control. It has happened in cheese, eggs, poultry, and other commodities, if current reports are correct. He thinks that the meat packers should be required to remain in that line of food products and let the wholesale grocers continue to distribute the canned and package food products."

I want to say I am reading both kinds, where a man thinks it is fair and where another man thinks it is bad. This is Mr. Long's report, No. 74, of an interview with Earle Bros., Tyler Grocery Co., and Collins & Co. (Inc.), wholesale grocery firms, dated September 30, 1918, at Atlanta, Ga. [reading]:

"The three wholesale grocers interviewed all state that the Big Five have branch houses here, and that their salesmen canvas this territory thoroughly for business. These meat packers handle practically everything in food products that wholesale grocers carry, as well as meats, butter, eggs, cheese, and poultry. The Big Five in this territory have been selling some canned

goods very low. Mr. Samuel Earle states that they can do this in one territory, while they may make up the loss in another where they control the market; and then they have unlimited capital and can buy up the supply on a certain commodity, whether it be cheese, canned milk, grape juice, canned tomatoes, or other products, and hold same in storage until the article becomes scarce and the demand forces the price up. Then sales can be made at a big profit. By not carrying full line, as the wholesale grocer does, the meat packer goes into a certain commodity and gets control of the supply, then even the wholesale grocer must buy from him or do without that commodity until the supply is replenished.

"Unfair methods.—Mr. Earle says that the wholesale grocers here feel that the Big Five by having a perfect understanding of each other's intentions have an advantage over wholesale grocers, and when one of the Big Five goes into the market to create a demand for a commodity by advertising in all the magazines and newspapers and by having his traveling salesmen push that commodity onto the retailers by lowering prices and urging purchases, it is noted that the others of the Big Five are busy on marketing other commodities by similar advertising campaigns. For instance, when Armour for months is advertising everywhere—newspapers, magazines, and billboards—his breakfast foods, Swift will be advertising just as much in some of his many food products, while Wilson will keep up with advertisements on catsup, and Morris and Cudahy will perhaps be advertising different articles also; but they seem to avoid pushing and advertising the same article at the same time. By pushing an article and selling it cheap—perhaps below cost—to get the public to want it, then when a trade is built up thereon and a demand created for it, they can then raise the price and make back their losses and much more. The wholesale grocers feel that this is an unfair method of the Big Five, so Mr. Earle says. He thinks that they are endeavoring to secure control of food products, and unless curbed, believes that it will be only a few years until the Big Five have a monopoly thereon."

THE CHAIRMAN. That says they can do those things. Is there any statement in there that they did do them?

MR. DURAND. I have read the statement just as he made it.

THE CHAIRMAN. All right.

MR. DURAND. I have some instances here that I might read later on on rice, showing illustrations that the thing cited is a general practice.

This is Mr. Long's report, No. 86, dated October 10 and 11, 1918, of an interview with Maret-Streater Co., Oglesby Grocery Co., Kelley Bros. Co., and McCord-Stewart Co., of Atlanta, Ga. [reading]:

"Big Five activities.—The wholesale grocers interviewed all say the Big Five—Armour, Swift, Cudahy, Morris, and Wilson—have branch houses in Atlanta and that their salesmen canvas this territory thoroughly for business; that these meat packers handle practically everything in food products that wholesale grocers carry, as well as meats, butter, eggs, poultry, and cheese. They sell rice, coffee, dried and evaporated fruits, catsup, cereals, breakfast foods, canned vegetables and fruits of all kinds, canned milk, peanut butter, pickles, catsup, cheese, grape juice, soda fountain supplies and sirups, canned meats, canned salmon, and many other commodities. Swift and Armour take the lead in business in the Atlanta territory. They seem to be able to sell many of their food products at prices the wholesale grocers can not meet in competition without losing money. Then their system of 'route-car' deliveries give them an advantage over the wholesale grocers with some out-of-the-city trade. As they are in all the markets of the United States, they also have an advantage over the local wholesalers, because if one market is low they can ship to another in their own private cars, which are constantly moving with something, back and forth.

"They will go into a market on a certain product at a time, spend large sums of money advertising it, reduce the price down to or below cost, and get it into the homes of people by free sample packages, then when a demand has been created prices can be raised so as to make them a big profit in the end. First one article and then another has been 'pushed' this way by the Big Five until they are gradually getting their food products to be the leading ones on the market. It begins to look to these wholesale grocers interviewed as if the Big Five intended to absorb the food-product business, and some of them—Mr. Kelley, Mr. Albright, and Mr. Hudson—expressed the belief that unless curbed by the Government the time would be only a few years away when they would have competition stifled and practically a monopoly on many of

them. First the Big Five practically took away from the wholesale grocers the handling of salted and smoked eats and provisions; then next, butter and eggs; and now they seem to be trying to get the remainder of the food products they have been distributing for the packers and manufacturers since the beginning of time. 'If the Big Five are able to produce, manufacture, and distribute food products cheaper than is being done by wholesale grocers, it would be legitimate and all right,' one of the grocers—Mr. Coleman, vice president of McCord-Stewart Co.—stated; but he also added that if they were selling them cheaper in order to eliminate the competition of the wholesale grocer and expected after that is accomplished to have a monopoly thereon and be able to get such prices as they desired, then they should be curbed by the Government and prevented from getting a monopoly on these food products.

"Mr. Hudson, vice president of McCord-Stewart Co., stated that as a sample of the intense advertising of the Big Five this grocery company had this morning received a letter from the Atlanta Journal urging them to handle Armour's corn flakes because through the Journal Armour was advertising the products. He had thrown the letter in the scrap basket, but dug it out, and same is attached 'Exhibit A' to this report. Mr. Hudson said, of course, they would not handle Armour's goods, because it would be handling a competitor's article, for he is their competitor on probably 50 per cent of food products handled."

The letter from the Atlanta Journal is as follows [reading]:

THE ATLANTA JOURNAL,
Atlanta, Ga., October 9, 1918.

DEAR SIRs: Armour & Co., through the advertising columns of the Atlanta Journal of last Friday introduced into the homes of over 65,000 people their newest product—"Armour's corn flakes."

For the next eight weeks Armour & Co. will continue to tell the people in these homes the many good reasons why they should purchase Armour's corn flakes.

"These advertisements will occupy 480 lines each time and will without doubt create a great consumer demand.

"May we suggest that if you are carrying these corn flakes in stock that you take advantage of this advertising by displaying this product in your windows, or at least giving prominence to them by displaying same on your counters and show cases.

"By so doing you will be tying up with this valuable advertising and be able to cash in to advantage.

"We will appreciate any cooperation that you see fit to give us in making this advertising campaign a success.

"Yours for the fourth Liberty loan,

"THE ATLANTA JOURNAL,
Merchandising Department."

I can not read the signature.

Mr. Chairman, I am afraid this is taking a good deal of time, and perhaps it would be as well for me to submit here the list that I have of these file numbers, and the agent and the companies interviewed, and the date, without reading them further.

Judge HAINER. If they are all along the same line.

Mr. DURAND. They are along the same general lines.

Judge HAINER. You have read them and you can make that statement?

Mr. DURAND. They are along the same general lines. Perhaps some would be better and some worse, and some are on one aspect and some on another.

Judge HAINER. But they are of the same general character?

Mr. DURAND. They are of the same general character, so far as I know. But if the committee would like to look at any of them, we would be glad to make the record and the files available to the committee at any time. I can file this list, Mr. Chairman, for the record, if you desire.

The CHAIRMAN. That may be done.

(The list is as follows:)

INSTANCES OF UNFAIR OR QUESTIONABLE PRACTICES AND UNDUE ADVANTAGES.

File Unf 7, Pa 5, Part 1: N. M. Barrett, Nos. 64 and 65, interview with H. H. Fairbanks, treasurer Andrews-Fairbanks, at Waterbury, Conn., September 27, 1918; B. E. Long, No. 17, interview with T. A. Snider Preserve Co., manufac-

turers and distributors of catsup, Chicago, Ill., August 23, 1918; E. C. Reed, No. 15, interview with Mr. Roland Harris, of Barker, Harris & Kehrhaun, brokers in dried fruits, nuts, foreign hides, etc., Boston, Mass., August 19, 1918; D. D. Sells, No. 7, interview with R. A. Keys, president Franklin McVeagh & Co. wholesale grocers, Chicago, Ill., August 21, 1918.

File Hea 6, A 5, P 3, Part 4: Marked passages in first memorandum.

File Who 7, Or 5, Part 1: N. M. Barrett, No. 14, interview with Eben M. Somers, manager F. C. Bushnell Co., New Haven, Conn., September 21, 1918; N. M. Barrett, No. 45, interview with Le Grand Cannon, president Stoddard Gilbert Co., New Haven, Conn., September 21, 1918.

File Who 7, Or 5, Part 2: B. E. Long, No. 3, interview with Lewis DeGross & Son, wholesale grocers, New York City, August 6, 1918; B. E. Long, No. 7, interview with Kilian & Clark (Inc.), brokers in canned fruits and vegetables, August 9, 1918.

File Who 7, Or 5, Part 2: B. E. Long, No. 14, interview with Hall, Wedge & Carter, general commission merchants, Chicago, Ill., August 20, 1918; B. E. Long, No. 35, interview with D. Canale & Co., wholesale produce and fruit dealers, Memphis, Tenn., September 6, 1918; B. E. Long, No. 55, interview with Nicholas Burke Co. (Inc.), wholesale grocers, New Orleans, La., September 18, 1918.

File Who 7, Or 5, Part 3: B. E. Long, No. 74, interview with Earle Bros., Tyler Grocery Co., and Collins & Co. (Inc.), wholesale grocery firms in Birmingham, Ala., October 2, 1918 (Big Five activities); B. E. Long, No. 86, interview with Maret-Streater Co., Oglesby Grocery Co., Kelley Bros. Co., and McCord-Stewart Co., wholesale grocery firms at Atlanta, Ga., October 14, 1918 (Atlanta Journal letter, Oct. 9, 1918).

File Who 7, Or 5, Part 4: Edwin C. Reed, No. 13, interview with Mr. Clarence E. Manscomb, manager of Delano Potter & Co., wholesale grocers, Boston, Mass., August 16, 1918; E. C. Reed, No. 14, interview with Mr. Finigan, manager of the Boston Wholesale Grocery Co., Boston, Mass., August 17, 1918.

File Ter 7, Ad 5, Part 1: N. M. Barrett, No. 40, interview with J. W. Lanigan, New Haven, Conn., September 20, 1918.

File Ter 7, Ad 5, Part 3: E. C. Reed, No. 42, interview with Mr. Henry G. Sears, president and chief owner Henry G. Sears Co., wholesale grocers and produce dealers, Holyoke, Mass., September 12, 1918.

File Ter 7, Ad 5, Part 2: Cowie, No. 15, interview with Robert H. Brooks, bookkeeper and manager of J. Gillespie & Sons, wholesale grocers and bakers' supplies, Philadelphia, Pa., August 19, 1919; Cowie, No. 16, interview with Robert Comly, of Comly-Flanigan & Co., wholesale grocers, Philadelphia, Pa., August 19, 1918; Cowie, No. 32, interview with J. A. Edgar, secretary-manager Frankford Grocery Co. (Inc.), Philadelphia, Pa., August 29 and 30, 1918; Cowie, No. 49, interview with Joseph M. Brown, president of V. J. Brown & Sons, wholesale grocers, Baltimore, Md., September 11, 1918.

Mr. DURAND. I referred a moment ago to one of the general statements that the wholesale grocers have made, and I think that I have here some rather concrete evidence upon the same point—that is, on rice. ¹

Mr. BREED. What point?

Mr. DURAND. The entry of Armour & Co. into the rice business. I have a letter from Mr. J. J. Kettel, president of Wilson & Kettel Co., wholesale grocers, 21 Bridge Street, Worcester, Mass., dated September 10, 1918. He says [reading]:

"Some regulation should prevent any men going into the production areas and buying up an entire crop. This was the case with tomatoes a year ago, when Armour & Co. cornered the crop in certain areas. The same thing occurred recently when Armour & Co. had control of the rice. Wilson & Kettel have no rice at the present time, and have not had for a long time."

The CHAIRMAN. That is the statement of the commission?

Mr. DURAND. No; that is the statement of Mr. Kettel.

Mr. BREED. What is the date of that?

Mr. DURAND. September 10, 1918.

Judge HAINER. What place does that refer to?

Mr. DURAND. Worcester, Mass.

Judge HAINER. Just one town?

Mr. DURAND. Yes, sir.

Judge HAINER. What year was that?

Mr. DURAND. September 10, 1918.

Judge HAINER. That was during the Food Administration, was it not?

Mr. DURAND. Yes, sir.

Judge HAINER. Couldn't these food-control men regulate that at that time under the Lever Act? They had a pretty strong hold, didn't they?

Mr. DURAND. Yes; I think they did, Judge.

Judge HAINER. But they didn't do it?

Mr. DURAND. I would not want to say that.

Mr. Robert L. Montgomery, of the Montgomery Co., wholesale grocers, Philadelphia, Pa., states that in the prior 60 or 90 days they had been unable to buy a pound of rice, yet the meat packers had large supplies, and had been selling to the retailers for 1 to 1½ cents below the market price.

Mr. BREED. What is the date of that?

Mr. DURAND. I don't believe I have the date of that.

Mr. BREED. 1918, I suppose?

Mr. DURAND. I suppose it was; I presume it was in this same period.

Here is a letter signed by E. H. Mason, president of the National Bank of Brunswick, Brunswick, Ga., addressed to the Hon. W. J. Harris, president of the Federal Trade Commission, May 5, 1917. He writes [reading]:

"DEAR SIR: I want to tell you"—

I will not read all of the letter.

"I want to tell you of a transaction that came directly to my notice yesterday afternoon. Yesterday afternoon while sitting in the office of one of our jobbing houses the manager opened a letter from Wilson & Co., packers and dealers in fresh meats. I noticed that he took out of the envelope an invoice showing 150 sacks of rice. I told him that it was somewhat singular that he was buying rice from the packers of fresh meats, as it appeared to me that this was out of their line. He told me that all of the rice had been bought by the packers, and he was compelled to buy through them.

"I am thoroughly convinced that commodities other than rice have also been bought by these people, and are being sold to the trade at an enormous profit."

I think that is all I will read of that file.

Mr. BREED. Are those merely illustrative of a general situation which the commission found to exist?

Mr. DURAND. I have turned into the record a list of a considerable number of other reports of agents of a similar general character as those that I have read.

Mr. BREED. Do the records of the commission show that this complaint with respect to the control of rice by the packers was prevalent throughout the country, or only just locally?

Mr. DURAND. I think there were a number of places where that condition was reported.

Now, I think, Mr. Chairman, that the record is in a somewhat unsatisfactory condition as respects this matter that the committee and the Attorney General particularly inquired about. You have particularly inquired regarding the extent of control, and whether there is a monopoly in the unrelated lines by the five large meat packers, and what instances we have of unlawful practices. And I have explained that we do not know what the total proportion is that the packers hold of the wholesale grocery trade. It presumably is not very large. It would be surprising if it were an extremely large per cent, because they have started in it only recently.

I have also explained that we do not know and can not present to you cases tested out and sifted by process of law to say, "Here are unlawful practices." I have shown why we could not. The material that I have presented is subject, as you see, to the criticism of being *ex parte*. And I have explained that I am presenting it so that the committee may see that those who advocate the modification of the decree can not say that there is no complaint of unfair practices; they can not say that the packers have a clean bill of health in this line. There are complaints. What their value is; how much would appear to be well-founded on thorough sifting and investigation under the procedure provided for by law, of course, remains to be seen. But there are complaints, and the complaints are sufficient, I think, to put us on notice, that there is likely to be some evidence of unfair competition which inquiry would substantiate.

Now, as I say, I am not aware, of course, of the opinion of the committee as to whether the reports of the Federal Trade Commission have or have not proved a combination among those five meat packers, in meats, and perhaps in some other lines not covered by this decree. I do not know whether the present

Attorney General feels settled in his own mind as to whether the commission's report has shown a combination or agreement, or not.

The CHAIRMAN. Well, without expressing any position upon the part of the committee or the Attorney General, of course—

Mr. DURAND (interposing). I would not ask for that, of course.

The CHAIRMAN (continuing). Would it be sufficient for you to make your argument and base your conclusions upon the assumption that you have shown a monopoly with reference to meat and meat products.

Mr. DURAND. What I think, or what the commission thinks about that matter—

Judge HAINER (interposing). Assuming that there is, for the purpose of your testimony.

Mr. DURAND. That there is a monopoly?

Mr. SMITH. Mr. Chairman, wouldn't it be possible or proper for him to express his own conclusion from his own investigation for whatever it may be worth to the committee?

The CHAIRMAN. He may do that, certainly.

Mr. DURAND. I was just trying to make the point that the whole weight or effectiveness of our argument here that there is a menace in these unrelated lines had been upon the extent to which the committee or the Attorney General are convinced that the packers are in agreement or combination, or want of agreement or combination on the other lines.

The CHAIRMAN. And that is because of the fact that you have no specific data showing monopoly among the meat packers with reference to the unrelated lines, or showing any unlawful combination upon their part with reference to those unrelated lines?

Mr. DURAND. Yes; and the further fact that you must judge the future by the past; what they are likely to do is, I think, a material thing in this consideration. And that can be judged only by the past as to what they will do in the future.

Mr. SMITH. Mr. Durand, won't you give your opinion, what they are likely to do?

Judge HAINER. That is, judging from these acts with reference to the meat-packing business, what is your opinion with reference to the unrelated commodities? That is what we desire to get at.

The CHAIRMAN. Yes.

Mr. DURAND. I would like to state that as briefly as I can, referring simply to large bodies of evidence, without going into that in detail.

Mr. BREED. May I ask you, before you start, whether these large bodies of evidence were before Attorney General Palmer prior to the filing of this petition in this equity action?

Mr. DURAND. Yes; all of them were before Attorney General Palmer in this case. A large part of them, however—that is, all of the documentary evidence has been returned by the Department of Justice to the Federal Trade Commission, so that unless the Department of Justice took copies during the time when they had this material in their possession, the documentary evidence itself, as distinguished from the published reports, is no longer in the possession of the Department of Justice, and the present Attorney General has had no access to it. That I understand to be the case. And inasmuch as a very large part of the evidence in the case was documentary, additional to that set out in the report, that is of some importance, I think.

You see that the report bases almost all of its conclusions on documentary evidence that we had taken from the files of the packers. They knew that we had that evidence, and that evidence we set out in the report, and we thought it sufficient to make a case. But we had a great deal of evidence that our agents, going all over the country, had gathered from men—witnesses who had information on that subject. And we did not disclose in the report hardly any of that character of information. We thought that we would strengthen the Government's case by withholding that and presenting it in the case.

This report of Mr. Long with regard to Mr. C. H. Beauchamp and his knowledge, personally sitting week by week for years in the price-fixing meetings at which the prices of smoked and cured meats were agreed upon among those five meat-packing interests, that testimony did not appear in the published report. It was before Attorney General Palmer. I doubt whether the present Attorney General has had any opportunity to see it. And there are things like that which seem to me are material, so that the question

should not be settled just on the ground of whether one feels in general that the Federal Trade Commission was right or the packers were right on the contention of a combination.

Now, as to the general evidence that I would refer to is that the packers have a vast organization for the overhead management of business in a large way. I think that makes them a menace when they go into any one of these unrelated lines.

Now, the general evidence as to that is found in part 1, where—I might state my second point, and all three points are covered in part 1 of the report.

The second point is that they have an extensive physical plant in the way of manufacturing plants that in many instances are adaptable for expansion into other lines—of refrigerator cars that can transport other commodities, and branch houses that can sell them.

In the third place they have vast financial power of their own, and because of their relations with banking institutions.

The CHAIRMAN. Now, can you not assume those things as proven, Mr. Durand?

Mr. DURAND. Well, I am only going to refer in a very general way to the fact that in part 1 you have a summarized statement—just a page or two, in part 1. On pages 260 to 261 is the statistical summary of the present control by the packers of various facilities and industries. That is table No. 64.

Mr. BREED. Can you state briefly into the record the percentages from those tables?

Mr. DURAND. Yes. I would show the committee that chart [indicating a chart], which goes with the table and shows that.

The percentages here are these: Meat group: Receipts of live stock at stockyards controlled by the big five as compared with receipts at all yards, 66.8 per cent, if the Chicago yards were not counted in; 77.2 per cent if the Chicago yards were counted in.

Beef refrigerator cars of interstate slaughterers, their percentage is 93.1 per cent; live-stock cars, 1.8 per cent.

Number of branch houses operated by interstate slaughterers, 89 per cent.

Interstate slaughter: Cattle, 82.2 per cent; calves, 76.6 per cent; sheep, 86.5 per cent; swine, 61.2 per cent. All animals, estimated live weight, 73.3 per cent.

Interstate and wholesale local slaughter: Cattle, 74.5 per cent; calves, 62.5 per cent; sheep, 78.5 per cent; swine, 66.9 per cent. All animals, live weight, 67.8 per cent.

The CHAIRMAN. Now, Mr. Durand, those were the conclusions of the Federal Trade Commission upon the testimony which they had before them?

Mr. DURAND. No; those were the conclusions of the Federal Trade Commission statistically arrived at from a schedule of inquiries addressed to every concern, the name and address of which we could get, which was interested in this line. That was certified to by the companies, and it was stated to them that correct information was required, under penalty of the law.

The CHAIRMAN. On such information as that you feel there was a monopoly by the packers in these meat lines?

Mr. DURAND. Yes, sir.

The CHAIRMAN. Then can you not go ahead on that premise, without going into these details?

Mr. DURAND. Yes. I would simply refer you to these two pages giving the summary.

The CHAIRMAN. All right.

Mr. DURAND. Now, the next thing that I would refer to is Table 62 in Part I, extending from pages 237 to 256, which shows the progress of the packers, from 1857 to 1917, and which shows specifically, year by year, the effects and companies and plants acquired, showing the rapidity of development, which is the point that I have been making as to these unrelated lines, and by analogy showing that in the unrelated lines they will rapidly develop. This table includes a good deal on the unrelated lines, but it is in the more recent years.

On their vast financial power, I think, I would refer you to part 1, the table called Table No. 65, which begins on page 290 and carries through several pages, and is a classified list of the companies in which the five big packers are interested; and among the classifications there you will find the classification of banks, and I would refer you to that classification of banks in which the five

packers are interested, which is the table showing the manner in which their interest appears.

The CHAIRMAN. And that goes to their financial power, does it?

Mr. DURAND. That goes to their financial power. For example, on page 294, in that list, and page 295, you have about 20 banks listed in which the packers have certain relationship, two or more of the five packers being jointly interested in each of those to some extent. And the resources of those twenty-odd banks amount to \$979,237,340, as shown on page 295.

Then, turning to the second list in the tables, where the interest is not joint but separate interest, by just a certain packer being interested in a company, the list of banks there on page 300 covering two banks, in which our information showed that one of the packers had a majority or control of the voting stock of these two banks, and those two banks show resources of \$14,306,820.

And then, on page 317, a list of banks in which some one of the packers are interested, as shown mostly by directorship, and in some cases by stock ownership. There are about 15 or more banks with resources of \$340,970,350.

Now, I would say further, in addition to the statement of the power which they have been shown to have, that these five packers in their past history have shown a disposition to use that power and press their advantages vigorously to obtain the ends they have in view, including the use of unfair methods which I think can be established unquestionably in the meat and live-stock business and no doubt in some of the other lines, such as poultry, butter, cheese, and eggs; instance which would not be subject to the criticism that those that I have presented on the unrelated lines are subject to; instances on which we have documentary evidence in great quantity. So that I think the material is such that a court would consider it as pertinent evidence, because that was the thing we were investigating thoroughly. These unrelated lines were a side issue.

Judge HAINER. Incidental?

Mr. DURAND. Incidental. I want that to be clear.

Now, there is, I think, almost nothing more I want to add.

I do develop here rather more fully than in my opening statement the point that the evil conditions in the food trade should be remedied by other means than modification of this decree. I think, however, that I stated that quite clearly, probably, in my opening statement, and I will not go into this detail on this point unless the committee wish me to file these pages, if they want to look at it.

Judge HAINER. Just hand it to the reporter. Do they cover those points?

Mr. DURAND. Yes.

The CHAIRMAN. They cover the unrelated lines?

Mr. DURAND. They cover this condition: That the evils in the food trade should be remedied by other means than by a modification of the decree. In other words, I point out something of the work of the Joint Commission of Agricultural Inquiry, and what it has done, and also refer to various parts of the reports, which I would like included in the record, and to the Kenyon-Kendrick bills, and other bills.

The CHAIRMAN. That may all go in the record.

(The matter referred to is as follows:)

EVIL CONDITIONS IN THE FOOD TRADE SHOULD BE REMEDIED BY OTHER MEANS THAN MODIFICATION OF THE DECREE.

In a considerable measure the conditions that are portrayed as an argument for readmittance of the packers into the grocery lines are conditions that everyone admits. They are conditions that have had the earnest attention of all students of the problem of distribution, especially for the past year or two. Everyone will admit that there is too great a spread between the price that the producer of foodstuffs receives and the price that the consumer pays. The fact is so patent that no one will deny it. Conditions of transportation, intermediate manufacture, and of distribution that permit so wide a spread between the farm and the city cry out for remedy, but that is no sufficient reason for modifying this decree. Far different remedies are necessary for the solution of these fundamental problems.

I believe it is pertinent to the committee's duties that it should consider somewhat this point, and with the committee's permission I would suggest that the remedy for these economic problems will not lie in any action by the Attorney General on this case.

The problem of the high cost of living has engrossed the Government for the past four years. It is worth while to remember that the Government's move to indict the packers on this very subject matter was a part of its program for combating the high cost of living. It appears absurd, therefore, that in the end the consent decree, obtained in the proceedings so begun, should be modified on the belief that the activities of the packers were necessary to lower the cost of living.

Another means by which the Government sought to control the increasing cost of living was by the institution of current governmental reports on the basic industries, including food, to be made monthly or oftener, by the Federal Trade Commission, so that people could know the cost, prices and profits on basic commodities, including food, at each stage in their progress from the raw material to the finished product delivered to the consumer. That program was authorized by the Appropriation Committee of the House and an appropriation of \$150,000 was made by Congress for beginning the work. The Federal Trade Commission undertook first the work of collecting costs, prices and profits data on coal and on steel and was about to proceed with similar programs in other big industries when we were temporarily enjoined by the coal operators and the steel operators. That matter is even now being heard before the Supreme Court looking toward the determination of whether the Commission, and whether back of the commission, the Congress, has power to require the furnishing of statistics of production.

Surely if the Federal Government has power—and we have no doubt that it has—to give the public information about conditions at every stage of the food industry, it will have a very strong drawing tendency in bringing the producer's and the consumer's price closer together.

In the special session of Congress just closed, a very intensive study was made by the Joint Commission on Agricultural Inquiry, of which Congressman Sidney Anderson, of Minnesota, is chairman. The problems to which that committee addressed itself are the very problems which the advocates of modification of this decree would solve by permitting the packers to go back into the grocery business. I think you will find when Mr. Anderson's committee makes its final report that it will consider other remedies more generally useful in the public interest.

Finally, if I may again repeat President Harding's recent message to Congress, the President speaks with the greatest concern of the agricultural problems and the problems of distribution, yet we do not find him suggesting the Chicago packers as the remedy; in fact, as I have already pointed out, he says—let me quote again:

"The existing scheme of adjusting freight rates has been favoring the basing points, until industries are attracted to some centers and repelled from others. A great volume of uneconomic and wasteful transportation has attended, and the cost increased accordingly. The grain-milling and meat-packing industries afford ample illustration, and the attending concentration is readily apparent."

The proponents of modification of the decree, besides their general statement of the evils existing in our system of distribution, pay their respects with especial emphasis to the wholesale groceries. They emphasize with great vigor the belief that the wholesale grocers constitute a combination indulging in unlawful practices.

On that point I would make two suggestions: First, let them aid the Federal Trade Commission to continue, as it is now doing, the examination of unfair practices or agreements in restraint of trade alleged to be carried on by wholesale grocers; second, if combinations are found, let them press for prosecution by the Department of Justice, and if, as a result of such prosecution or threat of prosecution, a consent decree is entered against wholesale grocers, let them with all their strength oppose modification of such decree.

The counter charge of combination and monopoly among four or five thousand wholesale grocers is not ground for urging instead a course which will almost surely result in a monopoly by four or five packing interests.

The Federal Trade Commission finds the law written on the books condemning combinations and restraints of trade in interstate commerce by whatsoever interests or whatsoever sets of people. It has no favoritism in urging the enforcing of this law. It is opposing the modification of this decree and if it be said that this will result in leaving the field free for the wholesale grocers, the commission will be watchful as it has been in the past to seek out the facts in the conduct of the wholesale grocers' business so as to prevent unfair

practices and to bring to the public attention any combinations that may spring up.

While I am referring to the studies that have been made and the remedies that have been proposed for the evils in our present-day food situation and in the distribution of food commodities, I wish to point out that the Federal Trade Commission, in addition to the meat investigation, has made an investigation of private-car lines and an investigation of the wholesale marketing of food, both of which bear quite directly on the problems that are referred to by the gentlemen proposing modification of the decree. The commission's reports on these investigations are here, and I should like to make them a part of your record by reference, if I may, without their physical incorporation in the record. A number of copies of these reports are available here, and I should like to file one with each member of the committee and to say that other copies are available here for any of those in attendance who desire them.

PRIVATE-CAR LINES.

Several of the arguments of Mr. Campbell and those who regard the packers as necessary to economical distribution depend upon the fact of the packers' control of the refrigerator cars. Instead of saying, as these gentlemen do, that because refrigerator cars are necessary to an economical distribution, and because the packers own their refrigerator cars, therefore we should permit the packers to do our distributing business—instead of saying that the commission, in its report on private-car lines, says that the refrigerator cars should not be private lines but should be common carriers and made available to everyone. If that situation were brought about many of the difficulties experienced by those who have appeared here seeking modification of the decree would disappear.

So with the committee's permission I should like to read into the record at this point the conclusions of the commission on its private-car lines investigation, as set forth in the letter of submittal accompanying that report.

In reading this you will understand, of course, that the report was written before the decision of the Interstate Commerce Commission in the case of the wholesale grocers against the packers; in fact, the Interstate Commerce Commission case was the outgrowth in part of this private-car line report. As to the question of how far the findings of the Interstate Commerce Commission support or do not support the findings of the Federal Trade Commission in regard to the private-car lines in their effects on packer and wholesale grocer, that is a question which I will not take up. I assume that Mr. Thorne and Mr. Breed have discussed that matter. They were of counsel, I understand, for the grocers in the case before the Interstate Commerce Commission. I make that comment, in submitting this letter of submittal of the private-car line report, in order that I may not be subject to the criticism of placing in your record without comment findings which have later been the subject of inquiry by another governmental body. With this comment I will hand the letter of submittal to the reporter and read only the last part of it, which concerns the immediate point I am discussing, namely, removal of refrigerator cars from packer control as a remedy for our difficulties rather than permitting the packers to expand into the grocery lines because they have control of the refrigerator cars. This is the conclusion of the commission's letter submitting its report, the date of this letter being June 27, 1919, as follows:

"The prompt and efficient handling of the traffic in meats and other perishable foods is of great public concern, and it is also important that all shippers should have equal and adequate service.

"In order, therefore, to correct the inequalities of service and rates as well as to prevent the dangers of monopolistic advantages in the use of certain types of cars, the following recommendations are made.

"1. That the Government acquire all cars used for the transportation of meat animals and all necessary equipment for their proper operation and that such ownership and operation be declared a Government monopoly; or that such cars be owned and operated by the railroads under Government license regulation.

"2. That the Government acquire all refrigerator cars and all necessary equipment for their proper operation and that such ownership and operation be declared a Government monopoly; or that such cars and equipment be owned and operated by the railroads under Government license regulation.

"These recommendations contemplate the acquisition and operation not only of the live-stock cars and refrigerator cars, but also of all necessary facilities for their operation, such as car shops for their construction and repair, feeding and watering facilities for live stock in transit, precooling equipment for refrigerator cars and icing stations for the refrigeration of perishables in transit, ice manufacturing plants and natural ice producing privileges connected therewith or necessary thereto, together with such other facilities as may be needed to secure the efficient transportation of meat animals and perishable food products.

"The execution of these recommendations would give to the small packer, especially, facilities which he generally lacks at the present time and for which he is frequently not able to provide either because his requirements are not large enough to justify the investment or because he is not financially strong enough to procure the necessary equipment. Assurance of an equitable allotment of cars would make him a stronger competitor of the big companies.

"In the fruit and vegetable trade, also, considerable advantage, both to producer and consumer, should follow this legislation.

"Further, all this equipment should be under unified direction, in which event there would be opportunity for considerable economies in utilization and in expense of operation.

"It is worth suggesting that, as an incident of the administration of refrigerator cars under this system, a single combined rate might be established to apply to each kind of transportation service, and thus do away with separate charges for freight, refrigeration, and icing. This would simplify not only rate and service accounting, but also the shipper's marketing, for he would know his charges before making shipment and would be able to quote delivered prices.

"Respectfully,

"WILLIAM B. COLVER, *Chairman.*

"JOHN FRANKLIN FORT.

"VICTOR MURDOCK.

"HUSTON THOMPSON."

I would add, gentlemen of the committee, that this recommendation was first made by the commission in substantially this form at a time when the railroads were under control of the United States Railroad Administration. At the time of the publication of the commission's report the railroad administration had gone out of existence, which accounts for the alternative form in which the commission's recommendations were made in the report. You will notice that the recommendations were to the effect that the Government should acquire all live-stock and refrigerator cars and their equipment, or that such cars and equipment be owned and operated by the railroads under Government licensing regulation. The original recommendation as made in the commission's report on the meat-packing industry was that the Government should acquire the cars and equipment through the Railroad Administration. (Pt. I, p. 25.)

WHOLESALE MARKETING OF FOODS.

The Federal Trade Commission's report on the wholesale marketing of foods, in a sense, grew out of its report on the meat-packing industry. The report on the meat-packing industry stated one of its recommendations in the following language:

"We therefore recommend:

"4. That the Federal Government acquire such of the branch houses, cold-storage plants, and warehouses as are necessary to provide facilities for the competitive marketing and storage of food products in the principal centers of distribution and consumption. The same to be operated by the Government as public markets and storage places under such conditions as will afford an outlet for all manufacturers and handlers of food products on equal terms. Supplementing the marketing and storage facilities thus acquired, the Federal Government establish, through the railroad administration, at the terminals of all principal points of distribution and consumption, central wholesale market and storage plants, with facilities open to all upon payment of just and fair charges." (Pt. I, p. 26.)

The report on the wholesale marketing of foods sets forth in much detail the conditions in transportation and marketing of perishable foods in this country, the losses at producing and shipping points during transportation, and at terminals and final markets, including the defective condition of the

ings and facilities in the wholesale marketing districts in many large cities, their uneconomical location and their physical condition, besides the losses due to glutted markets, the dumping of produce, and the shipping and buying of perishables without adequate knowledge of market conditions. Besides the report treats of unfair and wasteful trade practices all along the line of distribution of perishable foods.

"Full consideration is given these matters, as well as a study of the types and functions of dealers engaged in the distribution of perishable foods, from the point of origin to the point of consumption."

The report contains a statement of the urgency of the food problem and its proposed solution. With the permission of the committee, I should like to put into the record an extract from the report summarizing the uneconomical conditions in the wholesaling of perishable foods and the proposed public wholesale marketing system.

"**Sec. 4. Uneconomical wholesaling of foods.**

"Improved marketing facilities and processes are everywhere, in village as well as city, urgently needed. Dealers generally recognize this need. Producers are a unit in pressing for such improvement. Consumers, through organization and press, have demanded that the system of food distribution be simplified and the movement of food be made most direct from field and factory to table, allowing only for such delay in manufacturing and storing as is necessary to the most economical disposition of products.

"Evidence presented in this report which would seem to place the responsibility for the existence of any marketing condition on any one individual or group of individuals or agency is not necessarily conclusive in that respect and is not cited generally for that purpose. Rather is it the object, primarily, in presenting this evidence to establish the thesis that marketing conditions are fundamentally bad. It is deemed not of so much importance to assess the relative merits of complaints where charges and countercharges have been made or to determine the incidence or degree of individual blame as to present complaints which appear to be typical and which by their number and serious import point to conditions requiring fundamental correction.

"*Marketing facilities.*—It is shown in this report that careless handling, improperly equipped cars, delays in moving, and exposure while foods are in railway transit to market are the causes of large and unnecessary losses and expenses to dealers and shippers; that railway terminals are usually scattered, that they are not properly equipped with cold, heated, and dry storage to prevent deterioration before perishables can be removed, and that often they lack facilities for the quick and safe handling of foods.

"It is also shown in this report that buildings and other facilities for the marketing of perishables in the vast majority of wholesale receiving centers are entirely inadequate, are generally badly located with reference to terminals, storage, and retailers, are often congested, and are invariably ill-adapted in construction and arrangement to economical marketing. In several cities runing above 100,000 in population, public storage facilities were found to be entirely lacking and in others inadequate. Where storage is sufficient it is often far from both terminals and wholesale centers.

"As a consequence of the location of markets with reference to terminals, storage, and retailers, a large amount of carting is necessary. Congested and poorly paved streets, long distances, ill-equipped conveyances all make for useless expense and large losses of foods through deterioration.

"If the wholesaling of foods is to be placed on an efficient basis, the first and most obvious requirement is that respecting physical equipment. Facilities adequate to every need should be provided for the receiving, handling, storing, preserving, buying, selling, and delivering of specified foods. This requirement will not be met under the present organization of the marketing system. The benefits arising from the economical physical handling of its food supply are dependent upon such public action as will secure the facilities required.

"*Marketing processes.*—The work of the United States Food Administration during the period of the war was directed through education and regulation to secure in the main these five ends: Adequate production, equitable and adequate distribution, limitation on the cost and profits of distribution from producer to consumer, coordination of Government purchases and sales of foodstuffs, and food conservation. The two ends touching distribution directly concern marketing. Many regulations of the marketing processes were effected through the administration's licensing power granted under the Lever Act of Congress. Most of these were clearly beneficial to the producer and consumer as well as to the

honest dealer serving a necessary function and should be made permanent with proper provision for their enforcement.

"Substantially all manufacturers and wholesale distributors of food, and all retail distributors doing an annual business of \$10,000 or more were licensed. The license was made subject to the general license regulations and also to those drawn to cover the practices peculiar to his particular trade. These regulations for dealers in both perishable and nonperishable foods were directed to the elimination of hoarding, speculation, profiteering, and unnecessary functions increasing distributing costs. In staples a margin over cost was fixed. In fresh fruits and vegetables this is less practicable, and the regulations sought to eliminate deceptive, wasteful, and unfair practices, to require commission firms to render prompt and accurate accounting, to confine such firms to reasonable commissions, and to require the prompt unloading and disposing of goods.

"For dealers in poultry, eggs, butter, and cheese held in cold storage, margins sufficiently low to discourage speculation were fixed and resales were limited. The operations of butter and egg exchanges were strictly regulated to exclude speculative trading and manipulation of the market. The Elgin butter board was closed. Speculation on commodities held in cold storage was discouraged by limiting a public warehouseman's loan thereon to a fixed percentage of their value and by prohibiting his dealing in such commodities. He was required to file a schedule of storage charges and to make no changes except on 30 days' notice. Where charges were found to be excessive, maximum rates were prescribed for him by the Food Administration. Cold-storage products were required to be labeled as such to prevent their sale as fresh products at higher prices. (See annual report of the United States Food Administration for 1918.)

"These and other similar regulations of the handling of both perishables and nonperishables, frequently referred to in succeeding pages of this report, were instantly effective in checking wastes of foods and unnecessary distributing expense. With the war over, most of these regulations have been lifted, and in the absence of further legislation all will be gone following the ratification of the peace treaty. A proven instrument for curbing the profiteer in food, the unnecessary trader, the speculator, and the wasteful handler should not be abandoned. If effective regulation of the marketing processes is retained, it must be through some established governmental agency.

"Sec. 5. Proposed public wholesale market.

"The final chapter of this report outlines in detail the commission's recommendation made in the summary of its report on the meat-packing industry (summary and Part I, pp. 76-78) that central wholesale markets and storage plants shall be established by the Federal Government.

"*Public as applied to market defined.*—The term 'public' is used to include these two conditions:

"First, that the physical facilities required to be used in the wholesale marketing of specified foods shall be owned by the Government and furnished to individuals for use under private operation; second, that all wholesale market operations whereby use is made of these publicly furnished facilities shall be under Government regulation.

"The inclusion of the first condition is based on the proposal to realize the following aims:

"(1) To limit the total capacity of facilities to the maximum requirements that may be placed on such facilities, thus reducing to the minimum wastes arising from nonuse.

"(2) To provide facilities of such operating efficiency as will function at a minimum of cost per unit of product handled.

"(3) To insure against lack of facilities and consequent insufficiency of services.

"(4) To insure against private monopoly of facilities and consequent monopoly charge for their use.

"(5) To secure the best use of facilities by providing competitively under the incentive of private operation and private profit the best tenants.

"(6) To require the full cooperation of all the forces concerned in the use of facilities thus publicly furnished.

"The inclusion of the second condition, that these publicly furnished facilities shall be under Government regulation, rests upon the following three corollaries of the foregoing proposals:

"(1) The corollary of a proposal to provide public facilities is a system of regulation which conditions their use to the public's advantage.

"(2) The corollary of a proposal to regulate the total capacity of such publicly furnished facilities is provision for regulating the profits arising from the privilege of their use.

"(3) The corollary of a proposal to permit or require by the public the co-operation of the forces concerned in the use of such facilities is the public regulation of such cooperation.

"Federal control of markets to be preferred over state or local.—If it is conceded that wholesale food markets should in the interests of public economy be made public, there remains the twofold question of what branch of the Government should have jurisdiction and how that government should function.

"Federal jurisdiction, rather than State or local, is urged on these grounds:

"(1) The movement of food pays little heed to State or city lines. Indeed, the source of food supply of any given community is largely, in many lines of food wholly, beyond the boundaries of that community's own State. Interstate commerce is, therefore, involved in this movement, over which the Federal Government only is in control. Moreover, the marketing transactions themselves affect parties widely separated. On the buying side wholesale marketing begins in many cases with purchase at point of shipment, and in all cases it is concerned with the methods of grading, packing, inspection, and shipping, all of which are matters of interest to wholesaler and consumer. A local or State government, however, has no authority over a shipper beyond the confines of the State and can not directly control his activities in the protection of local merchant and consumer.

"(2) The local wholesale merchant and the consumer are, however, not the only parties primarily concerned in a wholesale food market. The producer of foodstuffs is dependent on such markets for an outlet to his products. It is a matter of as much interest to him as to the consumer in knowing how to meet the latter's wants, for upon this knowledge his own livelihood depends. Grading, packing, and shipping are all matters about which he is directly concerned, both as factors of cost and as means of meeting the demands of the trade. He is interested equally with the buyer in the wholesale market in inspection and terms of settlement. He is as desirous of a broad and stable market as is the consumer of his products. Only the Federal Government can conserve his proper interests in distant and widely separated markets.

"(3) Neither producer nor consumer is well served by the present hit-or-miss system of marketing. Only through a thoroughgoing coordination of wholesale markets and producers supplying such markets can maximum economies in distribution be effected, eliminating the relative glut, wastes of food, and shippers' losses in some markets and on the same day the relative under-supply and overcharge to consumers in other markets. The coordination of such widely separated marketing forces can not be accomplished by the State or local governments.

"(4) Dealers in many markets and others interested in improving market conditions and service admit the desirability of the public market but contend that its establishment under local government is impracticable, if not impossible, because of conflicting local interests and petty jealousies. Such conditions were found by the commission to obtain in many localities. Federal establishment and control would remove this difficulty.

"(5) Control by packer interests over the channel of distribution in many food lines is rapidly growing. Monopoly of the channel in some of these lines is imminent if not actually present. Undue economic advantages of these interests tend further to choke the way. A system of wholesale markets under close public supervision will open up and shorten this channel from producer to consumer and will keep it unobstructed. If the channel is interstate, as it is for the transportation of much of the food, it is the business of the Federal Government to eliminate monopoly and unfair practices. If the method of making the market public is chosen to accomplish this, the Federal Government can not force the State or local government to adopt this method. If the market is universally and uniformly made public, the Federal Government alone is in position to accomplish this result.

"The Railroad Administration as the controlling agency.—The commission in the summary of the report on the meat-packing industry (Summary and Part I, p. 77) recommended that the Federal Government establish these markets through the United States Railroad Administration. Should the railroads of the country continue to be operated by the Federal Government, there would be certain advantages in placing public wholesale markets under the Railroad Administration. Use would thereby be made of a Federal agency already fully

organized and needing only expansion for this additional service. Considerable saving in overhead expense would result.

"Economies of handling foods require the closest coordination between railroad terminal facilities, including trackage, yards, switching engines, sheds, depots, etc., which are properly a part of the railroad equipment and under the Railroad Administration, and facilities for storing these foods until deliveries are made to the retail trade.

"Dependence of the market on the transportation system for safe and quick handling is obvious. Perishable foods should usually have priority in movement and care over all other freight traffic. A centering of responsibility in one controlling agency for the condition of food from the time it leaves its shipping point until its arrival in the hands of the retailer would have immense advantages. Moreover, the extent to which one market should benefit over another because of greater nearness to food sources should be determined by the governmental agency responsible for the supplies of food and general conditions in both markets.

"Section 6. Indirect benefits possible from the public marketing system.

"In addition to the direct marketing benefits which a public marketing system should confer, certain others equally valuable might be secured. These are briefly as follows:

"*Food storage and preserving.*—In every community where a considerable number of people live there should be the organized means of economizing food-stuffs. So intimately does this matter concern the public, both in the manner and the outcome of its accomplishment, that it should not be undertaken apart from the common effort and the common counsel of the public. It is properly a part of the public market system.

"Of measures already in partial operation, the one which contains most of promise for the economizing of foods is a system of storage which will out of seasons of plenty guarantee against lack in seasons of scarcity. More food, better food will be supplied; greater stability in supply and price will follow. Radical changes, however, are necessary to realize this promise. Losses arising at present from inadequate, ill-kept, and unavailable storage are pointed out at length in a succeeding chapter. It should be clear, therefore, in the light of such disclosures that such a system should provide storage adequate to all requirements, locally and nationally; should be nationally coordinated, strictly and uniformly regulated, and made available to all on like and reasonable terms.

"Storage in excess of known local or regional requirements should be made only at points of production or at strategic centers of distribution on the way toward probable consumption to avoid the necessity of useless handling and freighting. For example, to store great quantities of food produced, say, in the Middle West at points on the Atlantic seaboard, which will be consumed some hundreds of miles back in the interior, causes wasteful transportation and indicates badly located storage facilities. Frequent shifting of foods from one warehouse to another results in useless handling and loss of foods, and points to misplaced storage or poor coordination in the marketing process.

"Provision should also be made in the public market for the preserving by canning, dehydrating, or other processes of any surplus foods passing through the market whose food value are in danger of being lost. Such a service should be open to any licensee of the market upon his own order or that of an inspector at prescribed charges.

"The serving of a plentiful supply of ice in the summer season may be fairly termed a utility only a little less important to the city household than is the serving of water itself. Not only is economy of food in the home dependent upon it, but comfort and health, since it checks the use of tainted food and milk, the prolific source of summer ailments. Complaint of short supplies, famine prices, and poor service is a matter of yearly recurrence. The maximum consumption of ice through a season of given temperatures is as predictable as that of water. Since ice must be manufactured and stored for refrigeration and storage purposes for the public market, there would seem to be no valid reason why it should not be wholesaled under regulations that would safeguard the public interest.

"*Unified delivery system.*—The excessively large wastage of food and useless expense arising from the carting of perishables back and forth over the streets of cities before they reach the retailer is shown in succeeding pages of this report. To lessen these losses terminals, storage plants, and markets should first of all be most conveniently located in relation to one another. F

reduce these losses to a minimum a unified system of delivery should be established as a part of the public market. Such a system would provide equipment adapted to the safe and speedy delivery of all commodities handled through the public market from incoming car or truck, through storage and market, to the premises of the one buying from or through the licensed dealer or Federal agent of the market, and would eliminate the unnecessary duplicating of intramural delivery equipment and routing.

"Licensing of shippers and Government inspection.—As pointed out in detail in this report, losses occurring through inadequate grading, packing, branding, and inspecting at the shipping point are heavy. Tainted fruit or vegetables cause decay of the sound and in addition require the same expense of packing, shipping, and handling as do the sound. Products ill assorted as to size and quality lessen the value of the whole. Disputes between shipper and receiver and claims for losses are almost wholly due to the shipping of ungraded and uninspected products.

"To eliminate these losses the United States Food Administration inaugurated a system of licensing shippers and receivers of certain products (best developed with respect to western-grown potatoes) and of inspecting at shipping and receiving points, which should not be thrown aside. Each shipper, aside from the grower, and each wholesale dealer was required to be licensed. Before a car could be billed the licensee must sort and grade his shipment. Grades were established to which the grading must conform. The local inspector, employed by the Government, was required to issue a certificate of inspection to the shipper stating shipper's name, car number, commodity shipped, and its grade. A second copy of this certificate was sent by the inspector to the consignee, a third to the food administration office of the State in which the shipment originated, and a fourth was retained by the inspector. A nominal fee of \$2 was charged the shipper for inspection. If a consignee was not satisfied with his shipment, he notified the food administration office in the shipper's State and reinspection was ordered. If the car was wrongly graded, the consignee might refuse the car and the shipper was required to pay the reinspection costs. If the car was correctly graded, the consignee must accept the car and pay the reinspection costs. Even though the grower was not required to be licensed, he found the protection which the inspection certificate carried an advantage and might avail himself of it where the quantities were considerable.

"The benefits of such a system are obvious. Products found by the inspector to be unfit for human food are refused shipment. Growers are encouraged to work for a high grade instead of bulk only. The shipper is protected against unjust claims, and when disputes arise with either receiver or carrier there is basis for quick settlement. Shipping is conserved. The dealer with fewer claims and less uncertainty can operate on a closer margin. Food is economized. Grades which will not keep long are forced on the market and consumed first, as they should be. The consumer gets the grade of food he pays for and in the long run gets a better product at lower prices.

"To accomplish these results a central Federal agency might well be authorized and directed to license all shippers, or marketing and shipping organizations of which such shippers are members, whose products are shipped to licensed dealers of public markets or consigned to others through such markets, and to prescribe regulations concerning grading, sampling, branding, inspecting, storing, reporting, packing, shipping, routing of shipments, keeping of records, and organizing of shippers.

"Market information.—It is to the advantage of each class, producers, dealers, and consumers, that all should have intimate knowledge of all conditions affecting the market. The producer should be kept acquainted with the changing wants of the consumer—not only what he wants but how he wants it, what size of container or package is wanted, how packed, etc. He should know what markets want his products and what the approximate demand is at any particular time. He should be apprised of quantities received in the principal markets with wholesale prices actually paid, quantities reshipped, and quantities in transit. Full information as to conditions of distribution would be highly beneficial to the producer and not detrimental to the consumer unless coupled with concerted action in curtailment of production itself.

"On the other hand, the consumer should know what foods are plentiful, both fresh and in storage; from what points and under what conditions foods are being shipped; quantities received each day at his market with wholesale

prices paid; and quantities bought by local retailers with prices which they paid.

"The wholesale dealer should have practically all the information required by both consumer and producer.

"All this and other market information should be secured in an absolutely reliable form by a central Government agency and published in bulletins and daily papers over a Government official's signature, and made available to all interested parties."

This is pertinent, I think, as showing that the conditions complained of in the proceeding before this committee are properly solvable not by the modification of the consent decree, but by measures more fundamental and measures in the public interest rather than against public interest.

At the risk of somewhat encumbering the record I should like to suggest to the committee that it incorporate at this point the discussion of sections 2, 3, 4, and 5 in Chapter IV of this same report. These sections cover the different methods of dealing with the food marketing problem, a general description of the proposed marketing facilities, suggestions as to the establishment of these facilities through the Federal Government, or railroads, or State and municipal government, and, finally, the regulation of marketing methods through Federal license. These extracts cover from the bottom of page 185 through page 195, 10 pages, which I think would make a valuable addition to the record if the committee approves.

It is as follows:

"Sec. 2. Different methods of dealing with problem.

"There are several ways in which to deal with the wholesale food problem.

"Initiative of dealers.—The public may desire to depend on the wholesale dealers themselves to improve their marketing facilities, methods, and practices, and to standardize the trade. However, the history of the food trade is such that the adoption of this method of dealing with the problem promises slow and small improvement. As the trade developed the costs of carrying on transactions and the decay and deterioration of the goods have continued to increase rather than decrease. The facilities in use have become more inadequately suited to the business. The methods and practices have become more complicated rather than simpler, and monopolistic tendencies have developed.

"The way in which the facilities needed for the efficient conduct of any kind of business are provided has an important bearing not only on the success of those engaged in it, but also on its competitive character. If the matter is left to the dealers themselves, it is easily possible that the best facilities will be available only to very large or even to monopolistic concerns. Economic conditions, however, may upon the whole be unfavorable to large-scale operations, and, in any event, public policy is opposed to private monopoly. If, on the other hand, the needed facilities are provided by the Government, or under its regulation, they may be available to small as well as to large concerns. Under such conditions competition may be maintained on a healthier basis and, at the same time, the work be done at a lower cost than would otherwise be possible.

"No immediate results through cooperative associations.—A second and often discussed method of handling the food marketing question is through cooperative marketing associations. In regard to many perishable foods, much improvement has already been accomplished through the cooperative shipping associations organized by the producers in the shipping of products to the wholesale markets. With the right kind of laws and encouragement on the part of the Government, doubtless much more improvement along this line would be made. However, so far, the producers' cooperative shipping associations have done practically nothing in improving the facilities, methods, and conditions in the wholesale marketing of food products. These shipping associations sell their products to or through the wholesale dealers in the consuming centers just as do the private local shippers. They, in every way, take the 'trade' place of the private local shippers.

"Conceivably, consumers' cooperative associations may do much to improve both retailing and wholesaling of food products. They have done much along this line in England. However, in the United States there have been few successful consumers' cooperative associations organized and a less number of them have attempted to become wholesale dealers. In order for such associations to appreciably influence the wholesale marketing of food, they must have control of a material proportion of the retailing of foods. Certainly it will be a considerable time before they reach such a magnitude in this country.

"State and municipal activities inadequate.—Another method of handling the problem would be for the State and municipal governments either to furnish or to induce others to furnish better marketing facilities and through regulation standardize the trade methods and practices. Doubtless, much improvement in the wholesale marketing of foods and in the reduction of the cost thereof could be accomplished should all State and municipal governments vigorously take hold of the problem. However, by the adoption of such a method many serious difficulties and drawbacks would be encountered. In the first place, in the very large cities from 90 to 98 per cent of the wholesale-food trade is interstate rather than intrastate commerce. Therefore, State and municipal governments would be quite limited in the extent of regulation which they would be able to impose upon the wholesale-food trade. If they should provide ideal terminal storage-market facilities, they could require only those dealers conducting an intrastate business to use these facilities.

"Most of the States and municipalities would have difficulties in securing appropriations with which to provide adequate market facilities. Before this could be done some of the State constitutions and city charters would have to be changed.

"Another difficulty connected with this method of dealing with the problem is the impossibility of securing standard regulations throughout the country through State and municipal regulation. Standardization of grades, containers, weights, and methods in the different markets is necessary if improvement in the wholesale marketing of food products is to follow. This could not be accomplished through State and municipal regulation.

"Federal action adequate.—The adequate and thorough method of dealing with the problem is through the action of the Federal Government. That the marketing of food is a national question was recognized in the establishment of the Bureau of Markets under the Department of Agriculture, which bureau was empowered to study the problem of the marketing of food products, and also to administer certain regulative measures, such as grain and apple-grading laws. Further indication that the problem is recognized as Federal was shown by the fact that upon entrance of the United States into the World War the United States Food Administration was established to prohibit profiteering in food products and to prevent waste thereof. Many of the regulative measures adopted by the Food Administration were beneficial in eliminating unfairness in the trade and also in the establishment of a less expensive line of trade from producer to consumer. The Food Administration did not attempt to improve physical marketing facilities.

"The problem is a national one because trade in food products is national and international in scope. The eastern cities get the bulk of their fruits and vegetables from the Pacific coast, the West, and the South; they get their meats and poultry products from the Southwest and Middle West; their wheat and corn products from the Northwest and West; and even their dairy products come from farms hundreds of miles, and sometimes thousands, from the cities. More than 90 per cent of the food which enters the large cities has been transported in interstate commerce, and even the greater part of the food which is consumed by people in the smaller cities and towns has passed through interstate commerce. On the whole the average distance between the producer and consumer of food in the United States is probably more than 1,000 miles. The extensiveness of the trade is such that it can be adequately regulated only by the National Government. Only through national action can uniformity be attained and wastes, monopolies, and suspicion be eliminated.

"In dealing with the problem the Federal Government, through some agency, should furnish or require or induce others to furnish adequate terminal storage market facilities in wholesale centers, which facilities all the wholesale dealers in highly perishable products should be required to use in carrying on their business, and which all other wholesale food dealers should be permitted to use. The services and charges should be the same to all dealers who use these facilities. Also the Federal Government, through some agency, should so regulate interstate commerce in food products as to standardize the grades and containers of the products as well as the methods of carrying on the business; eliminate monopolistic tendencies; and open up a more direct line from producer to consumer.

"In the following sections are discussed in detail the above suggested activities of the National Government in connection with the wholesale marketing of food products.

"SEC. 3. Description of proposed marketing facilities.

Centralized food terminals.—In each city and large town, through the action of the Federal Government, each railway, electric line, and steamboat company should be required to unload all incoming and receive all outgoing food products at a central terminal (probably the cities of New York and Chicago each would need two or even several centralized food terminals. So far as possible this central terminal should be located where it is most accessible to the retail food trade. In each case the food terminal should be located, and the ground space occupied by it should be sufficient as to permit the construction thereon of docks and switching tracks, storage, manufacturing and marketing structures, and driveways necessary to accommodate the wholesale food business of the particular center. Each common carrier entering a city should be required to make permanent and adequate transportation connection with the centralized food terminal.

Storage, manufacturing, marketing facilities.—As a necessary part of each central food terminal there should be constructed dry, heated, and cold-storage buildings large enough to take care of all the food products requiring storage at the center of which the terminal is located. Extending from the storage building or buildings and leading to the car tracks and piers should be constructed inclosed, cooled, and heated platforms for the loading and unloading, without exposure to the weather, of perishable food products.

"When received at the terminal no dealer should be allowed to remove from the terminal storage any perishable food products except for immediate delivery to the retail trade or reshipment to another wholesale market. The maximum length of time which each perishable food product is permitted to remain in the wholesale storage should be definitely prescribed. The foods in this class are: All fresh meats, dressed poultry, eggs, butter, cheese, and fresh fruits and vegetables of all kinds.

"With such terminal storage facilities and regulations, with date of storage and price on that date required on all stored foods, practically all the losses from deterioration and decay in the wholesale market would be eliminated. It would also prevent much of the speculation now due to uncertainty of the quantity and quality of perishable goods in the market, because accurate storage figures would then be public property.

"As a part of each food terminal there should also be provided space and machinery for preserving, canning, dehydrating, and manufacturing all food products passing through the terminal which would otherwise materially deteriorate or decay before they reached the retail trade. This would apply to overripe, bruised, frozen, or overheated fruits and vegetables, broken eggs, rancid butter, and improperly iced meats and poultry. It would also apply to all surplus food products passing through the terminal. These preserving, canning, dehydrating, and manufacturing facilities should be a part of the terminal facilities and should be operated upon a rental basis by private parties under Government inspection and supervision.

"By the provision of proper methods in the wholesale trade for the utilization of surplus foods which would otherwise deteriorate before they could be consumed, many tons of palatable and wholesome food would be saved for human consumption. It would also tend to stabilize prices to both producers and consumers. The producer would thereby have assurance of more reasonable prices for his products when they arrived at the market in subprime condition; the consumer would be assured a more constant supply of food, which means more uniform prices.

"As a necessary part of each central food terminal there should be, in connection with the storage and manufacturing facilities, adequate sales and auction rooms to accommodate the business of the wholesale food dealers at the center. These salesrooms should be rented to dealers and to producers or their agents on a uniform basis. Each food dealer—whether professional dealer, agent of farmers, or cooperative sales associations, or producer who sells his own goods—in every line would then have available to him storage market facilities equal, and in most cases superior, to those which the big packers now have through their branch house and storage system.

"All wholesale dealers in fresh meats, dressed poultry, eggs, butter, cheese, and fresh fruits and vegetables should be required to carry on all their business in the sales and auction rooms provided at the central food terminals, and, as already stated, there should be some regulation of their storage operations. All other wholesale food dealers—those in canned, cured, dried, and packaged foods, and in flour, sugar, coffee, and other bulk nonperishable foods

and food products—should upon a just rental basis be permitted, in carrying on their business, to use storage and sales space at the central terminal.

"At each central food terminal, also, there should be set aside a certain amount of storage and sales space to be used by producers or their agents who seasonally or occasionally desire to sell their products at the central terminals. This would provide a direct trade channel for the producers at all times and would insure against the success of any combination that might seek to control the market.

"The forcing of certain classes of wholesale food dealers to store their goods and carry on their business at the central terminals and permitting others to do so not only would protect the perishable goods from deteriorating and save large cartage expenses, but would furnish a definite known market to which producers could ship for sale and one to which retailers and large consumers (or groups of consumers) could go to buy. Such central markets would bring producers, retailers, and consumers in touch with a free and open wholesale market. They would eliminate most of intersales between wholesale dealers, which are now necessary to move the goods through the decentralized, unorganized wholesale market. Through the central market the goods could pass from the producer or his agent directly to the retail or large consumer buyer, and in other cases it would not be necessary to have more than one professional wholesale dealer handle the goods through the wholesale market. The central wholesale market would thus eliminate practically all food jobbers and speculators and would greatly simplify the wholesale marketing system.

"Any producer or shipper who desires to send his food products to a certain centralized market and have them sold at auction should be permitted to consign them to the management of the market or the Government agent, who, through a licensed auction firm, should have them sold and make the return to the producer or shipper. This would permit a producer to ship to and sell in a market without doing business with or even knowing a particular dealer in the market, and at the same time would insure the producer fair treatment.

"The size, character, and location of each central terminal storage market would have to be determined for each city or town according to local conditions. The size, of course, would vary with the size of the center. The architecture and character of the building or buildings would depend partly upon the size of the terminal and partly upon area and topography of the site. The large terminals should have larger and more permanent structures. In every case care should be exercised to see that there are sufficient driveways from the terminals to cart the goods to the retail trade. Where there are water connections with a city the centralized terminal should be located near docks. Otherwise, where suitable locations can be secured, they should be situated as near the center of the retail trade as practicable.

"There are a number of dealers who advocate some form of combination on the part of those who do the work of cartage. Some favor cooperation, either among the dealers themselves or between the dealers and the cartage companies. Others favor the establishment of a central office or distributing bureau. One or two favor giving over business to one regulated company. None of these plans, it will be noticed, necessarily implies the existence of a union terminal market or even of a centralized produce district. In connection with the establishment of a terminal market, however, arrangements might be made for a systematization of the work of delivery. This does not necessarily mean that the work should be given over to a single company. A central office would indeed be desirable, but it might be under the control of the management of the market or of a cooperative organization of the dealers. The actual work of cartage, however, might be done by a large number of independent truckmen.

"Sec. 4. Establishment of facilities through Federal Government.

"The Federal Government may itself, through some Government agency, establish central wholesale storage markets, or it may see that the railroads (in private hands) do so, or it may, through cooperation with State and municipal governments or with private individuals, cause such central storage markets to be established; or the Federal Government may use a combination of these methods in causing the establishment of the facilities.

"*Through its own agency.*—In the summary of its report on the meat-packing industry the commission recommends that—

"the Federal Government establish through the Railroad Administration (its own agency), at the terminals of all principal points of distribution and consumption, central wholesale markets and storage plants, with facilities open to all upon payment of just and fair charges."

"The commission also recommended—

"That the Federal Government acquire such of the branch houses (of the meat packers), cold-storage plants, and warehouses (of meat packers and others) as are necessary to provide facilities for the competitive marketing and storage of food products in the principal centers of distribution and consumption."

"The above recommendation was made with the idea that the Federal Government in establishing central wholesale markets in certain centers would find it practical and economical to take over some or all of the existing branch houses, cold-storage plants, and warehouses, and with additions and alterations convert them into suitable central wholesale markets for the wholesale food trade at those centers. In establishing wholesale markets in many of the small centers it would be found more economical to take over existing branch houses, cold-storage plants, and warehouses rather than to construct new ones, for in such centers the branch houses and cold-storage plants are generally located near each other in a central wholesale district and have adequate rail connections. Whereas in the large centers the branch houses, cold-storage plants, and warehouses are generally poorly located and are distributed over a wide area, and, therefore, generally, could not be used as part of a central wholesale market.

"There would be no interference with the meat packers in using for the distribution of their goods the branch houses taken over by the Government. They would then have adequate market and storage space in the enlarged and improved branch houses and storage plants used as central wholesale markets open to all wholesale food dealers on equal basis.

"The meat packers would be prohibited from using their present branch houses and cold-storage plants only in those cities where new central wholesale markets are established and where all wholesale food dealers in perishable foods are required to store their goods and carry on their business in these new central markets. But in such cases the packers would be provided with storage market facilities as good as or better than the distributive facilities they now have in those cities. So the new central markets would improve rather than injure the distributive facilities available to the big packers.

"The commission in making its recommendations took account of the national importance of the packers' distributive system as well as the differential advantages which it gives them over others. Therefore it recommended not the tearing down of the packer branch-house system but the building up of a national marketing system on the branch-house principle, one which will give all dealers, including the packers, marketing facilities as good as or better than those the packers now enjoy. So the aim is not to destroy any efficiency the packers' distributive system may have, but to add to the efficiency of the national distribution of food products and to put all dealers on the same basis.

"These central wholesale markets when established should, through some agency of the Federal Government, be controlled so that all food dealers who carry on their business in them shall have equal facilities at uniform charges. In regard to the operation of the public markets, the commission in the summary of its report on the meat-packing industry recommended:

"The same to be operated by the Government as public markets and storage places under such conditions as will afford an outlet for all manufacturers and handlers of food products on equal terms."

"The charges for the use of storage space and sales and auction rooms should be on a uniform basis to all dealers, and the Government should see that no dealer or set of dealers secures a monopoly of the central market facilities. In order to accomplish this the Government agency controlling the market facilities should rent to dealers on short-time contracts only the amount of storage and sales space necessary for the transaction of their business, and should have the option of taking from any dealer rented space that he does not put to actual, efficient use. The market should be so conducted that anyone who desires to sell food products at wholesale may get accommodations in the central wholesale markets on equal terms with other dealers there, all requirements safeguarding the public having been met.

"*Through the railroads.*—For any reason should it be thought unwise to have the Federal Government itself construct the storage and business buildings at central wholesale markets, the Federal Government might require the railroads to unload all food products at a central terminal in each city and to build in connection with the terminal adequate dry, heated, and cold storage to take

care of the goods. It might in each case also induce the railroads to construct, in connection with the terminals, the necessary office and sales space to accommodate the wholesale trade.

"The Federal Government, under the interstate commerce clause of the Constitution, would have power to regulate the use of the railroad-owned central markets just as it has power to regulate the other interstate commerce activities of the railroads.

"Through State and municipal governments.—The central wholesale markets may also be constructed through cooperation between the Federal Government and State or municipal governments. The Federal Government might furnish a part of the funds with which to construct the central markets on condition that the State or municipal governments supply the balance of the necessary funds and consent to certain provisions as to Federal powers over the operation of the facilities when completed. Such cooperation between National and State Governments is being successfully worked in the improvement of public roads. Under such a cooperative scheme the Federal Government would exercise its power to require the railroads to construct spur tracks to and unload food products at the central markets, and would also exercise its power of eminent domain in securing desirable sites for the markets.

"Sec. 5. Regulation of marketing methods through Federal license.

"In order to be permitted to carry on interstate commerce in food products of any kind, each dealer should be required to secure a license from the Federal agency which has control over the operation of the central market facilities. In case of violation of its terms the Federal agency should have power to revoke the license and prohibit further engaging in interstate commerce in food products on the part of the licensee. The provisions of the license should be such that the regulating Federal agency would have power to require each licensee to furnish full information concerning his business and to follow certain definite rules in regard to business practices.

"The licensing Federal agency should have power to require each licensee to answer any question concerning his business and to furnish at stated periods information in reference to the volume and character of his business, stock of goods on hand, prices paid, prices received, overhead expenses, and net profits. And each licensee should be required to keep his books and records in accord with uniform principles determined by the Federal agency with approved modifications necessary to fit the individual business. The Federal agency should at all reasonable times have the power to enter the public place of business of any licensee and inspect any or all of his books, documents, correspondence, and records, and to take true copies of such as it sees fit.

"Under the license no licensee should be permitted to (a) engage in any unfair, unjustly discriminatory, or deceptive practice or device in commerce; or (b) charge an unreasonable price or rate in commerce; or (c) exact an unreasonable profit for any calendar year in carrying on his business in commerce; or (d) refrain from buying food products for the purpose of unreasonably depressing the price of those products in commerce; or (e) withhold from the market any food products for the purpose of unreasonably enhancing the price of those products in commerce; or (f) sell or otherwise transfer to or for any other licensee or buy or otherwise receive from or for any the licensee any food products for the purpose of apportioning the supply or unreasonably affecting the price or creating a monopoly of those products in commerce; or (g) be both buyer and seller directly or indirectly, in the same transaction; or (h) conspire, combine, agree, arrange, or have an understanding with any other person to apportion territory for carrying on business or to apportion purchases or sales of any food commodity or to control prices in commerce. Where any licensee is by the Federal agency found guilty of committing one or more of the above enumerated offenses it should be empowered to punish or have punished the licensee to the extent of taking his license away, subject to right of appeal to the courts.

"For the purpose of regulating the weights and measures and standardizing the containers of food products in wholesale trade, the licensing agency of the Government should have authority to specify the size, character, and kind of containers to be used in the shipment of the different kinds of food products in interstate commerce. Also this Federal agency should have authority to determine, in so far as is practicable, standardized grades for each food product and maintain inspection service at important shipping markets. When grades are established for a commodity the particular grade should be marked on such

package of that commodity before it is accepted in interstate commerce with proper penalties for those who misbrand a package.

"In order to prevent the same goods from passing through the hands of several wholesale dealers, the Federal agency should have the power to prohibit one wholesale dealer from selling to another in the same trade, except under special rules and regulations laid down by the Federal agency. That is to say, the line of movement of goods should in general be toward the consumer, and the channels of trade should not be clogged by excessive intertrading between wholesale dealers.

"The Federal agency having control of the central market facilities and of the enforcement of the licensing of the food dealers should be authorized and required to make investigations of and frequent reports on the demand for, the supply, consumption, costs, and prices of and the facts relating to the ownership, production, transportation, manufacture, storage, handling, or distribution of all kinds of food products. This Federal agency should be required to make daily market reports, giving the amount of different kinds of foods sold to wholesale dealers, with the prices they paid, and the quantities and kinds of foods sold by them to retailers and others, with the prices they received, thus giving producers, dealers, retailers, and consumers the benefit of public information."

Some of the ideas in this report on the wholesale marketing of foods and a remedy for some of the conditions therein portrayed found expression in a section of the Kenyon-Kendrick bills, which provided for voluntary registration of companies operating abattoirs, marketing, and storage places. That provision of the bill was eliminated in the final consideration of the measure. The Sterling bill, which came close to passing the Senate as a substitute for the House packer control bill, also was based in part on this report on the wholesale marketing of foods.

What I am driving at here, if I may repeat, is the fact that these problems of food distribution will not be settled by a mere opening of this consent decree and allowing the packer to attend to the matter for us. Will opening the decree have any effect on the transportation rates? Yet the reduction of transportation rates is one of the most important immediate means of lessening the price spread between the producer and the consumer.

What I have been saying about the reports of the Trade Commission, the studies of the Joint Commission on Agricultural Inquiry, and all the other proposals for remedying our food situation are intended to suggest that some other kind of program would be much more useful in the public interest than the proposal made in this hearing, that the Government shall turn to the packers as our salvation from these evils.

If we are seeking specific agencies to aid in solving the evils of distribution, why should we not also consider the chain store, the mail-order house, and, of more importance in these reconstruction days, the producers and consumers' cooperatives? Among them, I am inclined to think, we would find better remedial agencies to trust than the five packers.

President Harding's message to Congress made a suggestion on this point also. After citing the statement that 9,000,000 bales of cotton raised in a year will be worth more to the growers than 13,000,000 bales would have been, and that 700,000,000 bushels of wheat raised by American farmers would bring them more than 1,000,000,000 bushels would, the President says:

"In a world where there are tens of millions who need food and clothing which they can not get, such a condition is sure to indict the social system which makes it possible.

"In the main the remedy lies in distribution and marketing. Every proper encouragement should be given to the cooperative marketing programs. These have proven very helpful to the cooperating communities in Europe. In Russia the cooperative community has become the recognized bulwark of law and order, and saved individualism from engulfment in social paralysis. Ultimately they will be accredited with the salvation of the Russian State.

"There is the appeal for this experiment. Why not try it? No one challenges the right of the farmer to a larger share of the consumer's pay for his product; no one disputes that we can not live without the farmer. He is justified in rebelling against the transportation cost.

"Given a fair return for his labor, he will have less occasion to appeal for financial aid; and given assurance that his labors shall not be in vain, we reassure all the people of a production sufficient to meet our national requirements and guard against disaster."

Mr. DURAND. There are two things which I want to emphasize in conclusion. Perhaps I have emphasized them sufficiently already, but with your permission I would like to emphasize them again.

The first is that the past record of the packers, as shown by voluminous evidence, is such as to convince any reasonable man that their reentry into these unrelated food lines, practically at the behest of the Government, would almost surely result in their substantial domination of these unrelated lines. This, added to their monopoly and their present dominance of the more important substitutes for meat, which the decree as it stands does not touch, will leave the American people at the mercy of these monopolistic interests for substantially everything in their food supply within the course of a few years.

Not only does the history of the packers show their rapid growth inside and power in any line they undertook, but it shows clearly their disposition to combine in violation of law and against the public interest.

This conclusion, from the analogy of past experience, is an added reason for not opening up another field to the packers through modification of this decree.

Now, the second point, growing out of that first point, is this thought: If the opening of this decree will tend toward an increase of monopoly, the Attorney General, in adherence to present laws, is bound to oppose such a course. The law of the land is for competition. Any divergence from that policy is for Congress to decide. Whatever the personal views of an administration official as to the merits of regulated monopoly as opposed to competition, it is not for him to commit the Government to a policy not sanctioned by law. Congress, rather than the Department of Justice or the court, is the governmental agency before which this great question of national policy should be thrashed out and decided.

Judge HAINER. You are discussing now the law, are you not, in that closing paragraph?

Mr. DURAND. Possibly I am.

The CHAIRMAN. We will now take a recess. Perhaps we will have some questions to ask after luncheon.

(Thereupon, at 12.35 p. m., the committee stood on recess until 2 o'clock of the same day, Wednesday, December 14, 1921.)

AFTER RECESS.

The committee resumed its session at 2 o'clock p. m., pursuant to the taking of recess.

The CHAIRMAN. Gentlemen, let us proceed with our hearing.

STATEMENT OF MR. WALTER Y. DURAND—Resumed.

The CHAIRMAN. Mr. Durand, you have finished your statement, so I have no doubt there will be some questions that we may have to ask you. Judge Hainer, have you anything?

Judge HAINER. In your closing statement, if I understood you correctly, Mr. Durand, you stated that if the Attorney General should move for a modification of this consent decree that in your judgment that would be sanctioning or approving a monopoly of the unrelated commodities that are prohibited from being handled or transported by the Big Five meat packers. Did I understand you correctly?

Mr. DURAND. I think that was about what I said, Judge; I do not recall my exact words. Just as an expression of my personal opinion there.

Judge HAINER. Your personal opinion?

Mr. DURAND. Yes. I understood that you had been asking me from time to time for my personal opinion, and I just closed with it, with an expression of it.

Judge HAINER. But would it follow, even if the decree should be modified by the court after the court hears all the evidence, would it necessarily follow that these facilities for handling unrelated commodities would be absolutely unrestrained? In other words, isn't there a distinction between absolutely prohibiting the transportation and handling of a commodity and at the same time restraining such persons or corporations from either monopolizing the source of supply or the means of distribution? You catch the distinction, don't you?

Mr. DURAND. I think that probably is a legal point, Judge Hainer.

Judge HAINER. Well, you gave a legal opinion.

Mr. DURAND. Well, if I gave a legal opinion, I was not enough of a lawyer to know that I was, Judge, and I would want to withdraw it as a legal opinion. If that trespasses on the field of legal opinion, I would like to withdraw it to that extent.

Judge HAINER. You did state, though, that if they moved to modify this decree—that is the impression that you have given all through your testimony—that that would be sanctioning a monopoly. Isn't that your chief objection why you are opposed to the modification to the decree, that you have fear and apprehension that these unrelated commodities would be monopolized by the big packers?

Mr. DURAND. It seems to me that the history and the experience that we have had shows that as a very likely result, and I expressed an opinion based on the data that I submitted to you, to indicate that that result was likely. I did not mean to go further than that into any legal argument in the matter.

Judge HAINER. Well, you don't mean to entertain the thought, or no one else, that this committee or any officer of the Government would favor a monopoly, do you? And that that is the purpose of this proposed modification of the decree?

Mr. DURAND. Well, I hear a great deal of discussion throughout the country, sometimes in the mouths of Government officers and of others, as to the general question of monopoly versus competition, as to whether the Government some time will not have to come to regulating monopoly instead of trying to insist on competition.

Judge HAINER. That would be for Congress to determine; it would be for Congress to determine that question?

Mr. DURAND. That is the point that I have been making. It was my judgment that Congress should determine the national policy.

Judge HAINER. Yes; that is what we call the license to regulate even monopoly.

Mr. DURAND. Yes.

Judge HAINER. But until Congress passes such legislation you understand that it is the duty of all Government officials, every one, to prevent monopoly or monopolization, either the source of supply or the distribution thereof.

Mr. DURAND. Yes. I was not at all assuming that the Attorney General would sanction monopoly, but I said that if this evidence that has been presented here by any of those favoring modification of the decree did lead him to that conclusion, I still thought that it was for Congress to decide the matter of such policy. Now, maybe I am getting into a legal point again.

Judge HAINER. Now, let me put this question again, not as a legal point, but as a matter of common sense, without any law or reference to law. It is not unlawful to transport raisins, is it, in itself?

Mr. DURAND. Certainly not.

Judge HAINER. It is not unlawful to transport canned salmon or canned meats, is it?

Mr. DURAND. No.

Judge HAINER. Or any of these unrelated commodities, is it?

Mr. DURAND. No; I think not; not in and of itself.

Judge HAINER. And the only danger and menace is monopoly, isn't it?

Mr. DURAND. Yes.

Judge HAINER. That is, obtaining such control and controlling interests so that you could dominate and fix the prices?

Mr. DURAND. Yes, sir. That is what we want to avoid.

Judge HAINER. That is what you want to avoid. Now, don't you think that a decree could be framed permitting these commodities that are not unlawful to transport or handle, and yet write into the decree to prevent the monopolization of either the source of these commodities or the distribution thereof?

Mr. DURAND. Wouldn't we have a practical question as to what constituted monopolies, and wouldn't we be likely to get a long way on the road toward monopolization before the challenge was issued?

Judge HAINER. No; I say, write it into this decree. Now, for instance, you state that from the records that you submitted that the cheese business is being monopolized.

Mr. DURAND. There were a number of statements to the effect that the cheese business was now largely in the hands of these packers.

Judge HAINER. Yes. Now, couldn't it be written into the decree that the monopolization, or attempted monopolization, should be unlawful, and yet permit them to transport cheese?

Mr. DURAND. Just speaking as a matter of common sense, and without knowing what the law is—

Judge HAINER (interposing). I am asking you not as a legal question; just as a matter of common sense.

Mr. DURAND (continuing). It looks to me as if the decree forbids the monopolization of meats.

Judge HAINER. That is true. That is conceded.

Mr. DURAND. Yet it seems to me that they have the monopolization of meats and are operating a monopolization of meats right now, under the decree, and I am wondering what the decree will do about it.

Judge HAINER. Well, that can be governed by the decree. But, now, as to these unrelated commodities, do you think that the decree is proper, that it should absolutely prohibit the transportation of any of these unrelated commodities; without regard to whether it is a monopoly or not?

Mr. DURAND. That is the position we have taken; yes, sir.

Judge HAINER. That is the position you have taken, and you think that is sound, and you think that is to the interest of the public, do you?

Mr. DURAND. That is the only ground on which I have considered it; that it is sound.

Judge HAINER. And you think that is to the interest of the growers of fruit and berries in Michigan and Indiana?

Mr. DURAND. Yes; it is to their long-time interest.

Judge HAINER. To their long-time interest?

Mr. DURAND. Yes; to their long-time interest; to their real interest. And it might be an apparent advantage in the immediate present or the near future, but I think in the long run, and counting their real solid interest, it would be better if this thing were left as it is.

Judge HAINER. And you think that the wholesale grocers, with their facilities, are adequate to properly distribute all these unrelated commodities?

Mr. DURAND. I shouldn't want to at all go on record as opposing any development that will give us better service without monopoly. I think the wholesale grocers could certainly improve their service probably; I am not saying that they could not. I would not want to take that position. I think the genius of the American people will probably improve conditions of distribution as we go along.

Judge HAINER. Yes; but how does that avail the man, when it means, as Mr. Morrill and other witnesses detailed here, the running into bankruptcy with their orchards for want of having facilities that they could use and have used for the purpose of distributing the products of the same?

Mr. BREED. Weren't those the car lines, though, Judge, that he was referring to, private car lines?

Judge HAINER. Any means. I don't know. Any means of distribution.

Mr. BREED. He referred to private car lines.

Judge HAINER. Yes; I think he referred to the private car lines.

Mr. DURAND. My view of that, Judge, was that it was an indication of the unsoundness of the plan of relying too much upon a single large distributing interest, because when that interest fails the grower for any reason, whether it is because this consent decree comes in or some other reason operates, or whether the packer of his own volition should cut off service to that set of growers—whatever the reason is the growers are put in a very bad position, a very unfortunate position, when they can no longer avail themselves of or when that service is removed from them. It would be better not to get into that position.

Judge HAINER. Yes; but do you believe that it should go to the extent of destruction, absolute destruction of business that is beneficial to the producers of this country and absolutely take away from them the right to transport their products from the producer to the consumer?

Mr. DURAND. Certainly not. The only question is about the word "beneficial," and if in this case—

Judge HAINER (interposing). No; but this decree has taken away from them a large distributing agency, and deprives them of that without having been heard, as Mr. Morrill states, without an opportunity to present their case in a court, and they just woke up and found that they are absolutely deprived of one large distributing agency sending their crops from the farms to the consumers. Do you think such a decree is right?

Mr. DURAND. As I understand Mr. Campbell's testimony, his—

Judge HAINER. No; Mr. Morrill's testimony I am referring to.

Mr. DURAND. Well, I don't recall what Mr. Morrill said on this particular point.

Judge HAINER. Well, assume that he did say that. He is here. Mr. Morrill, do I fairly state your position on that?

Mr. MORRILL. Yes; with the exception that our interest lies both in the transportation of our fresh fruits and the preservation of our fruits through their canneries, which makes just that much greater market for us, in turning the business over to the dealer. It was a combination deal with us.

Mr. DURAND. My general view on that point was, Judge, that the question is whether it is a real benefit or whether in the long run it will prove not to be a benefit, and I think out of the history of the packers of meats and other lines you could draw this inference safely, that many times they have presented to other interests a very attractive program, an opening which the other interests have entered upon until they have advanced to a position where at some time it became to the advantage of the packers to cut in and take the ground from under and absorb that business, and that there have been cases of that kind.

Judge HAINER. Well, but you are expressing a theory now and not a practical fact.

Mr. DURAND. Yes; but—

Judge HAINER. But here are these large fruit growers, as stated by Mr. Morrill, and these Virginia canneries, whose business has been practically destroyed and available means of transportation have been denied them.

Mr. DURAND. But these refrigerator cars are still in existence, are they not? And are there not other means of distributing? I am not aware, of course—

Mr. MORRILL (interposing). No other successful means in the last 21 years in our State. There have been no other successful means. The railroads have tried it and have failed.

Mr. BREED. Well, right at this point, Judge, I would like to ask you if it is not your opinion that the packers are not restrained by this decree from using their cars as common carriers in transporting whatever they seek to transport? I call your attention to page 3, section 4, which uses the words "transporting (except as common carriers)." So there is nothing to prevent the packers from using their refrigerator cars to transport these products if they see fit to do so.

Judge HAINER. Well, they are not common carriers. That is the answer to that question.

Mr. BREED. They can not be common carriers with an interest in the product.

Judge HAINER (addressing the chairman). Do you understand that the packers are common carriers?

Mr. BREED. They are common carriers to the extent that they own these car lines and operate them and utilize the railroads merely as facilities.

Judge HAINER. If you construe that decree that way, Mr. Breed, there would not be anything left in it.

Mr. BREED. But still that is the verbiage of the decree.

Judge HAINER. I have serious doubts—it seems to me that that is except as common carriers, and these packers are not common carriers. Otherwise the decree would be without any force or effect.

Mr. MORRILL. Judge, might I make just a little statement in connection with that?

Judge HAINER. Yes.

Mr. MORRILL. The question is not fully explained there in the asking, because of the fact that on account of it being a food product, a tender article, a perishable article, a car used in common carriage can not be used for our purposes without ruining the car or the product that is put in it. I could own Armour's cars and make them common carriers, and my competitors could load onions in there and ruin any other product there was in the car for your consumption. I could put a barrel of kerosene in it, or I could put a ton of salt meats in one end of it and destroy its use for a year on fruits and vegetables. That I assume these gentlemen understand, but you should understand it.

Mr. BREED. We are talking about carload lots.

Mr. MORRILL. I am talking about anything that becomes a common carrier, and can handle products offered ordinarily for transportation; a shipper can ruin that car for my use, because he can put a load of potatoes in there that have got a thousand miles to go, and they will all be rotten before they arrive if they come in contact with any salt that has been put in that car.

Mr. BREED. Does Mr. Morrill take the position that the railroads of the United States are incompetent to furnish refrigerator service that will satisfy the needs of the fruit growers?

Mr. MORRILL. There are only two railroads that I know of that have ever succeeded in doing it, and one is the Illinois Central for a certain class of trade, from New Orleans to Chicago and intermediate points, and the other is the New York Central with the Merchants' Dispatch, which I believe was organized for the purpose of handling your class of goods—groceries and food products—and have succeeded perhaps to the extent that they own or control, as the traffic manager told me last year, 45 per cent enough cars to carry their business, and depend upon other cars for these peculiar food products like butter, cheese, and such as that, that require special handling and rules for loading.

The Pennsylvania has a dairy line in which they carry the dairy products. The Pacific lines—the Southern and the Union—and the Oregon Short Line, all allied, have a large system of cars called the P. F. E. (Pacific fruit express), in which they handle it with great success through a subsidiary company. I don't know what your laws are; I don't know anything about that. I know that it seems to be out of the control of the ordinary railroad to handle these perishable products as well as a company organized that shall have a different control; I know that; I understand that in a general way. They have got to have a different control to handle it satisfactorily. Because I know the judge would not buy any butter or cheese that smelled like onions, or if it was tainted with kerosene, or a lot of things. So it requires a separate service.

Mr. BREED. Then you do admit that the railroads of the United States can haul and carry fruits satisfactorily?

Mr. MORRILL. I think that I would admit that the Illinois Central, and to a certain extent and in certain lines of fruit—not all agricultural products—but in certain lines of fruits that the New York Central Lines have done very good work at it, but there are some hundreds of railroads in the country, many of them too poor to do it and unable to do it, and all attempts to pass over their lines seem to have been unsatisfactory. If our freight ran entirely on the line of the Illinois Central, all right, but the moment it branches and goes on a road that is not competent to handle it, it takes longer again, and we lose.

Mr. BREED. Just one other question. Then you favor turning over the handling of fresh fruits to the transportation system of the packers?

Mr. MORRILL. Absolutely, because it has been a success, to my certain knowledge, for 21 years in our State. Our business has grown up around it, and they have given us a square deal at every turn; I will say that for our whole people. And since I spoke here before, I received my home paper and I saw in it as a news item that our State Horticultural Society, 45 years old, composed of 42,000 members, and who know the business, have declared absolutely in favor of it, based on their experience. And they have had both kinds of experience all the way through.

Mr. STEVENS. Mr. Morrill, may I ask you a question in order to clear up a matter?

Mr. MORRILL. Yes, sir.

Mr. STEVENS. It seems to me that you hadn't the same understanding as to what a common carrier is as probably the rest of us have. Will you tell us what you call a common carrier?

Mr. MORRILL. Well, sir, you probably know a good deal more about it than I do.

Mr. STEVENS. Well, will you say what you call a common carrier, Mr. Morrill?

Mr. MORRILL. I call a common carrier a railroad that is compelled, for instance, to take my goods under the same conditions as yours.

Mr. STEVENS. All right. I had an idea that you referred to the cars as containing a mixture.

Mr. MORRILL. No. That would have to be subject to certain rules that do not exist on any railroad, and do not exist, perhaps, on one railroad and not on another.

Judge HAINER. I would like to have my question answered if you desire to. If not, why just say so. Will you please read the question that I put to Mr. Durand?

(Thereupon the reporter read the following:)

"Judge HAINER. Well, but you are expressing a theory now, and not a practical fact. But here are these large fruit growers, as stated by Mr. Morrill.

and these Virginia cannerys, whose business has been practically destroyed, and available means of transportation have been denied them.

"Mr. DURAND. But these refrigerator cars are still in existence, are they not? And are there not other means of distributing? I am not aware, of course"—

Judge HAINER. That is not the answer to my question. I did not ask you about refrigerator cars.

The CHAIRMAN. Put your question again, Judge.

Judge HAINER. What I wish to bring out is this: The distinction between prohibiting the transportation and available means of distribution, and regulating it. In other words, preventing monopoly, but at the same time using these agencies for the distribution of the products of the farmer to the consumer. And a modification of the decree to that extent only.

Mr. DURAND. That is a difficult question.

Judge HAINER. Well, why is it difficult?

Mr. DURAND. Of course, we have been discussing the proposition of a modification of the decree by elimination of these features. Now, as I understand, you ask what would be the wisdom of modifying the decree not to that extent, but to a more limited extent, by putting in there a proviso that there shall be no monopolization of these unrelated lines. And leave them free to deal in them provided they do not monopolize?

Judge HAINER. Certainly. Restraining them from monopolizing the source of supply, and from monopolizing the distribution thereof. That is, allow them to conduct their business in a lawful and legitimate manner, without violation of the antitrust laws.

Mr. DURAND. I think that there is no reason in the world to keep anybody out of any business—

Judge HAINER. Except the five packers.

Mr. DURAND (continuing). Unless where is a real reason for doing so, and if there is no monopoly now, and is to be no monopoly.

Judge HAINER. No; I am not asking you if there is to be. I say, put it absolutely in the decree that there shall not be; that they are restrained and enjoined from monopolizing the distribution of these products, or the source of supply?

Mr. DURAND. Well, could I answer that as I started to answer it a moment ago?

Judge HAINER. Well, answer it in your own way; yes, sir.

Mr. DURAND. That the decree as it now stands in terms prohibits the monopolization of meats. Yet, in my judgment—and without wishing to cast any aspersions on the decree, because I think it would be very difficult, perhaps—in my judgment, as a practical matter, the packers are now maintaining and will continue to maintain a monopolization of meats. If that is the case as respects meats, are we sure that putting into the decree an injunction against monopolies of the unrelated lines will be effective? That is the thought that runs in my mind.

Judge HAINER. Well, the presumption is that the decree will be followed. If not, the parties can move to do something. Well, you don't care to answer that question. I have asked that question in the beginning and in the close, and you have not answered the question at all.

Mr. DURAND. Well, I want to answer it, Judge. I want to answer it.

Judge HAINER. You are assuming always that they are going to violate the law

Mr. DURAND. No; if they are not going to violate the law, I don't see any objection to letting them or anybody else do anything they want to, assuming that the law sets forth, as I think it does, proper protection of the public interest. Of course, there are some instances where, perhaps, we need further law, and it might not be desirable in the public interest to do everything that is lawful, because we have not yet got all the law we need; but in general I do not see that there is any objection to letting anybody do whatever is not unlawful and does not because of that unlawfulness injure the public interest. With the one exception, that there may be instances where further law is needed. I think one desirable addition to law certainly would be that the ownership of the refrigerator cars, which give this advantage, should be in the railroads as a public utility.

Judge HAINER. I call your attention to paragraph 8 of the consent decree, in which the defendants are "perpetually enjoined and restrained from engaging

in the United States, either directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, in the business of buying, collecting, selling, transporting, except as common carriers distributing or otherwise dealing in fresh milk and cream "—

Mr. BREED. You might also add in there, Judge—

Judge HAINER (continuing reading). "Except as common carriers."

Do you think that is in the interest of the consumers, the public?

Mr. DURAND. If it would result in a monopoly in the long run, I think it would be beneficial to the public to prohibit it.

Judge HAINER. But if there be no monopoly, then what?

Mr. DURAND. Then the answer that I have just made before would hold. If there be no monopoly and no danger of monopoly, then no one is harmed by making use of all the services and facilities that are available.

Judge HAINER. Well, do you know of any instance in all this investigation that you have made where there is any monopoly in transporting fresh milk and cream?

Mr. DURAND. Why, Judge. I can not speak on that from my personal knowledge, but I know that the Federal Trade Commission has many instances and cases of unfair practices of creameries complained of, and that those cases are pending before it, and I think perhaps some of them are going to be transferred to your department under the new law. I can not speak on those things.

Judge HAINER. But if this decree is in force the Secretary of Agriculture has no jurisdiction over these matters.

Mr. DURAND. Well, Judge Hainer, I think that is a law question.

Judge HAINER. Well, I will say that, as a matter of law, it is beyond the Secretary and this department to enforce the decree as to these parties, I mean. Of course, not as to some one else. But milk is a perishable commodity, you will answer that as an economist, won't you?

Mr. DURAND. Yes, sir.

Judge HAINER. It should be delivered promptly and efficiently and expeditiously?

Mr. DURAND. Yes, sir; just as much as meat.

Judge HAINER. And if it is not a monopoly in the distribution of it or in the source of supply it is certainly against the public interest to prohibit any known available agency to distribute the same; wouldn't you say so?

Mr. DURAND. If there is not a monopoly and no danger of one, yes.

Judge HAINER. Well, now, you always talk about danger.

Mr. DURAND. I have so much in the back of my head here, Judge.

Judge HAINER. Don't you think the Government is big enough and strong enough to restrain and enjoin a threatened monopoly without destroying it?

Mr. DURAND. I think that it should be, and I think it probably is.

Judge HAINER. It has the power. It can. There is adequate law for it. Isn't there?

Mr. DURAND. For restraining monopoly?

Judge HAINER. Yes.

Mr. DURAND. Yes; but, Judge, I think there is a good deal of a body of sentiment through the country that the enforcement of the Sherman law has not been exceptionally successful.

(Then followed a discussion between Judge Hainer, Mr. Breed, Mr. Stevens, and Mr. Durand concerning former Attorney General Palmer's statement before the congressional committee, which was stricken from the record at Judge Hainer's request.)

Judge HAINER. That is all.

The CHAIRMAN. Mr. Hall?

Mr. HALL. Mr. Durand, I don't know whether I have followed you all through your statement or not, but did you produce any figures to show the volume of business in these unrelated lines handled by the meat packers? I do not ask you whether they are accurate or not.

Mr. DURAND. No total figures of any kind for the five meat packers. There were figures that I gave for Armour & Co. and I believe Wilson & Co., purporting to be their amount of business in these grocery or unrelated lines. That is as near as the classifications of their business permitted them to give it. But not for the other three, no total.

Mr. HALL. Well, now, based on those figures, would you say it is or is not a good thing to shut out the Michigan farmers in the distribution of their fresh fruits, as this decree does?

Mr. BREED. Of course, we maintain, Mr. Hall, that this does not shut out the Michigan farmers from the distribution.

Mr. HALL. But Mr. Morrill says that it does, Mr. Breed.

Mr. BREED. No; he says distinctly that they had distributed all of their goods this year, but he felt that if next year they should have a very great pack that they would have more difficulty.

Mr. HALL. No; Mr. Breed.

Judge HAINER. No.

Mr. BREED. That was my understanding.

Mr. HALL. He said he distributed his own, Mr. Breed, and he is not relying upon the car line. He is on a lake port. He is speaking for the Michigan farmers, and I said the Michigan farmers.

Mr. BREED. Yes; but I understood his testimony to be that he had distributed his goods this year; the pack being small, but that he feared if next year there was a large abundance of fruit packed that they would have difficulty.

Judge HAINER. Mr. Morrill?

Mr. MORRILL. I use steamers and trucks.

Mr. BREED. Am I right?

Mr. MORRILL. You are wrong.

Mr. BREED. In what respect?

Mr. MORRILL. In this: I did probably incidentally mention that I got by myself.

Judge HAINER. Yes; that is how I understood you, Mr. Morrill.

Mr. MORRILL. I am at a Lake port, and that Lake port does not suffer. I am not expecting to suffer. If half the people of Michigan are ruined there will be half as much fruit put on the market, and I will be one that is putting fruit on the market. That is a fact. But it is the interior man who is dependent upon this service, and the man who for 25 or 30 years has been educated up to the standardization of product and to the realization that the carload must be the unit of trade, and it must be a uniform and satisfactory product—for 30 or 35 years a number of us have been working hard for that, and growing up around it has been this Armour car line for 21 years, giving them that service, which, so far as I have ever heard up to date, was satisfactory. It is the interior man, as I say, who is suffering. Not me. Because, while I have loaded as high as 20 or 22 or 23 cars of my own product per day in freezing cars—not always Armour's—and run up to hundreds in a season, I have had good success with all of them. And they have all been private lines. And they have all been satisfactory. Each car becomes a contract between them and me to carry fruit and deliver it in good order to a certain place, and they have always performed.

Mr. BREED. The railroads are still there?

Mr. MORRILL. The railroads do all the hauling; oh, yes; they do the hauling.

Mr. BREED. And there is nothing in this decree that prohibits Armour from acting as a common carrier, if they see fit to do so?

Mr. MORRILL. If their cars are used in common carriage, I could not use them on some of our fruits.

Mr. BREED. I do not understand that, because the words "used as a common carrier" mean that they merely go upon the railroad and have the railroad facilities here open to the parties who wish to ship.

The CHAIRMAN. Well, now, let us get this question answered if we can.

Mr. HALL. Read the question.

(The question previously asked by Mr. Hall was read by the reporter, as follows:)

"Mr. HALL. Well, now, based on those figures, would you say it is or is not a good thing to shut out the Michigan farmers in the distribution of their fresh fruit, as this decree does?"

Mr. DURAND. I am not sure that I quite understand the question. Does it mean that these figures for Armour & Co., for example, showing not a very large proportion of the total business of Armour & Co., and presumably not a very large proportion of the total business of the country—is it a good thing to shut the Michigan fruit growers off from access to that distributing system?

Mr. HALL. Yes.

Mr. BREED. That is, Armour's system?

Mr. DURAND. I think that is the same question in another form that I answered as to Judge Hainer's question.

Mr. STEVENS. I was just about to suggest that.

Mr. DURAND. If there is no monopoly—and the figures that I have, as I said, are not complete and certainly in themselves do not show a monopoly—and if there is no danger of a monopoly, then it is not a good thing to shut them off. But the whole tenor of my remarks here before the committee has been that it seemed to me there was a danger of monopoly, and that in the long run it was a safer position for the carriers to develop other systems of distribution, rather than to rely upon a monopolistic factor, or one that might readily become a monopolistic factor between them and the consumer. I think that is what I have been trying to say.

Mr. HALL. What do you mean by "developing another system"?

Mr. DURAND. The use of other systems of distribution that other growers of fruits and vegetables use. I certainly would regret very much if it were necessary in the public interest to shut off any superior system of distribution, any superior advantages; but if those superior advantages are offered with an ultimate result of a monopoly and subsequent and final injury to the public, then I think we have to be on our guard.

Mr. HALL. But you could not say that they have been, could you, as regards these unrelated lines, Mr. Durand?

Mr. DURAND. I think my position is clear on that, that the argument from analogy on other lines, which I have not presented here in detail, is convincing to my mind that the packers will arrive at a dominance of these unrelated lines if they are permitted again to reenter them. Now, that leaves out of consideration Judge Hainer's suggestion that there be a specific provision put in here to restrain them from monopolization.

Judge HAINER. And further subject to the control of the packers and stock-yards act and further subject to investigation by the Federal Trade Commission when requested by the Secretary of Agriculture—with all those safeguards around it, couldn't they be permitted to conduct this business in a lawful manner for the interests of the public, and yet restrain them and keep them within legal bounds, beneficial to the public and the consumer, and no injury to our good friends the wholesalers?

Mr. DURAND. I can not quite grant all that in my mind, Judge. I seem to think back on the history from 1903 on, when the Government has been trying to control and regulate these packers in one way or another. It does not seem to me we have been very successful.

Judge HAINER. You have still got the idea of monopoly looming before you, and you can not escape it.

Mr. DURAND. I have this idea, Judge, that if you started out on the road to Baltimore here, and after you got out a few miles found a caravan proceeding toward Baltimore, and say out 10 or 12 miles, and if again perhaps a little afterwards you came and looked again and found they were 25 miles along on the road to Baltimore, and then after a bit you came and found that they were 35 miles along on the road to Baltimore, and it is only 45 miles to Baltimore, you would get the opinion and come to the conclusion that if something did not stop them they were headed for Baltimore and would probably get there. That is my general feeling.

Judge HAINER. Yes; but you are always assuming, Mr. Durand, that there is nothing in our laws that will restrain monopoly. But there is a distinction between allowing a person to conduct his business and restraining him from engaging in a monopoly or monopolizing any commodity or any article of commerce without destroying business. It is not the policy of the Government to destroy business, is it?

Mr. DURAND. Certainly not.

Judge HAINER. It is not the policy of the Federal Trade Commission or any agency of the Government to destroy business?

Mr. DURAND. No.

The CHAIRMAN. Mr. Durand, your belief is, then, that the best way to prevent a monopoly, which you fear on the part of the meat packers in the unrelated lines, is to eliminate them entirely from this business?

Mr. DURAND. Well, may I say, Mr. Chairman, it seems to me that I have tried to present to the committee here the facts. I have been asked for opinions from time to time, and I have given them, and I have volunteered opinions from time to time in the enthusiasm of my presentation, but I really do not feel that my opinion here, which is a personal opinion, has great weight. That the committee is better able to make deductions from the facts that I have presented. I would rather leave it that way.

The CHAIRMAN. The proposition I am getting at is this: I gather, Mr. Durand, that you feel this decree ought to be sustained in its present form, at least not weakened, for the reason that you fear a monopoly in the future unless it is sustained, and back of that is the theory, as I understand it, and I want to know if I am correct or wrong, that you feel the best way to prevent a monopoly by the meat packers on these things is to eliminate them entirely from those things?

Mr. DURAND. I would not say that. I think that I have suggested that this whole question ought to be thrashed out before Congress. And I would not want to say that this was the best way. I think it is for Congress to decide after everybody has been heard from and the thing has been considered from all angles, what is necessary to do, and what is the best way to do it.

The CHAIRMAN. Well, do you think that we can safely permit the packers to engage again in these unrelated lines?

Mr. DURAND. I have been giving you such facts as I had that tended to show that it was dangerous, to my way of thinking.

The CHAIRMAN. Do you think that there are any restrictions that we could place upon them that would make it safe for them to engage in these unrelated lines?

Mr. DURAND. I have not considered questions of that character, really, Mr. Galloway. I can see that those questions are very pertinent, but I have not given thought to them, and I would not want to make an offhand statement.

The CHAIRMAN. And then you would not care to say, Mr. Durand?

Mr. DURAND. That is, I do not want to make suggestions here for any modification of the decree on some compromised extent in between what was announced, as I understood, of the proposition made by the gentlemen favoring modification, which was that certain paragraphs should simply be eliminated.

Now, to take up the question of eliminating this and then substituting something else, I have not gone over those things, and I would not like to give an offhand opinion, and in any case it would only be my personal opinion, and certainly could not govern the committee as an expression of opinion from the Federal Trade Commission. Only the commissioners, I think, could do that.

Judge HAINER. But you expressed the opinion that you were opposed to any modification. Had you just confined yourself to detailing facts without giving that last conclusion and advising the Attorney General to oppose it these questions would not have been asked; that is what opened up these questions. Of course we appreciate the fact that you are just coming here to detail facts, but you went just a little further on that.

Mr. DURAND. Well, I thought that the committee had been asking me for opinions from time to time, and if that conclusion that I have stated there is not a proper statement in my field I would be very glad to withdraw it.

Judge HAINER. Oh, no; it is all right. I wanted to know how you felt about it.

Mr. DURAND. Well, as I said, Judge Hainer, I am not here to express opinions.

Judge HAINER. Yes; I understand.

Mr. DURAND. I am giving facts.

The CHAIRMAN. Go ahead, Mr. Hall, and finish your questions.

Mr. HALL. Well, I was going to go right back to the Michigan farmers. I just wanted to know whether you were or were not in favor of this decree, even though it put the farmers out of business in Michigan?

Mr. BREED. Mr. Hall, we do not think that the evidence shows that it has put the farmers of Michigan out of business, nor that it will.

Mr. HALL. There are pretty strong statements, Mr. Breed, by Mr. Morrill to that effect.

Mr. BREED. I do not so interpret his testimony.

Mr. HALL. Well, the record will stand for itself.

Mr. DURAND. Why, that, I think, is a question of opinion that I would rather not answer. I have not heard the testimony of Mr. Morrill in the case. I have not heard what Mr. Morrill has said in his testimony, nor read it. I simply heard what he has said when I happened to be here, during my own testimony, and I do not like to answer a question which rather implies that I do know about that Michigan situation, because I don't know what has been said about it.

Mr. HALL. You would rather not answer?

Mr. DURAND. No.

The CHAIRMAN. Is that all, Mr. Hall?

Mr. HALL. Yes.

The CHAIRMAN. Mr. Durand, assuming that there is only one class or system of distribution open to any line of business, is it economically sound that that system should be taken away until another is provided for them?

Mr. DURAND. Well, I don't know that it is economically sound in the sense that—do you mean to say that if there is an organization here dependent upon a system of distribution, and that is the only system of distribution, and that is taken away from it? Of course, the economic result is that it is bad for the organization.

The CHAIRMAN. And anything that is bad for an organization of any consequence in the industrial or agricultural life of our country is necessarily bad for the public at large, isn't it?

Mr. DURAND. I wouldn't say that; no. I have heard Mr. Armour say that anything that was good for the 110,000,000 of American people was good for Armour & Co., and, conversely, anything that was good for Armour & Co. was good for the 110,000,000. Now, I think there is some question about that conversely there. I don't think there is much of a question about the first proposition. But I would not want to think that necessarily even a fairly important section in some one part of the country would control as to the public interests of the whole country.

The CHAIRMAN. Now, Mr. Durand, assuming that the theory of our laws is to encourage competition, do you think that any law or any decree of court that takes away one system of distribution and leaves only one other system is encouraging competition?

Mr. DURAND. Well, if you say, "One other system"—if that one other system is composed of four or five thousand, and the one that you take away is composed of one or two or three or four or five, then, I think, that there is certainly competition left. I don't think, in other words, that there is any warrant for saying that the wholesale grocers are a unit, and that there are only two systems—(1) the wholesale grocer, as if that were a unit, and (2) all the big packers, as if that were a unit. There is a good deal of indication that you can consider the Big Five a unit in some of these other lines. I don't think that you can say that you would consider them a unit in their practice and policy in certain of these unrelated lines. I think you can not say that the three or four or five thousand grocers are a unit. Now, so far as they do get to be units in certain localities the Federal Trade Commission and the Department of Justice should, and I understand are, in some instances getting after them.

The CHAIRMAN. Well, now, isn't it a fact that regardless of whether or not there are four or five thousand, or how many there are, engaged in any one system of distribution, that every system of distribution that you eliminate from all of the systems that are in existence, that you thereby decrease just that much competition in that line?

Mr. DURAND. Oh, I think there is no doubt that the packers are competitors in this line.

The CHAIRMAN. And therefore, by eliminating them you have taken away one group, at least, if not five competitors?

Mr. DURAND. Yes; five prominent competitors, large competitors; you have taken them away.

The CHAIRMAN. Another thing. Do you think it is right—not from a legal standpoint, but from ordinary experience and opinion of right and wrong—to place restrictions of this kind which are placed upon the five big packers in this decree, and to leave all others in the same class of business unrestrained?

Mr. DURAND. Why, I think you might draw an analogy between the man who is called into court and bound over to keep the peace and this situation. Ordinary persons can go about and do as they will, but if a man has manifested a disposition that is sufficient to warrant a judge in binding him over to keep the peace, why he has to be more careful as to what he does. He is restrained and restricted.

The CHAIRMAN. Now, let us assume that there is no violation of law with reference to unrelated lines by these meat packers; that they have not committed any violations up to this time with reference to these unrelated lines; do you think it is right that they should be so restrained, and that the others similarly engaged should not be likewise restrained? In other words, shouldn't any such restrictions apply to all of the same class?

Mr. DURAND. Why, I think you have a different situation where you have these people with the evidence that was in the hands of the Attorney General in this case, and that the situation is not the same as if you had concerns wh

were in this business alone, and had no other attached business, and no record of this kind in the attached business.

The CHAIRMAN. In other words, you feel, then, that the peculiar situation surrounding the meat packers justifies this distinction?

Mr. DURAND. I feel that the meat packers' business is a single business which includes their meat business and everything else, and that the same people run various different departments, and that that has to be taken into account, and the policies of all of the different organizations within the company, the you can not assume that they will act any differently in one department than they are acting in the other departments.

The CHAIRMAN. Well, assuming that there are ample facilities and law to prevent violations of the law and prevent monopolization when it occurs, is it proper then to restrain any class of business from engaging in any line of business prior to the time that they have violated the law or prior to the time that any acts have been committed which are violations?

Mr. DURAND. I think there again you are trying to separate the packer into two things—the grocery department of the packer and the rest of the packer. As I say, he is one and indivisible, and he has been under serious charge of violation of the law, and part of his business is this business. I don't think you ought to draw a conclusion that because there is no evidence of his violation of law in respect to unrelated lines as yet, that that gives him a clear bill of health, that he is to be regarded as any other man would be who had not violated the law. These are pretty large assumptions, some of them, and, I of course, answer them with those assumptions in mind.

The CHAIRMAN. Yes. Mr. Durand, during the course of your testimony you stated that it was questionable whether or not the big packers were as efficient as the little packers. And you cited some excerpts from statements by Mr. Armour and Mr. Swift upon that question.

Mr. DURAND. Yes.

The CHAIRMAN. And by analogy reasoned that it would apply, or might apply, to the wholesale grocery lines?

Mr. DURAND. Yes.

The CHAIRMAN. If that is true, and if they are not as efficient as these other competing wholesale grocers, why is there any reason to fear a monopoly upon the part of the packers in this business?

Mr. DURAND. The reason to fear—that is the fear of unfair practices, agreements, combinations in restraint of trade, and the use of their vast powers, economic, financial, to secure dominance even though their efficiency is not so great. I am not saying that their efficiency is not so great, but I say there is an analogy that at least raises the question.

Mr. BREED. Would you also include their control over the refrigerator and peddler car systems?

Mr. DURAND. And I would say the same thing as to meat; that if they are less efficient in meat, their growth could nevertheless be explained by unfair practices, agreements, and combinations.

Mr. BREED. Do you also mean to include their control over the refrigerator and peddler car systems?

Mr. DURAND. Yes; that is a part of their power—their facilities.

Mr. BREED. Did you mean to include that?

Mr. DURAND. I beg your pardon.

Mr. BREED. Did you mean to include their control over the refrigerator and peddler car systems?

Mr. DURAND. Yes; I think the fact that they own some 90 per cent of the beef refrigerator cars is important.

The CHAIRMAN. Well, then, Mr. Durand, if a court decree or legislation was enacted which prohibited, or effectively cared for these unfair practices that you speak of, what objection, if any, would there be to the packers going back into these lines?

Mr. DURAND. Well, that has two assumptions. If they are less efficient, and if a decree will be formed which will effectively prevent them from using unfair practices and the undue advantages—if you include those in there, then with those assumptions, no. But I have some doubt about those assumptions.

The CHAIRMAN. In other words, you doubt whether it can be effectively done?

Mr. DURAND. I have a doubt whether it can be effectively done; yes.

The CHAIRMAN. But if it could be done—effectively done—why it might be all right to let them go back?

Mr. DURAND. That is all that could be done under those assumptions. I do not want to prevent the packers from doing anything that they can properly do, and I don't want to take away from the growers or the producers or any other element of the country, or the consumers, any advantage that they ought to have. This is just my judgment based on the past experience that it is better to let this thing stand as it is.

The CHAIRMAN. Mr. Durand, in the course of your statement you also cited the amount of business done in some lines by these various packers, and in some instances you used a tonnage basis, and in other instances a dollar basis.

Mr. DURAND. Yes.

The CHAIRMAN. Well, now, those are not very easily compared, unless we knew the value of the commodities at the time the statistics were gathered. And isn't it a fact, in that connection, that some of those statistics were gathered during the time or applied to a period during the time in which there was war in Europe, and at which time the value and therefore the dollar statistics were high in comparison to what the ordinary values or statistics based on dollars would be?

Mr. DURAND. Yes; I think there are one or two or three of the instances that I cited in that large table where the basis was money sales and the period covered, I think, was 1916, 1917, and 1918, or possibly 1915, 1916, 1917, and 1918. Of course, in that period prices were going up. And I think I mentioned as I gave my testimony that the figures of money sales were not as reliable or satisfactory as those based on tonnage sales.

The CHAIRMAN. The tonnage sales are the most satisfactory?

Mr. DURAND. Most of the sales were tonnage sales, except in two or three instances. The figures that I gave were all that I could find in the report, as I gave them. As I said, they were rather spotted figures and spottedly reported to us.

The CHAIRMAN. You recall you also cited an advertisement by Armour, in which he cited that he handled a great amount of foodstuffs, and covered practically everything that was needed for the table?

Mr. DURAND. Not a great amount; a great range.

The CHAIRMAN. A great range, I should say.

Mr. DURAND. Yes; of foodstuffs.

The CHAIRMAN. Does that necessarily mean that he has a control of those lines?

Mr. DURAND. Oh, no.

The CHAIRMAN. Then the fact that he has a wide range of business would not necessarily mean a control of those lines of business?

Mr. DURAND. No; the question of whether he has a control of those lines would depend on other factors and the proportions.

The CHAIRMAN. Well, would the fact that he handles this wide range of commodities indicate his dominating the field of food supply of this country?

Mr. DURAND. That advertisement was not cited, of course, for any such purpose, or in an attempt to show any such idea. That advertisement was cited for a different purpose. I think I made clear in my statement I did not intend—

Judge HAINER (interposing): Bearing on the question of efficiency, was it?

Mr. DURAND. Bearing on the question of attitude of the packer in going into these things that Armour's attitude was that he was going to furnish a complete line; a complete service. I did not mean to suggest that, and I did not bring it in in connection with the unrelated business of the packers, or the proportion they do, because it does not tell us anything about that. It does show the attitude of Armour that he intends to furnish a complete line; that he intends to furnish that all over the country and everywhere; and if he so intends to furnish that all over the country and everywhere it would make him a very substantial factor in the trade, of course, if he succeeds in his intentions.

The CHAIRMAN. There really should be no objections to the number of lines a man handles if he handles them properly and efficiently.

Mr. DURAND. There is no objection, so far as I know, to the number of lines in itself. I did not raise that question; at least, I did not intend to.

The CHAIRMAN. I believe you also stated that it was the practice of the meat packers—

Mr. DURAND (interposing). May I just add to what I said there?

The CHAIRMAN. Surely.

Mr. DURAND. The principle is emphasized—it was in the Department of Justice petition—the principle that substitutes for meat should not be in the same hands as meat; that there should be preserved this competition in commodities. That would come in to affect my answer to your question.

The CHAIRMAN. I believe you also stated that it was the practice of the meat packers, after they had handled for a certain length of time any commodities, to go into the manufacture of that commodity?

Mr. DURAND. I think there is evidence of that; yes, sir.

The CHAIRMAN. Doesn't that, as a matter of fact, decrease the spread between the producer and the consumer?

Mr. DURAND. You mean the spread in price?

The CHAIRMAN. Yes; the spread in price.

Mr. DURAND. Not necessarily. It depends on whether Armour & Co. or the packers keep the profit or whether they pass it on to the consumer in the shape of a lower price.

The CHAIRMAN. Well, it would decrease the number of hands through which it passed?

Mr. DURAND. Yes; it would decrease the number of hands through which it passed.

The CHAIRMAN. And is it reasonable to assume that every hand through which it passes must have a profit?

Mr. DURAND. Yes; but this whole question of efficiency that I discussed raises the question of whether one hand, even though it is only one, is not so big that its overhead, etc., makes it cost greater than a smaller organization not attempting to deal nationally but to deal locally. That whole question comes in there.

The CHAIRMAN. As a matter of fact, do not most of these letters that you read from the wholesale grocers this morning say that competition was keen and that the packers sold lower than they were selling?

Mr. DURAND. Selling lower than they were, yes; many of them said that; yes, sir.

The CHAIRMAN. So that it would indicate, then would it not, that the goods were going to the retailer, and in theory, at least, to the consumer, at a less price?

Mr. DURAND. I think all of those statements, or many of them, carried the idea—and I think it is a sound idea—that this is an introductory thing; a thing that can be expected while you are getting hold of the business; and when they have got hold of the business then the question of what the real advantage to the public is will be tested out.

The CHAIRMAN. Well, did not the Federal Trade Commission, in its report on the wholesale marketing of foods, advocate the policy of the manufacturer distributing his goods so far as possible?

Mr. DURAND. I do not remember that closely enough to be able to answer, Mr. Galloway. I do not recall any such recommendations, but there may have been one of that kind.

The CHAIRMAN. I believe that is all. Mr. Breed, is there anything you care to ask?

Mr. BREED. Yes.

Mr. Durand, when did the Federal Trade Commission file its report upon the meat packing industry?

Mr. DURAND. The report was sent to the President in the form of a summary, which is the thing which is printed in the beginning of part 1 here, about 50 pages, July 3, 1918.

Mr. BREED. Under what authority of law was that report made?

Mr. DURAND. Under one of the paragraphs of section 6 of the Federal Trade Commission act the President was authorized to direct the Federal Trade Commission to make inquiries in matters concerning alleged violations of the Sherman law, as I understand.

Mr. BREED. Was it section (d) of section 3 of the Federal Trade Commission act reading as follows:

“Upon the direction of the President or either House of Congress to investigate and report the conditions relating to any alleged violations of any anti-trust acts by any corporation.”

Mr. DURAND. Yes; that is the section. In accordance with that section the President on February 7, 1917, directed the Federal Trade Commission to make this investigation.

Mr. BREED. And was this investigation made with a view to determining any alleged violations of the antitrust acts of these Big Five meat packers?

Mr. DURAND. That was one of the objects.

Mr. BREED. When did Attorney General Palmer begin his proceedings in equity which resulted in this court decree of February 27, 1920?

Mr. DURAND. I don't know as I can—

The CHAIRMAN (interposing). February 27, 1920. That is when he began it.

Mr. DURAND. Yes; that is when he began it.

Judge HAINER. And that is when he ended it, too.

Mr. DURAND. Yes.

Mr. BREED. Had he received from the Federal Trade Commission this full report at that time?

Mr. DURAND. The full report had been published at that time unless possibly volume 6. I am not sure about volume 6, which was a report furnished by the Department of Agriculture on the cost of production of cattle and other stock and the cost of marketing. I am not sure of the date when that volume was issued, but except for that all the other volumes of the report were issued.

Mr. BREED. Did the Attorney General, in other words, have before him the public data and the private data concerning which you have spoken in your testimony?

Mr. DURAND. He had all of the public data, and I would say substantially all of the private data. We submitted to him all that our attorneys, who went over the files, considered at all pertinent to the question, and a vast amount of material was sent to him. Whether the particular documents I have read to you were sent to him I do not know.

Mr. BREED. Was it at the request of the Attorney General that this was sent to the Attorney General's office?

Mr. DURAND. It is my recollection that it was sent on the initiative of the commission; that it was transmitted to him.

Mr. BREED. Is the Federal Trade Commission also engaged in ascertaining violations of the Clayton Act, as well as the Sherman antitrust law and the Federal Trade Commission act—all three?

Mr. DURAND. You mean as its general functions?

Mr. BREED. Yes.

Mr. DURAND. It is engaged in the enforcement of the provisions of the Federal Trade Commission act and the Clayton Act. As respects the Sherman law, I think it sometimes proceeds to investigate and turn over material to the Department of Justice in a sort of finished form, so to speak. In other cases it simply turns over the allegations to the Department of Justice and lets the Department of Justice investigate. I do not want to let my answer stand as the law practice of the commission, because I am not on the legal staff of the commission, and I would not be able to say just what their procedure is as respects the Sherman law.

Mr. BREED. But your investigation of this subject was with a view to ascertaining whether provisions of the Federal Trade Commission act or the Clayton Act were violated?

Mr. DURAND. Yes; I think you can read that from the letter of the President directing the investigation. This letter really called for an inquiry as to violations of the Sherman law and violations of the Federal Trade Commission act and the Clayton Act, which are, I suppose, in a sense amendatory of the Sherman law.

Mr. BREED. So that this was the purpose of the investigation?

Mr. DURAND. Yes, sir.

Mr. BREED. Does not the Clayton Act, among other things, made unlawful acts tending to substantially lessen competition?

Mr. DURAND. I think that is the language of the act.

Mr. BREED. Does not the Clayton Act also make—

The CHAIRMAN (interposing). Aren't those legal questions, Mr. Breed, you are putting to this witness now?

Mr. BREED. No.

The CHAIRMAN. I would like to know why they are not.

Mr. BREED. Because I take it that this department of Government is authorized in the Federal Trade Commission act to investigate facts which would tend to show those two points. I am not going into the law any further than those two. Does not the Clayton Act also make unlawful acts tending to create a monopoly in any line of commerce?

Mr. DURAND. My recollection of the law is not very clear, Mr. Breed. I seem to recall language like that. You could, perhaps, read it better.

Mr. BREED. I refer to section 3 of the Clayton Act, with respect to tending to substantially lessen competition; and with respect to acts tending to create a monopoly in any line of commerce, I refer also to section 3.

Now, what I wish to inquire is whether the facts which are contained in this report, and which you have reported to this committee, in your opinion are acts which tend to substantially lessen competition?

Mr. DURAND. I am not quite clear as to what acts you are referring to, as I have discussed a good many things.

Mr. BREED. Well, the various facts which you have presented here and referred to as part of the report. Do I understand that those are offered in the light of showing facts which, if true, would show that the packers were engaged in practices which would tend to substantially lessen competition?

Mr. DURAND. I think that is a legal question, and I am not sure that I would be able to give a very good answer to that.

Mr. BREED. I will ask you the same question, as to whether the facts which you have offered to the committee here, and which are contained in these reports, are facts which, if true, would lead one to believe that the packers in many practices, were engaged in practices which tended to create a monopoly in certain lines of commerce?

Mr. DURAND. I can say that there are in the annual report of the Federal Trade Commission for the fiscal year ended June 30, 1921, which has just been released, a number of cases brought under the Federal Trade Commission act, or the Clayton Act, involving these five meat-packing companies. There are several cases, and those are instances in which the commission has felt that there was reason to believe that the law was being violated; that is, the Federal Trade Commission act, or the Clayton Act, were whatever is specified in the particular case concerned. If you wish I could put into the record a list of those cases or I could just refer generally to the fact that at the end of this report, which is available, there are several of those cases listed as pending cases.

Mr. BREED. Well, the point I want to bring out before the committee is: Your commission made an investigation; how long a period of time did it cover?

Mr. DURAND. The investigation of the meat industry proper covered from July 1, 1917, to the spring of 1918, in which time we began spending most of our time in the preparation of the report on the information which we had gathered. And from that time on there was, during the next year or two, information coming sporadically to the commission, and it was getting information on sporadic parts of the subjects that needed further study. But the body of the investigation was completed, as I say, within about 9 or 10 months from July 1, 1917. Subsequently an inquiry on the marketing of perishable foods was made during the summer and fall of 1918, I should think, perhaps, from August on through to the end of 1918 and possibly a month or two into 1919 we had men in the field who were investigating that subject, which resulted in the report on the wholesale marketing of food.

Mr. BREED. And this total investigation covered not only the operations of the packers in meat and meat food products, but also, as you have testified, in connection with unrelated lines of business?

Mr. DURAND. Yes; a very small proportion of the time was spent on unrelated lines. The bulk of the time was spent on the other subjects.

Mr. BREED. Now, I want to come back and ask you again if you did not say that the President of the United States instructed you, or the commission, to investigate and report upon any alleged violations of the antitrust acts by the meat packers?

Mr. DURAND. The best evidence of that is the President's letter, as shown on page 391 of part 1 of the report.

Mr. BREED. I believe the letter so states. Now, again, were you not seeking in this investigation to find out whether the operations of the packers tended to substantially lessen competition in the fields in which they operated?

Mr. DURAND. I should think that was one of our principal objects, as I understand the question.

Mr. BREED. Well, isn't that one of those that you were seeking to ascertain facts about?

Mr. DURAND. We were seeking, certainly, to ascertain whether there was a monopoly or combination in restraint of trade, and also seeking whether there

were tendencies to lessen competition in the many different lines that were engaged in. In those many different lines that they engaged in there was room for different kinds of conditions to be found. The request of the President specified that part, I think, in this way, on page 392 of part 1 [reading]:

"I direct the commission, within the scope of its powers, to investigate and report the facts relating to the production, ownership, manufacture, storage, and distribution of foodstuffs and the products or by-products arising from or in connection with their preparation and manufacture; to ascertain the facts bearing on alleged violations of the antitrust acts, and particularly upon the question whether there are manipulations, controls, trusts, combinations, conspiracies, or restraints of trade out of harmony with the law or the public interest.

"I am aware that the commission has additional authority in this field, through the power conferred upon it, to prevent certain persons, partnerships, or corporations from using unfair methods of competition in commerce. I presume that you may see fit to exercise that authority, upon your own initiative, without direction from me."

Mr. BREED. Now then, it is a fact that your investigations during this period of a year and a half were to determine just such facts, whether the operations of the packers tended to lessen, substantially, competition; whether they tended to create, in themselves, a monopoly?

Mr. DURAND. Yes, sir.

Mr. BREED. And the facts which are contained in the reports of this commission, and which were presented to Attorney General Palmer before he began his proceeding have been, in part, referred to and offered before this committee?

Mr. DURAND. In very small part; only as respects unrelated lines have we put in any important portions of the material. The bulk of the material furnished him had to do with the meat end of the packers' business.

Mr. BREED. As a result of this investigation, in any event, the United States, by the Attorney General, brought its petition in the Supreme Court for the District of Columbia against the Big Five meat packers, in which this decree of the court that we are now considering was granted?

Mr. DURAND. I think it could be fairly said that it was as a result of the investigation.

Mr. BREED. And does that petition charge that the packers—

The CHAIRMAN (interposing): The petition will speak for itself, Mr. Breed.

Mr. BREED. Yes; I suppose it would.

Judge HAINER. You read that into the record.

Mr. BREED. I merely want to get clearly on the record the fact that this was not a quick or sudden proceeding that brought about these charges against the Big Five meat packers, which they consented to.

The CHAIRMAN. You ought also to put into the record that there was no evidence offered in the court on this petition, and that the decree itself provides that it is not an admission that there has been any violation of law, and that it is not an adjudication that the law has been violated.

Mr. BREED. I suppose the entire record is before the committee.

The CHAIRMAN. Yes.

Mr. BREED. But I supposed the committee would like to have knowledge of the fact that the petition was not brought—the action was not brought by the Government without a very serious consideration of the question as to whether there had been a violation of the antitrust statutes of the United States, as there have been some questions asked of the witness along that line.

Mr. Durand, did you find, as a result of this investigation, that the Big Five meat packers had acquired any substantial control tending to lessen competition in the cheese business?

Mr. DURAND. Yes; I think the report so shows.

Mr. BREED. Did you find as a result of those investigations that the Big Five meat packers had obtained any substantial control tending to lessen competition and create a monopoly in the butter business?

Mr. DURAND. They had acquired a very large proportion of the butter business; yes, sir.

Mr. BREED. Did the proportions of business that the Big Five meat packers had acquired in those two lines lead the commission to report that they were sufficient to tend to lessen competition and to create a monopoly in those particular lines?

Mr. DURAND. Well, I don't remember the exact language that was used. I will try to find it. The finding by the commission as to a substantial lessening of competition is a pretty definite thing, and I would not want to say, without consulting the record carefully, as to whether the commission's report was that these activities and acquisitions of the packers substantially lessened competition. They may have put the finding in those words, but I can not recall definitely about that, and I do not want to say; but the record will speak for itself.

Mr. BREED. About tending to create a monopoly?

Mr. DURAND. I would make the same answer.

Mr. BREED. Does your recollection serve you that the record does substantially draw that conclusion?

Mr. DURAND. I should think so; yes, sir.

Mr. BREED. Now, did you find that the packers had any substantial control of the refrigerator cars used on the railroads of the United States?

Mr. DURAND. The refrigerator cars used on the railroads of the United States are of two general classes; one is what they call the brine tank cars, or the beef refrigerator car, and the other is the ventilator car.

Mr. BREED. Now what did they have of the first?

Mr. DURAND. Of the beef refrigerator cars they had 91.6 per cent of all the beef refrigerator cars in the country.

Mr. BREED. And of the ventilator cars, what did they have?

Mr. DURAND. They had only 7.2 per cent. Nearly all the ventilator refrigerator cars were owned by the railroad interests. Eighty-six per cent of the ventilator refrigerator cars were owned by the railroad interests. And I think, Mr. Breed, that, in the consideration of the questions that have come up here, that should be borne in mind, as to whether the refrigerator cars that are being talked about for the distribution of some of these fruit products are ventilator refrigerator cars or are beef refrigerator cars.

Mr. BREED. What is the difference?

Mr. DURAND. If they are ventilator refrigerator cars, they are not suitable for handling beef, but are suitable for handling most other commodities; then the packers have only 7 per cent of them, and the railroads 86 per cent, and the other private lines have the remainder. Whereas if these are beef refrigerator cars, the packers have 91.6 per cent.

Mr. BREED. Well, the term "peddler car" has been used here quite frequently; what are those?

Mr. DURAND. I think those are the beef refrigerator cars used by the packers to handle their beef and groceries.

Judge HAINER. That was all gone into fully, Mr. Breed.

Mr. BREED. Well, did you find that the packers have a large percentage of those beef peddler cars in which they could put both beef which requires refrigeration and groceries?

Mr. DURAND. They have a very large proportion of the beef refrigerator cars, which can be used for both of those purposes.

Mr. BREED. Did you find that they were putting those things into those cars and transporting them with the beef?

Mr. DURAND. Yes, sir.

Judge HAINER. That has been covered.

Mr. BREED. In your opinion, does this possession of this large percentage of these beef peddler cars give to the packers a large advantage over other shippers in connection with their use in the shipment of unrelated grocery products?

Mr. DURAND. I think it gives them an advantage; yes, sir.

Mr. BREED. And is that one of the advantages which you feel is an unfair advantage, if they are to engage, or to be allowed to engage, in competition with all other people who are in the business of distributing groceries or unrelated products?

Mr. DURAND. My feeling is that those cars should be available to all as common carriers.

Mr. BREED. Or else that that railroad should furnish a like service to all?

Mr. DURAND. That is what I mean by my answer; that preferably the railroads should own them and use them and apply them as a common service facility—a common carrier facility to all applicants.

Mr. BREED. I should like to state right here on the record, gentlemen of the committee, that so far as the wholesale grocers are concerned, we personally do not believe that the refrigerator beef car should be taken away from the

packers, as we are confident that history has shown that they, themselves, can more efficiently serve the people of the United States with fresh beef by owning and delivering to the railroads of the United States their beef in their own refrigerator cars; and we are not asking the committee, nor have we ever asked the Interstate Commerce Commission, to take away from the packers their privately owned refrigerator beef cars for the handling of beef requiring refrigeration. The only thing that we do object to is the use by the packers of these refrigerator peddler cars for the purpose of transporting groceries or unrelated products not requiring refrigeration. There has been some confusion on that point in the newspapers and public press. The grocers do not object to that. Perhaps the enemies of the grocers have tried to make it appear to the public that they are seeking to take away, or moving that the packers should have taken away from them, the right to own and operate their own private, individual refrigerator cars for the handling of beef, but that is not the position of the wholesale grocers and never has been.

Mr. DURAND. Mr. Breed, I had put in the record of my testimony the recommendations of the Federal Trade Commission on that subject, referring to its report on private car lines.

Mr. BREED. Unfortunately we would have to disagree with the conclusions of the Federal Trade Commission on that point.

Mr. DURAND. I just wanted to put it in here that those were your conclusions and that those are our conclusions in the report.

Mr. BREED. I do not want it to appear that we agree with your report in that respect, because we do not. Now, you do, however, believe that the utilization by the packers of their refrigerator peddler cars for the transporting of grocery and unrelated products puts other people who are in beef lines of business, dealing with unrelated products, at a disadvantage?

Mr. DURAND. Yes, sir.

Judge HAINER. Mr. Breed, and that is your chief objection for not modifying the decree?

Mr. BREED. Well, I rather think, as the committee have phrased that several times—"chief objection"—that probably we would say it is the chief objection, because we honestly know that that is the way that they are trying to get into competition with the wholesale grocers, and that is a sound legal objection. However, we also take the further point that the utilization of this advantage enables them, with the power of their monopoly, to get into the business in such a large way that we believe that eventually, as the witnesses have testified, that the canner, the packer, and the jobber will suffer, and eventually be put out of business, turning the control of the food-product business of the United States over to the meat packer. We also believe this will eventually be to the injury of the consumer.

Now, the chairman phrased a question to you somewhat along these lines, "Do you believe in the proposition of shutting out one line of distribution, leaving only one there?" I do not think he meant to state the question quite so broadly. But let me ask you if the wholesale grocer is the only means of distributing food products in the United States, other than the packer? What do you say about the chain-store system; is not that a means of distribution?

Mr. DURAND. Yes, sir.

Mr. BREED. And what do you say about the mail-order house?

Mr. DURAND. That also is a means of distribution.

Mr. BREED. What do you say about the department-store method of buying and distributing?

Mr. DURAND. I don't know in detail regarding from whom the department store buys.

Mr. BREED. What do you say about the many manufacturers who pack products known in the trade generally as specialty manufacturers, who distribute their own products direct to the retailer; isn't that another form of distribution, and a very important system of distribution of food products?

Mr. DURAND. I don't know the extent of that. I understand that there are such specialty manufacturers who do distribute direct.

Mr. BREED. So that if the packer is not allowed to distribute in his refrigerator cars, under the terms of this decree, unrelated grocery products, there will still be left all the other methods of distribution that have existed for many years, will there not?

Mr. DURAND. Yes; and I think one method is growing up to a certain extent, and that is a kind of a cooperative purchase and distribution, and that that is a method which will be available.

Mr. BREED. In connection with competition between the packer and any of these other systems of distribution you have referred to, would the ownership of these refrigerator peddler cars and this vast service be of disadvantage to all these other people who are in this business of distributing unrelated products?

Mr. DURAND. I think there is no other group of them, or no other system of distribution which has the control of the refrigerator cars that the five packers have, or that have anywhere near the elaborate system of branch houses which they have.

Mr. BREED. You were also asked one question as to whether this restriction should apply to all in the same class. I think that was the chairman's question. I would like to ask you if you know of any other interests in the food business that is in the same class with the packers?

Mr. DURAND. I don't know just how you mean by "in the same class." I think they have a prominence that no other class has achieved.

Mr. BREED. Now, you were also asked by the chairman, or Judge Halner, something about the effect of this decree putting the packers out of this business of distributing unrelated products and whether it did not tend to lessen competition. What can you say with respect to your opinion if the decree is opened and the packers are allowed to come back into the system of distribution, especially the effect in the future upon competition in these unrelated lines?

Mr. DURAND. I think that would lessen competition in the long run.

Mr. BREED. In other words, is it your opinion that if the decree were opened that in the long run competition would be lessened by allowing the packer to come back into the manufacture, sale, and distribution of food products?

Mr. DURAND. Of these unrelated food products?

Mr. BREED. Yes.

Mr. DURAND. Yes; I think that the tendency would be for a monopoly to develop in the course of not a great many years.

Mr. BREED. And why would it tend to lessen competition, in your opinion?

Mr. DURAND. Well, just as a layman, I feel that if the packers should acquire a large proportion of the business the other competitors would not be there; they would be pushed out, or they would drop out, or be bought up; they would not be there, and there would be fewer interests offering goods to the public, the retail in this case, than there now are.

Mr. BREED. And your opinion as to whether that would happen, as I understand, is based upon your historical study of the development of the packers in other lines of business?

Mr. DURAND. Yes; plus the fact that there are complaints of unfair practices—untested and unproven complaints—but complaints of unfair practices in these very lines.

Mr. BREED. I think that is all.

The CHAIRMAN. Senator Smith, do you care to ask anything?

Mr. SMITH. Just a very few questions I wish to ask the witness. I would be glad to state for the record, for myself, before I ask anything, that while I regard the peddler car as an important factor in the power of the packers to bring about monopoly, that I am thoroughly convinced that if the peddler car were eliminated, their reentry into these unrelated lines would be a menace, and would still bring about a monopoly on their part.

Mr. BREED. I agree with you, Senator Smith.

Mr. SMITH. Now, Mr. Durand, to whom did you make your report—the Federal Trade Commission make its report—first on this subject?

Mr. DURAND. Our report, Senator, was made to the President of the United States, he having directed the investigation.

Mr. SMITH. To whom did he send it?

Mr. DURAND. He transmitted the report to the Senate and the House of Representatives. Whether he transmitted it to anybody else, I do not know.

Mr. SMITH. You don't know that he sent it to the Attorney General?

Mr. DURAND. I would not have knowledge of that.

Mr. SMITH. Do you know of the length of time the Attorney General had it before February 27, 1920, when this decree was taken?

Mr. DURAND. The Attorney General had the published reports that were issued from time to time before that period, as soon as they were issued, and had a number of instances—in some instances, at least, he had the preliminary galleys or sheets of the report before it was released for publication; before it was generally released.

Mr. SMITH. Then the Attorney General had had these reports for several months before this decree was entered?

Mr. DURAND. He had had the bulk of the documentary evidence, other than the published reports, which was a very large bulk, from some time, I should say, in the latter part of 1918, or at least early in 1919.

Mr. SMITH. For nearly 12 months, then?

Mr. DURAND. I should think on February 27, 1920, he had had the material—the documentary material—for more than 12 months.

Mr. SMITH. Is it not true that the purpose of the Department of Justice to file this bill and take this decree had been public for several weeks before it was done?

Mr. DURAND. I think it was made public some time in December, 1919, Senator, in a public announcement.

Mr. SMITH. Did not the Attorney General go before a committee of Congress and discuss it; either the Committee of Agriculture of the House or the Committee of Agriculture of the Senate, or both, several weeks prior to the filing of the bill and the taking of the decree?

Mr. DURAND. I think so.

Mr. BREED. It was more than several weeks, Senator Smith; it was on January 7, I think.

Mr. SMITH. January 7, and the decree was taken February 27?

Mr. DURAND. Yes; I think that is right.

Mr. SMITH. And the whole subject was in no sense a secret movement, but was made public before it was done?

Mr. DURAND. Yes; it was made public, I should say, probably two months before it was done; probably more than two months.

Mr. SMITH. As a result of your entire study of this question, is it true that you fear that this decree, if it is modified, and the packers were permitted to go into the handling of unrelated products, as they are termed in the decree, that they would break down competition and bring about substantially the same monopolistic control that they have of the products they handle?

Mr. DURAND. I think that would be the ultimate result.

Mr. SMITH. I haven't any further questions.

The CHAIRMAN. Mr. Stevens, do you care to inquire?

Mr. STEVENS. The ground has been pretty well covered by Mr. Breed and Senator Smith, but one or two points, I think, have not been inquired of concerning your statement, Mr. Durand. I think you stated on Monday that the packers, Swift & Co. in particular, had shown a large decrease in certain canned goods; for instance, in peas. I think you stated there was 93 per cent decrease in the business.

Mr. DURAND. There were certainly three or four items of canned goods, in which there were substantial decreases, and one, I remember, was about 93 per cent.

Mr. STEVENS. And Libby, McNeill & Libby showed a decrease in the vinegar business, I believe?

Mr. DURAND. I think so; yes.

Mr. STEVENS. And I believe you stated also that you did not know why there was such a decrease?

Mr. DURAND. No; it never had come to my attention before, and I had no information on that subject.

Mr. STEVENS. That is what I wanted to ask you about. Do you know anything about a concern called the Emery Food Co.?

Mr. DURAND. Yes, sir.

Mr. STEVENS. What is that organization?

Mr. DURAND. As I recall, that is a trade name for Swift & Co. I can verify that very soon. The Emery Food Co., I find, is listed on page 311 of Part I of the report as a Swift sale company, with its headquarters at Chicago, Ill.; it has voting stock of \$10,000, and that 100 per cent of that is owned by Libby, McNeill & Libby, of Maine, in which Swift & Co. own, or at that time owned, 99.8 per cent. The Emery Food Co. has conducted a brokerage business in canned goods since February, 1917. Libby, McNeill & Libby cans certain products under the trade name of Emery Food Co.

There is also here, I notice in this list, a company called Emery Provision Co. That company appears on page 315 of Part I of the report, and its address is given as Chicago, Ill., and it is said to have \$10,000 of voting stock, and that it is a trade name of Libby, McNeill & Libby. And a footnote on that reads as follows. [Reading:]

"Swift & Co. reported June 8, 1918: 'We expect to dissolve this corporation very shortly.' One hundred per cent owned by Libby, McNeill & Libby."

Mr. STEVENS. Do you know, Mr. Durand, whether or not the Emery Food Co. is practically one or two men who are in Libby, McNeill & Libby's office, and who purchase inferior or lower grades of canned goods?

Mr. DURAND. I know nothing about the operations of the company other than what I read here, Mr. Stevens.

Mr. STEVENS. Did your investigation show when it was that Swift & Co. turned over to Libby, McNeill & Libby the canned foods business and other allied articles?

Mr. DURAND. No, sir; I don't think it did.

Mr. STEVENS. As to the existence of the Emery Food Co. and its alliance with Swift & Co., what do you say as to the probable reason for showing the decrease in canned goods being that this business was turned over to the Emery Food Co. by Libby, McNeill & Libby?

Mr. DURAND. Well, I would not know at all about that, Mr. Stevens.

Mr. STEVENS. That is all.

Mr. BREED. I would like to ask just one more question. Did your investigations show whether the Big Five packers did business in food lines under the names of various corporations which did not show their ownership in any of the Big Five?

Mr. DURAND. That is, where the name itself did not indicate that they were Big Five companies?

Mr. BREED. Yes.

Mr. DURAND. Yes; and I arranged to present to the committee a list of those corporations and to give the stock interest in them classified to show whether they were corporate defendants or individual defendants or packer defendants that were not defendants in this case.

Mr. BREED. Have you done that?

Mr. DURAND. I have not as yet, Mr. Breed. You will find those companies listed in Part IV here in some of these extensive exhibits at the end, where the names of companies are given, together with the products which they reported to us that they were handling.

Mr. BREED. Is that to go into the record?

The CHAIRMAN. He is going to file it later with us.

Mr. BREED. Then I would like to ask if you found that was one of the methods of doing business which they adopted, namely, through acquirement of various canning establishments, food businesses, wholesale businesses, so that the public would not know that they were dealing with or buying from or through the packers themselves?

Mr. DURAND. I don't know that I recall at this time any specific instance of that as respects canned goods or these particular lines here. I think there were a number of instances of that character in the various lines that the packers were handling in this report that I was just reading from, as the Emery Food Co., I think, have the names of some 574 corporations that the five packers are interested in, either controlling or a minority interest or an interest of an unknown extent; and many of those I would not know to what extent the public was aware of the connection. I would say, however, that there have been several instances which have been brought before the Federal Trade Commission as complaints or applications for complaints—that is what they are—applications for complaint on this question of the packers maintaining bogus independents. I believe that all of those cases are to be certified over to your department, Judge Hainer.

Mr. BREED. Did you find that any one of the packers owned a wholesale grocery house known as Austin-Nichols & Co., of Chicago, New York, and elsewhere?

Mr. DURAND. Well, the Austin-Nichols case is one of those before the Federal Trade Commission in a complaint pending—that is, in this annual report that I referred to a short time ago, page 141 of the annual report for 1921.

Mr. BREED. That corporation, a wholesale grocery house, was acquired by Wilson, was it not?

Mr. DURAND. These are the circumstances as they appear here. [Reading:] "Complaint No. 745. Federal Trade Commission v. Austin, Nichols & Co. (Inc.) (Virginia). Charge: That Austin, Nichols & Co. (Inc.) entered into an agreement with Wilson & Co. (Inc.) for the acquisition of the Wilson & Co. (Whiteland, Ind.) vegetable canning plant and control of the Fame Can-

ning Co. and Wilson Fisheries Co. in anticipation of a consent decree resulting from the prosecution of a suit in equity brought by the Attorney General of the United States, by which decree Willson & Co. (Inc.) were perpetually enjoined from engaging in business unrelated to the meat-packing industry. The respondent, incorporated to effect the consolidation of all the properties, now holds control thereof and is charged with the suppressing of competition, tending to create a monopoly in the grocery and food product business in alleged violation of section 7 of the Clayton Act. Status: This proceeding is at issue upon the complaint of the commission and the answer of the respondent."

Mr. BREED. Did you find that any one of the packers had acquired the Buffalo Cereal Co. and started into that line of business?

Mr. DURAND. The Buffalo Cereal Co. was acquired by the Armour Grain Co., if I recall correctly, and that can be verified, in the list of companies owned by the packers.

Mr. BREED. Did you find that any one of the packers had acquired the company known as the Llewellyn Bean Co., of Michigan?

Mr. DURAND. The Llewellyn Bean Co. was at one time controlled by Armour & Co. It appears in this list, I want to say, of course, that my information is no later than the information reported to the commission at the time of its investigation. The Llewellyn Bean Co. appears in here as No. 334, on page 307, shown as 51 per cent owned by Armour & Co. I have some vague impression that that company has since changed hands to some extent; some change has come about in its ownership.

The CHAIRMAN. Is there anything further?

Mr. BREED. No, sir.

The CHAIRMAN. Mr. Daily, is there anything?

Mr. DAILY. No questions.

The CHAIRMAN. Mr. Campbell?

Mr. CAMPBELL. One or two questions. I have been very much interested in this question of monopoly, and I wanted to ask what proof have you of their monopoly in meats that has been spoken of several times.

The CHAIRMAN. We have agreed, Mr. Campbell, that we would not go into the meat question. We would permit him to assume for the purposes of the argument, that he had proof of that, without going into a discussion if there was proof or not.

Mr. CAMPBELL. The only thing I wanted to bring up is, that he assumed there was a monopoly in the meat business, and the question in my mind is whether he led up from that to the fact that they would monopolize some other line. It seems to me a false assumption, unless he has proof of it.

The CHAIRMAN. We are not going into the question of meats, and we have kept away from it as much as we could, and we only permitted him to assume that, as Mr. Durand knows for the purpose of answering questions.

Mr. CAMPBELL. I noticed one or two of the attorneys appear to hold up that allegation although you have reserved it, and have stated it should not be considered as evidence.

Mr. DURAND. May I say that this raised just the point that I feared would be raised in your not going into that question; that some one would raise the point that Mr. Campbell has raised, that there is no proof of combination among those five packers.

The CHAIRMAN. We are not going into the meat question, because it is too big a question.

Mr. DURAND. I understood the ruling of the committee, and as we were talking off the record last night at the close of the meeting, I mentioned Mr. Campbell's testimony to that effect, and I think it was the impression of the committee that Mr. Campbell intended to make that statement, that in the absence of proof of the combination of the five packers, it applied to unrelated lines. He seems now to attempt the impression that there is no proof of combination in the meat lines.

The CHAIRMAN. I do not recall Mr. Campbell stating that there was no proof of combination in meats, but he did state there was none as to the others.

Mr. CAMPBELL. The only thing that interested me was that I attended a meeting of the Committee on Agriculture of the House of Representatives last spring, and while I was there the statement was made, and it is unrefuted, that only 37 per cent of the kill was made by the five packers, and only 7 per cent by Swift, and—

The CHAIRMAN (interposing). That leads to a discussion of whether we are talking of animals slaughtered for interstate use, and there are a number of questions that will arise there.

Mr. DURAND. If Mr. Campbell had attended the other hearings up there he would have heard the refutation of that statement.

Mr. CAMPBELL. Mr. Chairman, I have some other questions outside of that entirely.

Mr. DURAND. I would state, with the commission put in the position of not putting in any proof of its contention, that this contention ought not to be challenged by other witnesses. I think, in other words, it would be proper for Mr. Campbell to say that he would withdraw that statement that there is no proof of combination among the five packers in their meat business in view of the fact that the committee does not wish me to take the time to go into establishing what we believe to be the fact with reference to that.

The CHAIRMAN. I think, Mr. Durand, that Mr. Campbell may let his statement remain that there is no proof—which is no more than his opinion—as you have given your opinion that there is proof.

Mr. DURAND. But I think, Mr. Chairman, I have much more behind my opinion than Mr. Campbell can marshal behind his. And if it is going to have any weight with your committee, I think we ought to be on all fours.

The CHAIRMAN. We are not going into the meat business any further. Let us quit discussing it. Go ahead with your questions, Mr. Campbell.

Mr. CAMPBELL. I understand Mr. Durand said—in fact, I have the transcript, page 2279, in which the statement is made [reading]:

“There was in the report of the case, so far as has been developed, no proof that any of the officers or directors of the company were agents of Armour & Co.; besides, three of the four alleged agents of Armour & Co. have been removed or have resigned, as a matter of fact, from the board of directors.”

I want to know upon what facts or by what right Mr. Durand should write such a statement into the record. I deny that there were ever any agents of Armour & Co. ever on the board of directors of the California Cooperative Canneries.

Mr. DURAND. The statement should not read that there were any agents; it was intended to refer entirely to the alleged agents.

Mr. CAMPBELL. You realize—

Mr. DURAND (interposing). I think I said that the allegation was that certain of those gentlemen were agents. As I tried to state in that statement, there was no proof that they were agents; and, in any case, the gentleman against whom the charge was made had resigned from the board of directors, so that was simply a reason why the Federal Trade Commission should not go further into the question. I was trying to state that to help Mr. Campbell out as much as possible.

Mr. CAMPBELL. I will try to help you in. There were never agents or alleged agents of Armour & Co. on the board of directors, and none resigned. None ever resigned except Mr. James Madison, who was shortly before that the head of the California Associated Raisin Co. So I think it is quite damaging to have such statements written into the record. I would like to have that statement corrected by you or the Federal Trade Commission.

Mr. DURAND. Mr. Chairman, I read the statement here on these cases, explaining that the commission was always cautious about giving out any publicity in a case on the application for a complaint which was dismissed for the very reason that it does not desire to hurt or injure anyone by such allegations as may have been before it. But the request was made of the commission that it should state the facts as to this case, and the commission authorized me to make the statement that I read.

Now, if Mr. Campbell desires that there should be more information, or a correction if there is anything wrong there, I would be very glad if the committee would have me ask the Federal Trade Commission, or direct me to ask the Federal Trade Commission, for such further facts as may be desired. I think I expressed at the time we were talking that over that the commission would probably be glad to place that whole record at the disposal of the committee.

The CHAIRMAN. Perhaps we can end that question in this way: Did you find or is there any proof—

Mr. DURAND (interposing). I can not speak for that, because I am not sufficiently familiar with that case, and if I were I would not feel at liberty, except as the commission authorized it, because of this rule that is intended for the

protection of those who are complained against. I want to assure Mr. Campbell there is no disposition to do any injury, and if there is anything wrong I am sure it would be the disposition of the commission to correct it.

Mr. CAMPBELL. I am glad to hear that.

Mr. SMITH. As I remember, Mr. Durand was reading the matter from the petition.

Mr. CAMPBELL. But the conclusion is that because these alleged agents were removed from the board of directors the case was dismissed.

Mr. DURAND. I think the point that was being made here was simply that the complaint having come in, and the complaint having been withdrawn, and certain things having happened, there was no occasion to go further with it.

The CHAIRMAN. Mr. Durand, would you just ascertain, then, whether your record showed that three or four who were alleged to be agents of Armour & Co. did resign?

Mr. DURAND. Yes; I will look that matter up.

The CHAIRMAN. And you can answer that in the morning. Is there anything further, Mr. Campbell?

Mr. CAMPBELL. That is all I want—that record clear.

Mr. DURAND. We also want it clear.

The CHAIRMAN. We will now adjourn until to-morrow morning at 11 o'clock, at which time we will hear Mr. Gaskill.

(Whereupon, at 4.40 p. m., the committee adjourned to meet to-morrow, Thursday, December 15, 1921, at 11 o'clock a. m.)

THURSDAY, DECEMBER 15, 1921.

The committee met at 11 o'clock a. m. in room 704, Department of Commerce, pursuant to adjournment on yesterday, Hon. Herman J. Galloway (chairman) presiding.

The CHAIRMAN. We will come to order.

Mr. SMITH. Mr. Chairman, I have a letter from Mr. Stires, who represented Mr. Wood, in which he states the reporter incorrectly reported him as using the word "you" that might have been supposed to apply to the committee, when he was referring to Mr. Gray; and he thinks he used the word "he." Now, evidently he did say "he" when he meant him, so it seems but the proper thing to do would be to print his letter in the record, which puts him right. Now, I want to say that I took him off and expressed to him my regret at the attitude he occupied, and he could not understand it; he thought that he said "he" and did not understand that looking at Mr. Gray he probably said "you," and created the impression that he meant what he did not mean at all. I offer his letter.

The CHAIRMAN. It may be inserted in the record.

(The letter is as follows:)

NEW YORK, December 13, 1921.

Senator HOKE SMITH,

Department of Commerce Building, Washington, D. C.

MY DEAR SENATOR: I have before me the testimony of yesterday morning and find a few errors and am going to ask you to be good enough to see that they are corrected on the record.

At page 2123, in the middle paragraph, there is this part of a sentence, "and that on the 2d day of January, 1909, there was a debit balance in your favor of \$611.95, etc."

This date is an error; it should be the 12th day of January.

On page 2128, the fourth question by myself reads: "And that this \$1,350 did not," etc.

This should read "\$1,300."

On page 2136 there is this statement attributed to me: "As I understood it Mr. Gray took occasion to make, out of a clear sky, an attack on a man about a transaction that happened 12 years ago. You did not give that man an opportunity to be present. You did not have the decency to let him know about it, and have him have an opportunity to be present and cross examine," etc.

I most emphatically say that I did not use the pronoun "you" in the last two sentences, but I used the pronoun "he," for I was directing my attack against Mr. Gray and not against the committee and I urgently urge you a request that all parties having a copy of the testimony correct the word "you" to the word "he" so that it will read "he did not give that man an opportunity to be present. He did not have the decency to let him know," etc.

Manifestly this is an error of the stenographer, for had I used the pronoun quoted in the testimony I suspect the learned members of the committee would have called me to account very promptly.

Yours truly,

MANNING STIRES.

Mr. DAILY. May I call attention to two obvious errors, probably not very serious, but I should like to have them corrected. Mr. Campbell reports me as representing the National Fruit Brokers; that should be National Food Brokers. And in another case, a letter from George W. Noland, a banker of New York; that should be "a broker of New York."

The CHAIRMAN. The corrections may stand.

We would like to hear from Mr. Gaskill this morning, the chairman of the Federal Trade Commission.

**STATEMENT OF HON. NELSON B. GASKILL, CHAIRMAN OF THE
FEDERAL TRADE COMMISSION.**

Mr. GASKILL. I appear as chairman of the Federal Trade Commission to state to you the attitude of that agency of the Government toward the proposed modification of the decree in question.

It is not my purpose to do more than state the commission's position, the support for which is to be found in the published reports of the commission upon the meat-packing industry which are before you supplemented in the present instance by the particularized statements of Mr. Durand.

The Federal Trade Commission felt at the time of its entry that the consent decree failed to secure to the public the complete remedy for and protection against the practices charged in the bill of complaint, for which the commission believed sufficient evidence was then available. It was no party to framing the terms of this decree and it was not consulted with reference to its provisions.

The commission feels that the proposed modification would still further lessen the remedial effect of the decree. It would be a surrender of one of the protective measures taken for the public which at the time of the compromise settlement was regarded as essential to the public right and which the respondents were willing to concede in exchange for concessions to them. If the provisions now sought to be eliminated from the decree were then essential to the protection of the public, they are essential now.

The Federal Trade Commission in the light of its experience with the subject matter and with due regard only to the public right in the maintenance of the principles of free and fair competition, presents its opposition to the proposed course of action with reference to this decree.

By authority of the commission.

The CHAIRMAN. I do not think we have any questions, Mr. Gaskill, and we thank you very much.

We are ready now to proceed with Mr. Campbell's cross-examination.

Mr. BREED. Before proceeding with that, Mr. Herscher has just handed me a letter received this morning, dated December 13, 1921, from Henry T. Stanton, of Grand Rapids, Mich. I understand Mr. Stanton is connected with the Judson Wholesale Grocery Co. in that city, and is connected with the Wholesale Grocers' Association of that State.

Mr. HERSCHER. Yes; that is correct.

Mr. BREED. This letter reads as follows:

GRAND RAPIDS, MICH., December 13, 1921.

Mr. J. W. HERSCHER,
Care of Hotel Washington, Washington, D. C.

DEAR SIR: Inclosed find letter of Robert D. Graham, denying the testimony of Mr. Morrill.

Yours very truly,

H. T. STANTON.

Mr. Herscher tells me that after Mr. Morrill gave his testimony with reference to an interview between himself and Mr. Robert D. Graham, that a copy of that testimony was sent to Mr. Stanton, of Grand Rapids, Mich., and this letter was received in reply.

Judge HAINER. You say it denies Mr. Morrill's statement?

The CHAIRMAN. You may read the letter.

Mr. BREED. The letter from Mr. Graham reads as follows:

GRAND RAPIDS TRUST CO.,
Grand Rapids, Mich., December 13, 1921.

Mr. H. T. STANTON,
Care of Judson Grocery Co., City.

MY DEAR MR. STANTON: I have gone over the alleged statement of Mr. Morrill, given before some Washington committee regarding the so-called packers' decree. I think Mr. Morrill must have misunderstood me, for I certainly never attended a meeting of the wholesale grocers, nor heard them discuss any subject whatsoever. I did, however, attend a meeting of a local concern, known as the Growers' Association, at which time I heard a statement made, and somewhat discussed, similar to the statement made by Mr. Morrill, before the above-mentioned committee. This took place at a time when the growers were trying to get certain canning interests to handle their crop for 1920. Personally, I have no primary knowledge regarding the matter.

Very truly yours,

ROBERT D. GRAHAM.

FURTHER STATEMENT OF MR. ROLAND MORRILL.

Mr. MORRILL. Now, Mr. Chairman, I have stayed over this morning, having intended to go this morning just as soon as the sun shone. I stayed because Mr. Breed very courteously told me that they had a wire denying my statement, and he gave me a gentleman's chance to reply, and I want to thank him for it.

I do not remember exactly my words regarding that conversation. You will notice Mr. Graham acknowledges having had some talk with me about that matter. Mr. Graham is a man that—well, you have read his letter—Mr. Graham is a man that tells the truth, and I just want to state that distinctly. And I think you will find it in the record, I think I stated it distinctly, that he told me, as I remember it, he had just come from a luncheon with somebody interested in the matter, and had learned something. Didn't I state that?

Mr. BREED. Yes.

Mr. MORRILL. I thought I had stated it that way. And that is my recollection. You understand that this is a matter that occurred more than a year ago. For nearly a year I have been trying to forget the whole blamed mess that has been working for a long time. But at this time, if you will permit me a little time, it might lead to something more of interest to you. And I am perfectly willing, since my veracity is called in question, if you will permit me the time—

Mr. BREED (interposing). I don't think Mr. Morrill's veracity has been attacked. And I want to say that Mr. Herscher, the president of the National Wholesale Grocers' Association, does not produce this letter to question Mr. Morrill's veracity at all. But it is apparent there was some conversation, and Mr. Graham says that the conversation had to do with certain other people, but not wholesale grocers, and I do not think Mr. Morrill would be held to any question of improper statement on the basis of what he has just said now.

Judge HAINES. It might be inferred, however.

Mr. MORRILL. The introduction of the letter conveys the impression to my mind, and anyone else's mind, I imagine, and that is why I would like to proceed a little while.

The CHAIRMAN. You may proceed. If we are not interested, we will be frank and tell you so.

Mr. MORRILL. Very well. There was a condition existed something like this: I was president of the Michigan State Farm Bureau at the time of the frozen-sugar period, and we were having some very interesting times attempting to limber that up—that situation which carried sugar from 6½ cents to 30 cents a pound, and we were talking about it, and digging up some information, and I was advocating in the farm bureau, as their president, and through our committees, the organization of cooperative sugar making. I was advocating it a little openly, and we were not denying the reporters a chance to know what we were talking about, because, while I did not absolutely have confidence that our people could do it, or undertake it, I thought maybe we could thaw out some sugar that was frozen up in the warehouses in our State and other States, and was not moving at all, but being advanced in price every day. And it was

being manufactured there, and the farmers were getting six and a half dollars for their beets, and they had a 14 per cent content, which was the average of our State. I may not state the figures exactly right, because it had been out of my mind for a year, but I knew at that time what I was talking about.

Now, I am going to say to you that the wholesalers of Grand Rapids have an organ called the Tradesman. I had never been assailed in my own State or anywhere else that I know of. But they came out and condemned me from top to bottom as one of the most insidious rascals in my State. And it was an eye opener. They put the branding iron right square on me. And that day, going to Lansing where we were holding our meeting, I took occasion to call on two of the men in Grand Rapids who were interested in the Tradesman, one the president of the Grand Rapids Savings Bank, and the other, Mr. Graham, the president of the Grand Rapids Trust Co. I said, "What is the matter with this Tradesman, that they should publish such a lie as that; it is a lie from beginning to end." By the way, they took it back in a month or so, but they got it out and got me discredited as far as they could.

I explained to Mr. Graham what I was working on, and who our evidence, as much as we got, led us to believe was responsible for the sugar conditions, and both he and Mr. Garfield said I had better just forget it; it didn't do me any hurt; that Mr. Stowe was mad because we were advocating cooperation, and he thought his interests were rather against it; his interests were with the wholesalers. I don't know whether it is all lines, but I think it is all lines.

It is a large wholesaling center. And then Mr. Graham told me that he had just met somebody, or had come from somewhere and some men whom he named, as I understood, a wholesaler, had told him of where they were taking advantage of the packers' decree. That was different from the sugar business, but he led me off onto that in regard to canned goods, and said there was an agreement to raise the price or the profits—I am not clear on that particular part of it, because the principle was the thing that was in my mind—to the consumers, and my memory was that it was 25 per cent, distributed between the retailer and the wholesaler. He was just simply giving me information in my official position. I, like a parrot, had talked too much and brought Mr. Graham into this. He is the president of a bank, and some of those fellows, the wholesalers are in each one of those banks and are a dominating interest in a way. I did wrong. I said that, and I should not have brought them in, although Mr. Graham never said a word to me confidentially; never suggested it was confidential or stated I could use it.

And then when I went out of there—our traffic department was two blocks from there; I had to go to the traffic department and I was there about an hour. Then I met Mr. Roach, who has testified here, and he jumped onto me about this article in the Tradesman; there was a joke on me all over the State. And then he commenced to talk, and he was in a conference there with brokers and wholesalers on some canned goods. I said, "What is the matter? Aren't they letting you in on the velvet?" And he made some reply that they were not. I said, "You better sing a little lower, or they will put the bird cage over you"—possibly you don't know what I mean, but shut off the funds. And he said they could go to some place he named, I think, down near the Equator; he said they could go; he did not have to come to Grand Rapids for money. He said, "I don't have to come to Grand Rapids for my money." And then he said, "I wish you would come to my room with me, and I will tell you something." I said, "I haven't time; I have got to go to the traffic department, and then I must get the train to Lansing." He said, "Will you come in when you come back?" And I said, "Yes; I will." And then coming back I took a through train and forgot all about it, and I have never met Mr. Roach from that time to this. But he was there in a row with them, too.

Now, this sugar condition which brought this all about was the condition which showed the sugar moved away from the manufacturers. At first we thought they were to blame, but we found they commenced to sell at 6½ and went to 12½ and sold out. We showed there were stacks of sugar in the warehouses and no trains moving from the warehouses to the wholesalers, and the wholesalers were feeding it out in small quantities, and families could buy only 1 pound or 2 pounds, or sometimes none at all, and the word was going out that there was no sugar available, and the wholesalers could not get deliveries, and things like that.

And our investigation told me, gentlemen—I am not responsible for it; it was laid down right in front of me on a table like this [indicating] and our board of directors were there, and the investigation showed us that sugar was

plentiful, but not moving, and certain people which were in position were letting it out at so much profit, and it was not moving. The people that had it were obeying the rules and making only so much profit, but it was not moving, and they were selling it over and over again, in a sort of a round robin, and prices were added and they would let a little out at a time. So I advocated our folks going together and putting in a sugar factory; and we sent out a committee and found we couldn't get any machinery. They could buy one factory, but they could not get any repairs, and it needed repairs. But all the time we were keeping that out to the public in the hopes of improving it. I told our folks, "You have them by the tail; don't let go, or they will bite." And finally they did do it.

These are things which I believe are pertinent, and maybe will clear your mind that this conversation had a perfectly legitimate origin, and I am ready to say that Mr. Graham did tell me these things, in which he said—I believe somebody whom he named—"Those fellows are putting their necks in a noose, or a rope around their necks, because the first thing they will get over. They are not over yet; they are following the law." And our investigation showed they were.

Those are the conditions connected with that. There is more of it, but I do not want to take more time.

Mr. BREED. Mr. Graham's letter says [reading]:

"I did, however, attend a meeting of a local concern, known as the Growers' Association, at which time I heard a statement made, and somewhat discussed, similar to the statement made by Mr. Morrill before the above-mentioned committee. This took place at a time when the growers were trying to get certain canning interests to handle their crop of 1920."

Would you say that statement was incorrect?

Mr. MORRILL. Oh, I understood him that he was talking with somebody connected with the wholesale trade.

Mr. BREED. Well, if he says that he was talking with growers, you would not say that he said it was wholesale grocers, would you?

Mr. MORRILL. I would say that I would believe Mr. Graham in any statement that he makes.

Mr. BREED. That is what I thought you wanted to get in the record.

Mr. MORRILL. Yes; I would believe him, because I have known him for 30 years, and he is an honorable man.

But there was more of our conversation than is disclosed in that letter. I know Mr. Graham is a good business man; he is not going to antagonize the interests of his bank. I know that. And he has put up a letter there that does not deny a conversation, but he shifts it to a slightly different channel, and it may have had its origin there. He stated it to me in such a manner that I took it it was a jobber or wholesaler in Grand Rapids. Now, I do not—

Mr. BREED (interposing). He also says [reading]:

"I think Mr. Morrill must have misunderstood me, for I certainly never attended a meeting of the wholesale grocers, nor heard them discuss any subject whatsoever."

You would believe that too, wouldn't you?

Mr. MORRILL. I do, and stated in my first statement, I think, that my recollection was that he had come from a luncheon. Did I state that? That is what I meant to state, and that is my present memory of it; that he had just been talking to somebody who was interested as to what they were going to do. And further, which he does not state there, that they had a plan by which institutions who bought of local canners would be shut off from their supplies. They had to come regular. I don't know whether I stated that the first time or not. I state it now.

Judge HAINER. That is a fact?

Mr. MORRILL. I did not just want to go out of town with the smell of smoke on my garments, and that is the reason I got permission to make this statement.

Mr. BREED. I did not want you to, and that is the reason I gave you the opportunity by telling you of this letter.

Mr. MORRILL. Yes; and I thank you very much for it, Mr. Breed.

Mr. SMITH. I wonder if the committee will indicate what length of time will be given for the preparation of arguments?

The CHAIRMAN. Senator, I have to state at this time I am not prepared to state when the arguments will be held or the length of time, or the detail of the methods of argument. Counsel will be notified later of that.

Mr. SMITH. It has been suggested by Mr. Breed, and also by the gentlemen from California that if it was agreeable to the committee, as the holidays are ahead of us, it would be agreeable to counsel and the California interests—

The CHAIRMAN (interposing). We wish, in that connection, to consult the Attorney General as to his desires, and he is not prepared at this time to indicate his conclusions.

Mr. BREED. Mr. Chairman, I would like to join in the request of the California people and also of Senator Smith that at least 60 days be granted; first, because we have had three weeks of hearings, and nearly 3,000 pages of testimony, and the holiday season is immediately on, and I take it that you want a reasonably carefully prepared argument on a subject so broad as this, on both economic and legal lines, because it is economically and legally important. Furthermore, the California people did call to your attention the fact that to get the testimony out there and get it reviewed and get it back here takes a considerable space of time, outside of the time necessary to prepare a memorandum.

Mr. STEVENS. Mr. Chairman, I suppose it is needless for me to say that I also would like to join the other counsel in this request.

The CHAIRMAN. We will consider all your requests, gentlemen, and notify you by letter or otherwise of the time and place fixed for the argument.

You may proceed, Mr. Campbell.

FURTHER STATEMENT OF MR. VERNON CAMPBELL.

Mr. CAMPBELL. My understanding is that I am to be cross-examined this morning.

Mr. BREED. Hasn't he finished with his direct statement?

The CHAIRMAN. Yes; he is to be cross-examined.

Mr. CAMPBELL. Before you proceed with your cross-examination I want to call the attention of the committee to the afternoon session of December 10, page 2020 of the transcript, where I failed to answer Mr. Breed during the course of my statement. I think he should have that reply. It was almost in the nature of a question. My statement was this [reading]:

"The wholesale grocers admit that they were called in consultation by former Attorney General Palmer in formulating the terms of the decree; they admit, by their presence here of themselves and their attorneys, that they are the beneficiaries of the operation of this decree by the elimination of their competitors.

"Mr. BREED. They do not admit that. You are mistaken, I think, when you say that the wholesale grocers admitted that they were called in by the Attorney General in the formulation of this decree. I do not think I should let that pass, because it might be taken as an admission against the truth."

I refer to page 744 of the transcript, Mr. Breed testifying. He says—

Mr. BREED (interposing). I never testified here.

Judge HAINER. A statement, you mean.

Mr. CAMPBELL. A statement, I should say. Page 744 [reading]:

"It is true that some wholesale grocers, as well, I believe, as some members of other trades, while the decree was under consideration by the Attorney General, may have been asked certain facts by the Attorney General, and I believe one or two members of our organization did respond to that information."

Mr. BREED. "Invitation"; it should be "invitation."

Mr. CAMPBELL. I refer also to page 887 [reading]:

"Mr. HERSCHER. * * * First, let me say that the wholesale grocers' association and no other wholesale grocers, so far as I know, had any connection with the action of the people against the Big Five except that, at the request of the Attorney General just prior to the entry of the decree, several conferences were had with members of the wholesale grocery trade and other trades affected by the decree in order to give the Attorney General certain information which he desired."

The CHAIRMAN. Does that complete your statement on that?

Mr. CAMPBELL. That is all.

The CHAIRMAN. Proceed with your cross-examination. Mr. Breed, you may proceed.

Mr. BREED. This cross-examination, I take it, goes to the original testimony?

The CHAIRMAN. The entire testimony of Mr. Campbell.

Mr. BREED. On the first day, and his remaining testimony.

Judge HAINER. Yes. And on that, it seems to me, in order to clarify the matter that was just referred to by Mr. Campbell, I think that the order of Mr. Justice Stafford in the case of the United States against the five big packers, in equity, in the Supreme Court of the District of Columbia, should be incorporated in the record. That is, I would like to have that read into the record, the order allowing the southern wholesale grocers to intervene in that case.

The CHAIRMAN. In that connection, my recollection is there are affidavits filed there in that proceeding in which it is stated that the wholesale grocers' association were responsible for the action.

Judge HAINER. The Southern Wholesale Grocers' Association.

Mr. CAMPBELL. The Southern Wholesale Grocers' Association, yes; you are correct about that.

Judge HAINER. And for that reason leave was granted for the Southern Wholesale Grocers' Association to intervene.

Mr. CAMPBELL. I thought I ought to correct Mr. Breed on that, because I felt that he was not acquainted with the circumstances.

Mr. SMITH. I did not understand that was the reason given by Justice Stafford?

Judge HAINER. One of the grounds, is the way I remember it.

Mr. BREED. On behalf of the National Wholesale Grocers' Association I would like you to know that we do not claim to have had any part in connection with the bringing of this suit, or the procuring of this decree. We knew nothing about the proposal to bring an equity action until the public reports with respect to the matter in the newspapers, about December 18, 1919; and then the testimony of Attorney General Palmer to the effect that Mr. Dunham, vice president of Armour & Co., had come to him as the representative of the packers, in December, I believe, of 1919, and had stated that he was prepared to comply with the Government's demands.

Mr. SMITH. Mr. Chairman, I think I ought to say this: Mr. Edward Watkins did state that he had conferred with the Attorney General and had understood that the failure to proceed under the Federal Trade Commission act by the wholesale grocers was directly due to the fact that the Attorney General took this decree.

The CHAIRMAN. Mr. Watkins was general counsel for the Southern Wholesale Grocers' Association?

Mr. SMITH. Yes; Mr. Watkins was general counsel for the Southern Wholesale Grocers' Association.

Mr. CAMPBELL. Mr. Chairman, I think that fact has been well established heretofore. I have a number of bulletins sent out to the grocers by the Southern Wholesale Grocers' Association in which that fact was reiterated again and again. I have a number of those in my possession.

Mr. SMITH. So far as Mr. Watkins is concerned, there is no dispute about it.

The CHAIRMAN. The order of Judge Stafford referred to may go into the record.

(The order is as follows:)

MEMORANDUM OF DECISION ON MOTION TO STRIKE OUT INTERVENING PETITION OF SOUTHERN WHOLESALE GROCERS' ASSOCIATION AND OTHERS.

In the Supreme Court of the District of Columbia, holding equity court. In equity No. 37623. United States of America, plaintiff, v. Swift & Co. et al., defendants.

Without deciding that petitioners have an undeniable legal right to intervene, it is considered that upon the facts alleged in their petition it is fair and just that they should be allowed to intervene, not to take control of the plaintiff's side of the proceedings, but for the limited purpose stated in their petition, namely, to be heard in opposition to any modification of the decree that would deprive them of the protection now secured by it, for the following reasons, when taken together:

1. The decree was, in part at least, the fruit of their own efforts.
2. They abandoned the pursuit of other remedies in reliance upon this decree.
3. The protection afforded them by this decree might have been secured in a proceeding in their own name and behalf.

4. The change suggested would leave them in an embarrassed position in now seeking to secure the same protection.

5. The decree ought not to be modified unless the court is convinced that the public interest requires it; and the petitioners fairly represent a large and well-defined portion of the public whose position will enable them, and whose interest will prompt them, to present to the court facts or reasons which, among others, the court ought to hear and consider before allowing the decree to be changed.

This decision must not be understood as opening the door to all would-be intervenors who may consider themselves interested in the decree or any change therein, but as strictly limited to the facts alleged in this petition, which are in law admitted by the motion to strike out.

WENDELL P. STAFFORD.

Mr. BREED. Mr. Campbell, when did you first learn of the Government's intention to proceed in equity, and of the packers' willingness to consent to a decree providing that they should separate themselves from the stockyards, stock-market papers, warehouses, and unrelated products generally?

Mr. CAMPBELL. I had no authenticated knowledge of those facts, as you state them, until after the decree was entered. I had read in the papers at various times of the proposed decree, but I had no idea that the packers would ever accede to the Attorney General's proposition.

Mr. BREED. Well, do you recall, Mr. Campbell, that in the early part of December, 1919, the newspapers very generally carried the story with respect to this proposal?

Mr. CAMPBELL. Yes; I do, and I remember of reading for several years of proposed legislation to control the packers, but I felt that this was one more agitated matter that might never come to fruition.

Mr. BREED. You did know, didn't you, that at that very time—December, 1919—there was going on before committees of Congress hearings on what is known as the packers' control bill, of which there were several, and which had been introduced in the early part of 1919?

Mr. CAMPBELL. Yes; I was perfectly well acquainted with that; had been for over a year.

Mr. BREED. As a matter of fact, you testified on those hearings, did you not?

Mr. CAMPBELL. I did.

Mr. BREED. And you knew of Attorney General Palmer's appearance, in the early part of January, before one or both of those committees?

Mr. CAMPBELL. No; I didn't know about that; I didn't follow that. In fact, I paid very little attention to it after that. I was busy about other matters.

Mr. BREED. Did you ever hear about the time that he had appeared and explained the stipulation which had been entered into by the packers providing in detail the terms of the decree that was subsequently entered?

Mr. CAMPBELL. No; I had not knowledge of that.

Mr. BREED. I mean, offered by the packers?

Mr. CAMPBELL. No; I did not. The difficulty, I suppose, was that I was quite busy at other matters at the time, and the proposed moves of the Attorney General did not interest me. I did not think it was possible that any such thing could be done in this country.

Mr. BREED. Well, the Attorney General did appear on January 7 before the Senate Committee on Agriculture, and submit the full stipulation which was offered by the packers, and which was later embodied in the decree, did he not?

Mr. CAMPBELL. I don't know. If you say so I will accept your statement.

Mr. BREED. Now, from the time when you first read of these newspaper articles, in December, 1919, and up to February 27, 1920, when the decree was entered, did you ever enter any protest to the Attorney General against any such action and decree?

Mr. CAMPBELL. No; I was never requested to be heard.

Mr. BREED. I didn't ask you if you were requested. You have testified that you knew of newspaper reports, in December, 1919, but that you couldn't believe them to be true; and I am merely asking you if, after you heard of those reports, in December, 1919, you communicated to the Attorney General your opposition to any such proposal or to such decree?

Mr. CAMPBELL. Would you expect me to do that in the light of all proposals made by this Government in that direction? I will not answer that question as you have asked it.

Judge HAINER. First give your answer, and then explain.

Mr. CAMPBELL. There are a lot of things in this record—

Mr. BREED (interposing). No; I just asked you if you had expressed any opposition to the Attorney General to the reports that you read in January?

Mr. CAMPBELL. Why do you ask me that?

The CHAIRMAN. Just answer the question, and then explain why you didn't.

Mr. BREED. I didn't ask him for any explanation.

The CHAIRMAN. We did. Why didn't you?

Mr. CAMPBELL. Because I was not informed as to the facts as to what he was doing.

Mr. BREED. But you didn't protest to the Attorney General?

Judge HAINER. He has answered that, Mr. Breed.

Mr. BREED. Yes; I agree he has. Did you protest to Mr. Armour, with whom you stated you had a contract?

Mr. CAMPBELL. I did not.

Mr. BREED. Did you have a contract with Mr. Armour with respect to the sale of any of the products of the California Cooperative Canneries, in December, 1919?

Mr. CAMPBELL. We have a contract with Armour & Co.

Mr. BREED. Have you that contract with you?

Mr. CAMPBELL. No, sir.

Mr. BREED. I would like to ask a few questions about the contract inasmuch as Mr. Campbell has testified to it, gentlemen of the committee, and I believe you reserved the question as to whether Mr. Campbell should be asked to produce it, for subsequent decision. Are you willing to produce the contract?

Mr. CAMPBELL. No, sir.

Mr. BREED. You are not? Now, I ask that Mr. Campbell be asked to produce the contract, and that we be given the right to see it, or that his entire testimony with respect to the contract be stricken from the record.

The CHAIRMAN. Mr. Campbell, are you willing to state why you do not want to produce that contract?

Mr. CAMPBELL. Yes, sir.

The CHAIRMAN. Why?

Mr. CAMPBELL. I feel that inasmuch as the Federal Trade Commission and the Department of Justice both have copies of this contract, that in case this contract is to be used in any action in court which may be brought later on I prefer not to have our enemies in possession of any more information than I am compelled to give them.

Mr. BREED. You regard us as your enemies, do you?

Mr. CAMPBELL. I certainly do.

Mr. BREED. I am sorry.

Mr. STEVENS. I hope you mean your friends, the enemy.

Mr. CAMPBELL. Yes; our friends, the enemy. Well stated, Mr. Stevens. I love my enemies.

The CHAIRMAN. Well, we will reserve that question until later, Mr. Breed.

Judge HAINER. You might proceed to something else, and we will rule on your question at luncheon. You understand, Mr. Breed, that we have no such judicial powers that we could compel the production of it.

Mr. BREED. I fully appreciate that, Judge.

Judge HAINER. But we will take it under advisement and announce it later.

Mr. BREED. But I feel that all of the testimony, according to any rule of justice or evidence, that Mr. Campbell has given with respect to a written instrument that he does not produce and refuses to produce, must be stricken not only from the record but from your memories.

Judge HAINER. I have never seen the contract, and certainly I would not consider it, Mr. Breed, I will state that. It should not be considered by the committee unless it is produced, and you have an opportunity to see it; I will state that. I stated that in the beginning.

The CHAIRMAN. Well, I have seen it, but I can not remember what is in it, I am frank to tell you that.

Mr. BREED. We feel that Mr. Campbell having given testimony with respect to the fact—

Judge HAINER (interposing). It is just like any other document. If it is not produced, of course it can not be considered by a court.

Mr. BREED. But we think that his testimony with respect to the fact that his contract has been affected by the entry of this decree so thoroughly permeates all of his original testimony that it is impossible to cross-examine him, and that the testimony itself is of no force and effect before you, relating to a written instrument, unless it is produced to you and to us.

Mr. CAMPBELL. I would call the attention of the committee to the fact that all evidence produced and all documents produced before the 18th were to be considered as confidential, and that I suppose the wholesale grocers have all filed certain documents, evidence, or written statements which have not been produced here.

Judge HAINER. I don't understand that, Mr. Campbell; no. Everything that will be considered is not confidential.

The CHAIRMAN. Well, I disagree with you, Judge.

Judge HAINER. What?

The CHAIRMAN. I think the written communications which came in before the 18th to the Department of Justice are not to be published as a part of the records in this case.

Judge HAINER. You mean the communications that came in before the public hearings?

The CHAIRMAN. Yes; everything that came in before the public hearings.

Mr. CAMPBELL. That was the statement made to all, I think, Mr. Chairman. That was my understanding.

The CHAIRMAN. That was my understanding.

Mr. BREED. Mr. Campbell; however, has testified at length as to this contract at this hearing. And I am sure by his testimony, he does not wish it to be regarded as confidential at this hearing.

Mr. SMITH. I would like to state that the written statement we sent in I put into the record for the Southern Wholesale Grocers.

Judge HAINER. Most of them have been put in the record, have they not?

Mr. SMITH. Yes; I put in the only communication we sent in into the record, so that everybody might see it.

Mr. BREED. Well, while we are on that point I feel that Mr. Campbell, very properly, perhaps, and very cleverly, read into the evidence all the various letters which he had received from people to whom he had written asking them to oppose this decree, and while the Wholesale Grocers' Association, which has also, as you know, written to various people asking their opinion, did not introduce any of the hundreds—and there may be more—letters that they received expressing opposition. We do not believe that is the way to try this case before you.

The CHAIRMAN. I feel very frank to say that neither side have produced copies of anywhere near all the letters that the department has received on this question.

Mr. BREED. Well, shall I go on then, Mr. Chairman? You said you would decide later.

The CHAIRMAN. Go ahead, and we will decide about the contract after recess, Mr. Breed.

Mr. BREED. When, if ever, did you first discuss the question of modification of this decree with Armour & Co., or Mr. Armour, or any of the officers of Armour & Co.?

Mr. CAMPBELL. Personally, or by wire or letter, do you mean?

Mr. BREED. Personally or by wire, either.

Mr. CAMPBELL. I think it was at the time, if I remember correctly, that I wired the Department of Justice protesting against the operation of the decree.

Mr. BREED. That was in May, 1919?

The CHAIRMAN. Nineteen what? 1920?

Mr. CAMPBELL. 1920; that is right.

Mr. BREED. Did you later have a conversation with Armour & Co., or any of its officers?

Mr. CAMPBELL. I have had many conversations subsequent—

Mr. BREED (interposing). With respect to this modification.

Mr. CAMPBELL. I have had many conversations subsequent to that; yes, sir.

The CHAIRMAN. What was the result of that original request that you made, Mr. Campbell, to the Department of Justice?

Mr. CAMPBELL. If the matter is not confidential so far as the department is concerned?

The CHAIRMAN. Well, I don't know that it is confidential, Mr. Campbell.

Mr. CAMPBELL. Well, if it is not confidential, I will tell the whole story. I am sorry I haven't the original wire here which I sent to the Department of Justice. It might be written into the record. We protested against the operation of this decree, pointing out—

Mr. BREED (interposing). That is the California canneries, is this?

Mr. CAMPBELL. Yes (continuing). That we had contracted supplies and arranged to handle a large quantity of fruits; that Armour & Co. had agreed to distribute these for us; that we could not make proper arrangements for the distribution of these goods through the season. The Department of Justice notified Armour & Co. that they would allow them to handle these goods.

Mr. BREED. Handle what goods?

Mr. CAMPBELL. The Department of Justice notified Armour & Co. that they would allow them to handle these goods rather than to cause this great inconvenience and loss to us.

The CHAIRMAN. During what period?

Mr. CAMPBELL. During that year, that season.

Mr. BREED. What season?

Mr. CAMPBELL. 1920.

Mr. BREED. Well, was there any prohibition against Armour & Co. handling any goods during 1920?

Mr. CAMPBELL. My understanding was and is that those companies—the five packers—had undertaken to reduce their stocks as rapidly as possible and to finally have the business entirely cleaned up within the two-year period.

Mr. BREED. That is, before February 27, 1922?

Mr. CAMPBELL. Yes. And I think that the defendant corporations felt that they should divest themselves of these interests as rapidly as possible.

Mr. BREED. But there was no prohibition in the terms of the decree against their handling and distributing your product during the years 1920 or 1921, was there?

The CHAIRMAN. I think I can best explain that, that it was the belief, opinion, and attitude of the Department of Justice, as well as the meat packers, in working out this decree, that it was the spirit and intent of the decree that there should be a process of elimination without the taking on of any additional lines or increasing the lines which they were already handling, and that both sides had been working with that in mind and felt that that was the decree and its provisions.

Mr. BREED. Well now, Mr. Chairman, that makes quite important our knowing about this contract. You said that Armour & Co. had taken on the obligation of distributing the product of the California Canneries. Had they bought the products? [Addressing Mr. Campbell.]

Mr. CAMPBELL. They had a contract for the purchase of their supplies. Those terms—

Mr. BREED. Had they agreed to take and pay for those supplies at a given price?

Mr. CAMPBELL. At the price of the California Packing Corporation. I have made that very clear in my original statement.

Mr. BREED. Well, all I wanted to get in my mind is: You said they had agreed to distribute. I want to know if you make a distinction between an agreement to distribute and an agreement to purchase. So I am asking you now: Had they purchased the goods under this contract?

Mr. CAMPBELL. A purchase usually presupposes a definite quantity. Their contract did not provide for the purchase of a definite quantity.

Mr. BREED. How much did it provide for, for 1920, Mr. Campbell?

Mr. CAMPBELL. It provided for the furnishing of supplies that they needed in their business.

Mr. BREED. Their own individual business?

Mr. CAMPBELL. Their own individual business, whatever that might be. Obviously when this decree began to operate they had no use for these goods, and therefore they made no demand of us for these goods.

Mr. BREED. Well then, if they didn't have any need for the goods in their individual business they were not obligated to buy and pay for them under the contract?

Mr. CAMPBELL. That is the reason why this decree destroyed our property.

Mr. BREED. I see. Well now, I may have interrupted you in your statement that you were going ahead to explain about your wire to the Attorney General in May, and your communication with Mr. Armour.

Mr. CAMPBELL. Mr. Chairman, would you like to have me go any further in that transaction?

Judge HAINER. I don't think so.

The CHAIRMAN. I don't see any occasion to. You stated the fact.

Mr. BREED. All right.

Mr. CAMPBELL. Yes.

Mr. BREED. Then your wire to the Department of Justice, your first communication, was when?

Mr. CAMPBELL. In May, 1920.

Mr. BREED. Prior to that time had you seen and talked with Armour & Co. about this?

Mr. CAMPBELL. None of them.

Mr. BREED. Had you communicated with them by wire as to their attitude or otherwise?

Mr. CAMPBELL. They wrote me a letter, however, and it was on the basis of that letter that I took this action.

Mr. BREED. Oh, they wrote you a letter before you sent the telegram?

Mr. CAMPBELL. They wrote me a letter before I sent the telegram, probably a week before. I then called in my directors and we had a long discussion of this whole matter. Following that discussion and my instructions from my directors, I forwarded this wire.

Mr. BREED. To the Department of Justice?

Mr. CAMPBELL. To the Department of Justice.

Mr. BREED. Have you that letter that Armour & Co. wrote you, Mr. Campbell?

Mr. CAMPBELL. No, I have not. I might have brought it from our files in California.

Mr. BREED. Would you be willing to produce that letter, Mr. Campbell?

Mr. CAMPBELL. Yes; I would be willing to produce that letter; but I could give you the gist of it, and it would be as clear as the letter.

Mr. BREED. Well, if you will positively agree to send it to the department, with a copy to us, I would not object to your talking about it; but I do object to your talking about a written instrument unless I see it afterwards.

Mr. CAMPBELL. We might just as well let it go, then, and not carry it on any further.

Mr. BREED. That is, you won't care to send the department a copy of that letter?

Mr. CAMPBELL. I don't think it is necessary.

The CHAIRMAN. Mr. Campbell, do you anticipate that if the Government does not move for a modification of this decree, you may be compelled to?

Mr. BREED. Well, now, Mr. Chairman, I want to object to that.

The CHAIRMAN. I want to get his grounds for a refusal to bring these things here.

Mr. BREED. Well, I think that is almost an implied suggestion on the part of the Government.

The CHAIRMAN. Well, I disagree with you upon that. I want to get his viewpoint as to why he is refusing, or why he does not wish to.

Mr. CAMPBELL. I might clarify that a little bit, Mr. Breed.

Mr. BREED. Well, I object to the question, and, of course, you can answer whatever you see fit if the commission so rules.

Mr. CAMPBELL. The point is this: The chairman, I think, is correct in his question for this reason, that I have already stated to the Department of Justice that we would so move.

Mr. BREED. You are not a party to this proceeding, are you, of the United States against the Big Five packers?

Mr. CAMPBELL. No, sir.

The CHAIRMAN. Is that the reason why you object to introducing here the contract, letters, and so forth, that have been referred to?

Mr. CAMPBELL. That is the reason, Mr. Chairman.

Mr. BREED. When you say, "We intend to move," who do you refer to?

Mr. CAMPBELL. The California Cooperative Canneries.

Mr. BREED. The California Cooperative Canneries?

Mr. CAMPBELL. Yes.

Mr. BREED. And you are not referring to Armour & Co.?

Mr. CAMPBELL. I know nothing about what they want to do.

Mr. BREED. I thought you gave some testimony here the other day to the effect that you talked frequently with Mr. J. Ogden Armour and with Mr. Wilson, and that they were favorable to the modification of this decree. Am I wrong about that?

Mr. CAMPBELL. You are not wrong about that. They seem to be favorable to the modification of the decree, and I might go back and recount a conversation had with Mr. Meeker in April, as I came on to Washington, that might enlighten you considerably as to their attitude, which I think the gentlemen here, not only the committee, but others, should know.

Mr. BREED. I would be glad to have it.

Mr. CAMPBELL. I called first on my arrival in Chicago on Mr. Davidson, who is the head of the canned-fruits department.

Mr. BREED. Is he vice president, also, of Armour & Co.?

Mr. CAMPBELL. I don't know what office he holds, but he is the head of that certain department with which we deal. He said to me in answer to my inquiry regarding their attitude on this decree matter that "I think our board of directors is entirely opposed to reentering the sale and distribution of side lines or unrelated products."

And I then called on one of the attorneys. I think Mr. Crafts, and I consulted with him about this matter, and he said, "I believe our people are opposed to reentering."

Then I called on Mr. Meeker and asked him why they had taken this position. And his reply was something like this: "That we have had so much opposition to our handling of these side lines that we are tired of the struggle and prefer to keep out of these lines if it is the will of the Government that we do so."

I then said to Mr. Meeker: "The people of this country should demand that these facilities which you have should not be taken away from public use. That the people, through their patronage, have built up this great system of distribution which you now have, and they are entitled to its use in economic distribution of foods."

His reply was that he felt that they were entitled to it; that it would cost them more money to deliver meat products alone than it would if considerable quantities of other products were handled with meats, thus cutting down their overhead and taking care of the branch house and tramp-car service.

I said, "Now, Mr. Meeker, would you be willing to handle goods on a commission basis for the producers, giving us the most direct route from producer to consumer?"

Mr. BREED (interposing). You are the originator of this commission idea?

Mr. CAMPBELL. I am, sir. I started it four years ago with Tom Wilson. He agreed to it at that time, he said, if I could get the people ready; in other words, could get the people up to the point of understanding what we were trying to do in making this saving.

Mr. Meeker then replied: "We will have nothing to do with the matter of"

Mr. BREED. What did you mean by "if you could get the people ready"?

Mr. CAMPBELL. Educate a few wholesale grocers, probably.

Mr. BREED. They do not ordinarily buy from the packers, do they?

Mr. CAMPBELL. No; but they seem to be concerned with the people's interests here, and are taking care of the people's interests, according to their story.

Mr. BREED. Well, excuse me.

Mr. CAMPBELL. Mr. Meeker then said that if they could handle the products on a commission basis and the Government would agree to allow him to do this, or in any other way they would not oppose my application for a modification. They were particularly concerned in carrying on their business in a way that would be satisfactory to the Government and to the people. He said that if the people would prefer to pay a higher price for meat and other products, due to the excessive overhead cost in handling but one product alone, why the people would have to pay it, but they would like to put, of course, their distributing facilities to the service of the people if the people would care to use them, but they would not take any active part in any application that I might make for the modification of the decree.

Mr. BREED. They would not. Did you then state to him what you proposed to do?

Mr. CAMPBELL. I told him nothing.

Mr. BREED. Did you say to him—Mr. Meeker—in that conference: "Will you take the stuff on a commission basis and sell it; not speculate on it at all?"

And did he say: "They might do that."

And did you say: "Well, will you just keep still when I go back there?"

And did he say: "Yes; we will keep still." "So I went back and started."

Mr. CAMPBELL. Yes; something of that sort, for this reason: I did not want them to oppose the work I was doing. I wanted them to keep still on opposition.

Mr. BREED. Well, when you said—and I am quoting from a speech of yours before the Western Cannery Association on or about November 12, in asking the questions—where did you mean you were going to go when you said, "So I went back and started"?

Mr. CAMPBELL. To Washington. I will explain in reference to that talk I made that I did not know that a reporter was taking it, and I talked so rapidly that he came to me afterwards and he said he only got about half of it, but he thought he got the sense of it. I guess I did talk very rapidly. I had but a few minutes.

Mr. BREED. But I think it is pretty clear.

Mr. CAMPBELL. I think it is clear; yes. I don't want you to misconstrue my meaning or twist it, because the thing that I brought out with Mr. Meeker was that what I wanted him to do was to allow me to go ahead without opposition. I didn't ask for his help.

Mr. BREED. You asked him if he would take it on commission basis and not speculate at all?

Mr. CAMPBELL. That is what I asked him.

Mr. BREED. And he said they might do that?

Mr. CAMPBELL. Yes; that is what he said.

Mr. BREED. You said that if he would keep still that you would go to Washington and start the thing?

Mr. CAMPBELL. Yes.

Mr. BREED. Now, did you go to Washington?

Mr. CAMPBELL. I did go.

Mr. BREED. When was that, Mr. Campbell?

Mr. CAMPBELL. I arrived here about the 20th of April, I think.

Mr. BREED. And have you been engaged in the question of trying to get modification of the decree since that date?

Mr. CAMPBELL. Yes; all the time I wasn't engaged in borrowing money and trying to sell goods to jobbers; which did not prove very successful, I will say that.

Mr. BREED. Referring to this conversation with Mr. Meeker, you stated that you said that the facilities of Armour & Co. should not be taken away from the public use. Are the distributive facilities of Armour open to the public use or to their private use?

Mr. CAMPBELL. I consider, if you want my view of the matter, that all great corporations engaged in interstate commerce are in the nature of a public utility, although they might not be under the control of the Government. The packers have now been put under Government control, and I consider them a quasi public utility, and therefore should be allowed to carry on the business in the interest of the public.

Mr. BREED. Well, you don't mean to convey the impression that any canner or jobber that wished to obtain the use of the refrigerator peddler cars of the packer could get that service by applying to the packer, do you now, under existing law?

Mr. CAMPBELL. Do you mean now to refer to the private car lines?

Mr. BREED. I mean the refrigerator car lines of which the testimony yesterday showed that the packers together own 91.6 per cent.

Mr. CAMPBELL. Of what refrigerator cars?

Mr. BREED. Brine tank cars.

Mr. CAMPBELL. Brine tank cars?

Mr. BREED. Refrigerator cars.

Mr. CAMPBELL. Meat tank cars?

Mr. BREED. Yes, sir.

Mr. CAMPBELL. No, sir; I don't believe that I would care to have the wholesale grocers use their cars, because they are a competitor of the canner.

Mr. BREED. But isn't that a facility that you were talking with Mr. Meeker about being used for the purpose of handling these nonperishable canned products and groceries?

Mr. CAMPBELL. I never said that canned products were not perishable.

Mr. BREED. I didn't mean that, but I mean are those the facilities that you are referring to that should be open to public use, in your opinion?

Mr. CAMPBELL. When you speak of public use, do you mean the use of anyone?

Mr. BREED. Well, I will limit my question again. Are those the facilities that you referred to?

Mr. CAMPBELL. Those are not all the facilities; no. I have referred to branch houses and to salesmen.

Mr. BREED. But that is a part of the facility.

Mr. CAMPBELL. A part of the facility; yes.

The CHAIRMAN. When you say "should be open to the public," do you mean to the consumer, or who?

Mr. CAMPBELL. My contention is that those facilities should be open to the producer and the consumer, not to middlemen.

Mr. BREED. To the producer—that would be canners, packers——

Mr. CAMPBELL. Farmers.

Mr. BREED (continuing). Manufacturers, farmers.

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Well, in the present state of our handling of food products, do you know of any canners, manufacturers, and farmers, and producers that own any refrigerator cars or have any such facility as the packers have?

Mr. CAMPBELL. No; and that is the reason we would like to get the use of them.

Mr. BREED. Yes. Do you know of any wholesale grocers or mail-order houses, catalogue houses, chain stores, or other people engaged in the purchase of these products from producers, farmers, canners, and so on, owning any such facilities by which they can transport these unrelated products from the producer, and so forth, to the market?

Mr. CAMPBELL. We do not, and we contend that they should own such facilities.

Mr. BREED. You contend they should?

Mr. CAMPBELL. Yes.

Mr. BREED. In other words, you believe that other people, other interests in the business of buying food products and selling them either to the retailer or the consumer should own these railroad facilities?

Mr. CAMPBELL. I do, sir.

Judge HAINER. You mean that the wholesale grocer should have these facilities for the interests of the public?

Mr. CAMPBELL. We mean, Judge, that they are not fulfilling their public duty when they do not furnish such facilities.

Mr. BREED. Well, you mean when they do not own them and have them available?

Mr. CAMPBELL. Yes; either own them or lease them.

Mr. BREED. And your idea is that the wholesale grocer, then, should buy and own refrigerator and other cars in order to get his goods from the various places at which he purchased them to his house?

Mr. CAMPBELL. It is not necessary to do that, because the railroads will transport them to those points of distribution. But he should furnish facilities for distribution comparable to the packer if he is going to continue in distribution and properly take care of the needs of the general public.

Mr. BREED. That is, you mean after the goods, we will say, are received in the wholesale grocer's warehouse, that he should have the railroad cars to distribute them to the retailer?

Mr. CAMPBELL. Either lease them or own them.

Mr. BREED. I see. Well, that makes clear a point that has been a puzzle to me in your examination, and I am very glad to have your idea.

Mr. CAMPBELL. I want him to become a real distributor instead of a very inefficient one.

Mr. BREED. Then you believe that it is not essentially the duty of the railroads of the United States to furnish these facilities and make them open to all parties desiring to distribute over their roads?

Mr. CAMPBELL. I might advise you to read a report of the Interstate Commerce Commission on that matter, No. 4906. I have copies here, and I will be glad to furnish it to you; and you can get a copy of it here in the Interstate Commerce Commission, in which that matter has been gone into for some six years.

Mr. BREED. Well, I just want to get your idea, Mr. Campbell.

Mr. CAMPBELL. My idea agrees with the idea of the Interstate Commerce Commission.

Mr. BREED. And you claim the Interstate Commerce Commission, then, believes that all the buyers and distributors of food products should own their individual private car lines?

Mr. CAMPBELL. I didn't say that, and neither did the Interstate Commerce Commission.

Mr. BREED. Well, but that is what I am talking about. I don't know what is in that pamphlet, because I have not read it.

Mr. CAMPBELL. Your conclusion is exaggerated.

Mr. BREED. No; I am speaking to just one fact, and not going off into written instruments again which I have not read.

Judge HAINER. I think he ought to be allowed to refer to that document if he wants to do so.

Mr. CAMPBELL. I can read it.

Judge HAINER. He says he approves of the doctrine announced in that by the Interstate Commerce Commission.

Mr. BREED. Then I just wanted to know as to whether as to this point the Interstate Commerce Commission has expressed approval of the idea that the distributors of food products—I suppose it must apply to other products—should own their own private cars for distribution of their products. You believe that, in any event?

Mr. CAMPBELL. I do not believe that in so broad a manner as you have stated it.

Mr. BREED. Well, how would you limit it?

Mr. CAMPBELL. I would limit it to those who are engaged in the traffic in sufficient volume to enable them to handle these cars economically.

Mr. BREED. Well, wouldn't that put the small distributor in the small towns at a very great disadvantage as against the larger distributor?

Mr. CAMPBELL. If he distributes only in that town it would give him no disadvantage at all. I know in the town where I am living we have two wholesale grocers who practically make no distribution outside of their town, or within hauling distance of their town by their trucks. It would not put them at any disadvantage at all.

Mr. BREED. Then you believe that a wholesale grocer should only distribute in his own town, and no outside wholesale grocer should sell to any retailers in that town?

Mr. CAMPBELL. No; I don't believe that.

Mr. BREED. Well, then, the outsider would have to get into these towns, wouldn't he?

Mr. CAMPBELL. Certainly. I went into that matter, if you read my testimony in rebuttal—I went into that matter of private cars quite at length, and I suggested there how the wholesale grocers might solve that problem.

Judge HAINER. Mr. Breed, perhaps you didn't hear that testimony. Did you?

Mr. BREED. I must have been away that day.

Mr. CAMPBELL. You were away. It think it is hardly worth while my going into that matter again for your special benefit.

Mr. BREED. Well, what is your idea as to the work-out of the wholesale grocer? In your opinion what should he do in respect to handling his products?

Mr. CAMPBELL. Do you think it is necessary for me to read that into the record again? [Addressing the committee.]

Mr. BREED. No; just briefly. I didn't know that he had gone over that.

Judge HAINER. Yes; he has gone over that. He spent about a half a day on that.

Mr. BREED. He did? Well, this will be only one question.

Mr. CAMPBELL. I can explain to you what I feel that a wholesale grocer in these large distributing centers should do. I have already explained and made a statement in some detail on that.

Mr. BREED. Can you state just briefly how you think he should conduct his business?

Mr. CAMPBELL. I gave an example of cooperative-delivery systems of retail dealers in many towns of considerable size. These retail dealers buy trucks and organize a separate corporation which does a cooperative-delivery service. Picking up the orders from the various retail dealers and delivering them into one section of the city under one management. Using that as an illustration, I suggested that the wholesale grocers, in a city like Chicago or Minneapolis or some such center as that, could equip, either by lease or by purchase, such refrigerator cars as were necessary to establish their delivery routes. They could then join—

Mr. BREED (interposing). But the wholesale grocer—

Mr. CAMPBELL. Just wait a moment until I get through with my statement. Kindly do not interfere with me.

They could then join with the green-fruit jobbers and fresh-vegetable jobbers in loading these cars daily or weekly—the meat packers usually load weekly from their branch houses—and get these routes extending over a hundred or two hundred miles and deliver these goods in common to their various buyers, and in my opinion could set up a competitive system which it would be very hard for the meat packers to compete with.

Mr. BREED. Don't you think this would involve considerable expense on the part of the wholesalers of fruits, jobbers, and so on?

Mr. CAMPBELL. It requires very few cars to equip a route. The cars return rapidly, and in the case of Armour & Co.—I am somewhat acquainted with their distribution in California—they do not own the cars themselves, because they do not use in their distribution in California any of these fresh-meat cars that you speak about, as they have no slaughtering houses in that district.

Mr. BREED. What do they use?

Mr. CAMPBELL. They use the ordinary refrigerator fruit car furnished them by these railroad private car companies.

Mr. BREED. And do they put their fresh meats in the cars as well as the grocery products?

Mr. CAMPBELL. They handle very little fresh meats. They are cured meats on the coast. The fresh meats are handled by local butchers and local slaughtering houses.

Mr. BREED. Why do they use refrigerator cars for goods not requiring refrigeration?

Mr. CAMPBELL. They will ship butter, eggs, cheese, and other products that should be kept cold, and, as I have explained and did explain to the committee in my former testimony here, canned goods require refrigerator cars in the winter time in order to keep them from freezing. That is not necessary, of course, in the State of California, but in the eastern States we must ship canned goods in refrigerator cars. After the 15th day of October all of our canned goods leaving California are shipped in refrigerator cars to keep them from freezing, so refrigerator cars are necessary during the winter months in transporting goods.

Mr. BREED. I noticed the shock to the committee when you first stated that, but I believe now that they believe you—that you need refrigerator cars to keep things from freezing. It was a novel statement to me, and I think it was to the commission.

Judge HAINER. Well, is it a fact, though?

Mr. BREED. Mr. Campbell says it is a fact.

Judge HAINER. Do you dispute that fact?

Mr. BREED. No; I think Mr. Bode testified to the same thing. It is a very interesting thing.

Judge HAINER. Yes.

Mr. BREED. Now, you realize, of course, that the large proportion of the grocery products shipped out by the individual wholesale grocer to his trade and surrounding territory does not require refrigeration?

Mr. CAMPBELL. Many of them do not, but the expense of the refrigerator car when it is not iced is no greater—in fact, it is very little more than the ordinary car, and the car is clean, and it is the proper conveyance of food of any kind, rather than an open dusty box car.

Mr. BREED. Also it gets better attention from the railroad officials, does it not?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. The refrigerator car is supposed to be the first car picked up when the trains are being made up by the railroads at railroad terminals?

Mr. CAMPBELL. Yes.

Mr. BREED. Now, we have strayed a long way from our original thought to get a bit of history here. You came to Washington, then, in April, 1920?

Judge HAINER. That has been answered.

Mr. BREED (continuing). And began your efforts to obtain a modification of this decree? I am just starting over again.

Mr. CAMPBELL. 1921.

Mr. BREED. After you came to Washington did you then take the matter up again with representatives from the Attorney General's office?

Mr. CAMPBELL. I did, immediately.

Mr. BREED. And have you taken it up with representatives in the Department of Agriculture?

Mr. CAMPBELL. I never did see any of the representatives of the Department of Agriculture except the Secretary himself. I had some conversation with him one day about the matter.

Mr. BREED. And you did go to these various conventions and make addresses on the subject?

Mr. CAMPBELL. No. I went to the Western Cannery Associations, but they refused to allow me to talk until after they had done all their dirty work.

Mr. BREED. But still you did talk?

Mr. CAMPBELL. I did talk afterwards.

Mr. BREED. And you did go to the original meeting of the Western Cannery in October?

Mr. CAMPBELL. No; I didn't attend that.

Mr. BREED. Well, but you were present in the city?

Mr. CAMPBELL. No; I was not.

Mr. BREED. Well, you said that they came over and consulted you at your hotel before they drew the first resolution, did you not?

Mr. CAMPBELL. No; I did not.

Mr. BREED. What did you say?

Mr. CAMPBELL. My record is clear on that.

Mr. BREED. I am only asking you if you were not in the—where was the convention held, the meeting?

Mr. CAMPBELL. It was held in Chicago.

Mr. BREED. In Chicago?

Mr. CAMPBELL. Yes.

Mr. BREED. Weren't you in Chicago at the time?

Mr. CAMPBELL. I was in Chicago.

Mr. BREED. And didn't you say that you talked with certain members of the committee while they were in session or during the time they were in session?

Mr. CAMPBELL. No, sir. I will make that clear again if you would like to have it.

Mr. BREED. I don't care to go into that again, but the record—

Judge HAINER (interposing). Well, let him state it. You have asked him.

Mr. CAMPBELL. I will state it so that it is clear to you if you want it stated.

Mr. BREED. All right.

Mr. CAMPBELL. After I arrived in Chicago I called on Mr. Mulligan, the editor of the Canner, which is one of the two magazines or journals in the United States devoted exclusively to the cannery's interest. Mr. Mulligan stated to me that there was a meeting of the Western Cannery's Association in Chicago that day.

Mr. BREED. And didn't you know that before that time? Didn't you know there was a meeting there before that time?

Mr. CAMPBELL. I didn't know it.

Mr. BREED. What were you doing in Chicago then?

Mr. CAMPBELL. I was on my way to Memphis, Tenn., to try to sell some goods to the Piggly-Wiggly stores.

Mr. BREED. Do you realize that the minutes of the meeting of October 3, which were sent out to the trade, contain this clause just ahead of the resolution that has been read in:

"Mr. Vernon Campbell, of the California Cooperative Canneries Association, who has been working for more than five months to have this decree set aside, assisted this committee, and we inclose you herewith copy of the resolution that was wired to Mr. Daugherty and was O. K'd by the Western Cannery's Association?"

Mr. CAMPBELL. Well, now, that doesn't state that I was at that meeting.

Mr. BREED. No; and I did not intend to quibble on words. I just wanted to bring out the fact that you were working on this job.

Mr. CAMPBELL. I was not. Now, if you will allow me, I will explain to you exactly what happened there. I have tried to do it several times to make it clear to you people.

Mr. BREED. Well, I am only interested in the question, Mr. Campbell—

Judge HAINER. Let him state it.

Mr. BREED (continuing). As to whether you were in Chicago and whether that is correct—that statement in the resolution.

Mr. CAMPBELL. I will make it perfectly clear to you. I went over to the hotel where the meeting of the western cannery was being held. I thought that I might be able to present this matter to them—this matter of the decree. They refused to allow me in the room. So I left. I then paid no more attention to the matter at all. Along about 5 or 5.30 that evening they called my hotel and asked me to come over to a meeting of a committee on a resolution covering this matter, stating that, as I had had considerable experience, they wanted me to assist them in drawing a resolution. I went over to the Sherman Hotel, to the room where this meeting was being held. There were five men there, I believe. I personally knew two of them. They had already drawn the resolution when I came into the room, and they read this resolution to me and wanted to know whether that would be, in my opinion, the proper wording for a resolution to be sent to the Attorney General. Mr. Frank Gerber drew the resolution with his own hands, and I think it was drawn by him in his

own words. I told them that I saw no reason why that resolution would not be satisfactory, and it was not changed in any particular at all. And within a few minutes I left the room.

Mr. BREED. Satisfactory to whom?

Mr. CAMPBELL. To the Attorney General. They asked me whether I thought that resolution was in proper form for such use. That is all I had to do with it, and I didn't put one word into it, and I hadn't met the men before that.

Mr. BREED. Then this verbiage, "Mr. Vernon Campbell assisted the committee," etc., merely refers to what you have just stated you did; that is all the assistance you gave?

Mr. CAMPBELL. If I gave them any assistance, it was this way: When I came into the room I found Mr. Lon Sears very wrathful about the attitude of the wholesale grocers, and he wanted to put some fireworks into this resolution, and he asked me what I thought they ought to put in, and I said, "Mr. Sears, it would be very undignified if you put such matters in there; I suggest that you put it in as Mr. Gerber has drawn it." And if I assisted them in any way it was I assisted them in keeping the matter within proper bounds and limits.

Mr. BREED. You were keeping the thing down?

Mr. CAMPBELL. As best I could.

Mr. BREED. Well, we wish you were on our side to smooth down the whole trouble.

The CHAIRMAN. It is half past 12, gentlemen. Let us adjourn until 2 o'clock this afternoon.

(Thereupon, at 12.30 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day, Thursday, December 15, 1921.)

AFTER RECESS.

The committee resumed its session at 2 o'clock p. m., pursuant to the taking of recess.

The CHAIRMAN. Gentlemen, let us proceed.

Mr. BREED. Mr. Chairman, Mr. Herscher wants to make a statement with respect to that incident of the Llewellyn Bean Co. and the telegram which Mr. Campbell read from Armour & Co. I do not think either one wants to be in the position of disputing the other, and he has a telegram he would like to read.

Mr. HERSHEY. I just want to get this matter cleared up.

The CHAIRMAN. What about the Llewellyn Bean Co.?

Mr. HERSHEY. I made the statement that the grocery trade understood that Armour & Co. owned the Llewellyn Bean Co., and Mr. Campbell referred to the fact that he had communicated with Armour & Co. with reference to it, and read their reply, by telegram, the closing part of which stated that the officers of the Llewellyn Bean Co. state that they know of no suit pending in the Michigan courts, and, further, know no reason for such suit. From Mr. H. T. Stanton [reading]:

[Western Union Telegram.]

GRAND RAPIDS, MICH., December 14, 1921.

J. W. HERSHEY,

Care Washington Hotel, Washington, D. C.:

A. H. Lamborn & Co., New York City, are suing the Llewellyn Bean Co. for \$20,000 for sugar. Lamborn & Co. garnisheed Armour & Co. Disclosure shows the contract between Llewellyn Bean Co. and gleaners clearing house association for property sold to gleaners amounting to \$200,000 has been assigned by the Llewellyn Bean Co. to Armour & Co. as accounts receivable, and that there is still due on this contract \$187,500, and that two installments on this contract, each for \$12,500, are due and unpaid; no other suits have been started. Investigating further.

H. T. STANTON.

The CHAIRMAN. How does he know what Armour & Co.'s books show?

Mr. HERSHEY. I don't know, Mr. Galloway. The inference might be there was no transaction whatever.

Mr. BREED. I think the telegram, Mr. Chairman, shows that there is a suit, and those figures are probably taken from the papers filed in court.

The CHAIRMAN. You may proceed, Mr. Breed.

FURTHER STATEMENT OF MR. VERNON CAMPBELL—Resumed.

Mr. BREED. Mr. Campbell, I think we were just finishing up some discussion about the western cannery meeting in October. You did attend the Western Cannery meeting on November 12 and made a speech at that convention, did you not, Mr. Campbell?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Did you say, in the course of your remarks, this, or this in substance: "I have gone to the Department of Justice, and I find there is not one scrap of evidence against the packers. I have no interest in the packers, except I want to see this thing cleaned up right. There is not one scrap of evidence"?

Mr. CAMPBELL. I might have qualified that by saying that so far as I knew.

Mr. BREED. Did you say that in your speech at that convention, or that in substance?

The CHAIRMAN. Mr. Campbell, in connection with that, didn't you ask the representatives of the Department of Justice what evidence they had against them?

Mr. CAMPBELL. I probably did; undoubtedly, I did; yes.

The CHAIRMAN. And did you receive any information along that line?

Mr. CAMPBELL. None at all.

Mr. BREED. Well, then, is that the only information you had upon which you based this statement?

Mr. CAMPBELL. None; except the reports of the Federal Trade Commission, in which I could find no evidence and never have found any evidence.

Mr. BREED. Well, the answer you have made to Mr. Galloway, then, is the only basis for your statement, "I find that there is not one scrap of evidence against the packers. I have gone to the Department of Justice"?

Mr. CAMPBELL. So far as the public evidence is concerned. What they may have looked up in their private vaults, I don't know.

Mr. BREED. What is that?

Mr. CAMPBELL. I am not quoting the Attorney General at all in the matter.

Mr. BREED. Now, did you attend a convention in Kansas City, held under the auspices of the Chamber of Commerce, on the subject of distribution and make a speech there?

Mr. CAMPBELL. I did.

Mr. BREED. With reference to the modification of the packers' decree?

Mr. CAMPBELL. I don't remember that I said anything about the modification of the packers' decree; not to any extent, anyway. We were discussing other matters there. I might have said something there. I certainly should have, if I had the opportunity.

Mr. BREED. Well, you did make a speech there?

Mr. CAMPBELL. I made a talk there; yes, sir. I would not call it a speech.

Mr. BREED. And you discussed the ideas which you have with respect to distribution that you have given to this committee?

Mr. CAMPBELL. Some ideas along that line. I don't know that I touched all the points there, however.

Mr. BREED. Now, you said you came to Washington for the purpose of trying to obtain a modification of this decree. Did you ever make application to anybody for a modification of this decree entered under this court action?

Mr. CAMPBELL. You mean a written application?

Mr. BREED. I mean any kind of an application.

Mr. CAMPBELL. Well, I certainly placed our situation before the department, and asked for a modification of the decree, or setting it aside entirely.

Mr. BREED. The Department of Justice?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Did you make an application for the modification of the decree to anyone else?

Mr. CAMPBELL. No; there was no one else to apply to.

Mr. BREED. What?

Mr. CAMPBELL. There was no one else to apply to.

Mr. BREED. You stated, at page 1884 of your examination, that nobody favoring the modification of this decree had asked for this public hearing. I suppose you mean before this committee?

Mr. CAMPBELL. Yes; that is so far as I know.

Mr. BREED. So far as you know?

Mr. CAMPBELL. I think I modified that. I didn't know that anybody did; I know we didn't.

Mr. BREED. What did you wish to imply; that it was an improper thing to have a public hearing on this question?

Mr. CAMPBELL. No; I simply wished to make it clear that, so far as the proponents were concerned, they were willing to leave the matter in the hands of the Department of Justice entirely, and not require an open public hearing on it.

Mr. BREED. Don't you think that the questions that are involved in this matter are of sufficient importance to have the hearing which has been held here or a public hearing?

Mr. CAMPBELL. I don't know that it would do any injustice to anyone to have an open hearing, but inasmuch as there was no open hearing in the beginning, I could not see why it should be open at this time. The matter was one which the Department of Justice was responsible for in the beginning, and they certainly are responsible for action taken now.

Mr. BREED. Well, the Department of Justice was not alone responsible for the decree?

Mr. CAMPBELL. No; I believe the wholesale grocers were likewise responsible for the action.

Mr. BREED. The packers who were the defendants in the suit also had something to do with that situation.

Mr. CAMPBELL. I believe so. When I talked to Mr. White, vice president of Armour & Co., I asked him why they had signed such a foolish arrangement, and he said they were holding a gun at his head and he had to do something.

Mr. BREED. Mr. White, of Armour & Co., said that?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Who was holding a gun at his head?

Mr. CAMPBELL. Attorney General Palmer. The point was this: That all this publicity and this continual hounding by the Federal Trade Commission, and these wild charges made against the packers, it was injuring their business in foreign and domestic trade; it was depreciating their securities, and it was causing the foreign Governments to begin to investigate the affairs of the packers, in some instances closing the doors to their business, so that in order to relieve themselves from this persecution they were willing to do almost anything to get from under the charges, Mr. White said unjustly made, by the Federal Trade Commission.

Mr. BREED. Did Mr. White tell you this?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Congress was also investigating the packers under hearings held upon packers' control bills, was it not?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Well, these packers' control bills were pending in Congress and this bill which passed, before its passage, and during the hearings, did you oppose the provisions that were contained in some of the early bills which gave control to the department which was to have control of the packers over unrelated products?

Mr. CAMPBELL. What department? I don't know just what department you refer to.

Mr. BREED. Well, two departments were discussed in various bills.

Mr. CAMPBELL. Well, there were—

Mr. BREED (Interposing). The Federal Trade Commission and the Secretary of Agriculture. I am simply asking you, did you oppose the provision which gave control of the packers over their dealings in unrelated products?

Mr. CAMPBELL. You mean last spring? No; I made no opposition along that line.

Mr. BREED. You are aware that in one of the early bills there was a provision prohibiting the packers from transporting those unrelated products in their car lines, or at least dealing in unrelated products, are you not?

Mr. CAMPBELL. I didn't see any such bill as that; no, sir.

Mr. BREED. Do you recall that one of the early bills has a provision prohibiting them from generally owning the stockyards?

Mr. CAMPBELL. I don't remember that. The provision that I objected to when I went before the House Agricultural Committee was a short clause which read something like this: "Nothing in this act shall be construed as preventing the operating of any decree heretofore entered into."

I don't know that those are the exact words, but I objected to that, because I stated to the committee that it would fix upon these defendants this decree in such a way that it would probably never be removed.

Mr. BREED. That is, it would put the decree, in a way, into legislation?

Mr. CAMPBELL. It would in a way put it in legislation, and would, in effect, give the color of approval by Congress to this decree.

Mr. BREED. And you opposed any of the terms of this decree, or any similar terms going into the packers' control bill?

Mr. CAMPBELL. Yes; and I am against all sorts of decrees; I don't believe in legislation by decree, and voiced my sentiments.

Mr. BREED. No; I am trying to find out whether you are opposed to the same provisions contained in this decree going into an act of Congress.

Mr. CAMPBELL. Yes, sir.

Mr. BREED. You are opposed to that, too?

Mr. CAMPBELL. I certainly am opposed to it.

Mr. BREED. Is there any ruling, Mr. Chairman, on the question of the contract?

The CHAIRMAN. Yes; the committee feels that this hearing and the request for a modification has been made upon the broad ground of public interest of whether or not it is to the public interest that this decree should be modified. The question of any individual rights, or of any obligations to individuals which have been interfered with, are only incidental and tending to prove the broad question of public interest; and, therefore, we do not feel that we should request the submission of this contract. We feel, further, that we have no power to require the production of this contract, and that as the witness has stated he contemplates probably the using of it as a basis for legal action, that we should not attempt to require him to divulge the same at this time.

Mr. BREED. If that is the position of the committee, I would then move that all of the evidence of Mr. Campbell with respect to this contract be stricken from the record.

Judge HAINER. As incompetent?

Mr. BREED. I did not say as incompetent. If you wish me to state my grounds, I will be glad to do so. My grounds would be on the fact that I consider it most improper for this committee to allow a man to testify to the contents of a written instrument and state how his business has been affected with respect to that written instrument, and not allow the other parties in interest to see what that written instrument is about which he is testifying.

Judge HAINER. This morning, Mr. Breed, you brought out more with reference to it than has heretofore been testified to.

Mr. BREED. Yes; I did, indeed, because I felt there are provisions in that contract not borne out by Mr. Campbell.

Judge HAINER. It is for impeachment?

Mr. BREED. Not impeachment. I think it highly improper to allow Mr. Campbell to testify as to the contents of the contract, if it is—

Mr. CAMPBELL (interposing). My position is that this contract is in the hands of the Department of Justice for its use, and also in the hands of the Federal Trade Commission, and the parties are witnessing here not as contestants, but as witnesses here for the information of this committee.

Mr. BREED. I don't care what Mr. Campbell's position is. He said he was unwilling to produce the contract. I will ask him again if he is willing that the Department of Justice, who has the contract, shall produce it and furnish a copy to us for cross-examination?

Mr. CAMPBELL. My position is that that contract is for our own proper confidential use, and not for the use of the public.

Mr. BREED. Is it your idea that the department could act on this matter on confidential communications?

Mr. CAMPBELL. They have so held that matters filed up to the 18th they would hold in confidence, and that—

Mr. BREED (interposing). I would like to ask the committee if that is their position, and if so, I would like to call to their attention that that is also improper, if this is to be decided on the basis of confidential evidence submitted, and not open to those who were interested in this public hearing which has been called.

The CHAIRMAN. Well, the position of the committee is simply this: That this is a proceeding to inform the Attorney General as to how he should act, and that after this proceeding is over and any determination is made by the Attorney General, should he decide to act, an open hearing would have to take place in court, where there would be ample opportunity to consider and discuss these matters that are being discussed now; and that we are at liberty to guide our course of action by any information which we receive which we think is

worthy of consideration, whether it comes to us in a confidential or in a public way. The files of the Department of Justice have always been considered as confidential, and are so considered as yet.

Mr. BREED. Does the committee believe that it is proper to call for an open, public hearing and allow a gentleman to appear and testify that his interests have been affected because of terms of a written contract and not call upon him to produce that written contract?

The CHAIRMAN. The committee has already stated that it feels that this contract enters into this hearing only in a very indirect and incidental way; that the broad question which it is considering is the question of public interest, and how such a modification, if any is made, would affect the public generally; and that this contract, its production here or elsewhere, would have but very little effect upon the Department of Justice or any conclusion at which it might arrive in this matter. It is only one instance of alleged injury to an individual, or an individual corporation, as the result of the operation of this decree, and certainly the Department of Justice is not attempting to straighten individual differences.

Mr. BREED. I now renew my motion that all testimony of Mr. Campbell with respect to this contract be stricken from the record.

The CHAIRMAN. The committee has no right to strike anything from the record, as it sees it. The weight of the testimony would, perhaps, be affected by the fact that the contract was not introduced in evidence, but we have no right and will make no ruling striking anything from the record, except impertinence and scandal.

Mr. STEVENS. Except upon agreement.

The CHAIRMAN. Yes; upon the agreement of the person who puts it in the record.

Mr. BREED. Mr. Campbell, you have stated your connection, so far as it goes, with Armour & Co.—that is, the connection with the California Cooperative Canneries—I would like to ask you one further fact. When you were organizing the California Cooperative Canneries did you or did you not apply to one of the banks of California for loans and offer as security for the notes of the company the indorsement of J. Ogden Armour?

Mr. CAMPBELL. One bank.

Mr. BREED. I don't know anything about whether it was one bank or more banks.

Mr. CAMPBELL. Well, we offered, in the beginning—I think we offered to three or four different banks to hand them as security notes of J. Ogden Armour. That was before we made the arrangement with Armour for money to come direct, I think, from Chicago. The point was that at that time Armour said, in our application for this loan which he finally agreed to make us, that they were borrowing a great deal of money themselves, so that the eastern banks were pretty well loaded up with Armour paper at the time, on account of the necessity of borrowing huge amounts to take care of this export business on meats, and he requested that we arrange for this money, if possible, in California, and that he would personally indorse those notes. That was simply a method of getting this money. We finally arranged to get it in some other way.

Mr. BREED. Was this the money that was to be used in building the plant of the California Cooperative Canneries?

Mr. CAMPBELL. No; it was only a portion of the money to be used. We eventually used over a million dollars, but the rest of the money we secured otherwise—from subscriptions from the growers and from other banks.

Mr. BREED. But, I say, these applications for loans to the banks on the indorsement of Mr. Armour were made prior to the building of your plants?

Mr. CAMPBELL. Well, no; it was prior to the building of the second plant; yes. The first plant was already built before we made any application.

Mr. BREED. And you had the authority of Mr. Armour to offer his indorsement?

Mr. CAMPBELL. Yes; we did.

Mr. BREED. You, at page 2016, made some statements with respect to the position of the five packers in connection with the modification of this decree, saying Swift & Co., and Cudahy & Co., and Morris & Co. were either opposed to modification or not interested. What is the basis of your statement, and did I state it correctly?

Mr. CAMPBELL. I think that you did state it approximately correctly, and that those three concerns you mentioned were opposed—I don't know what

their position is to-day, but I suppose the same as it was in the beginning—were opposed to a modification of the decree.

Mr. BREED. Where did you get your information to this effect?

Mr. CAMPBELL. Well, of course, that is my business.

Mr. BREED. Well, that might be your business, but it is very interesting to know whether your statement has any authority behind it.

Mr. CAMPBELL. Well, I don't know that it is necessary for me to go into details. I will say this, that I got it from Armour & Co., if that is what you want to know.

Mr. BREED. No; I want to know whether you got it from Swift & Co., and Cudahy & Co., and Morris & Co., or anybody that had authority to speak for any one or either of them?

Mr. CAMPBELL. I don't think it is necessary for me to satisfy your curiosity.

Mr. BREED. It is not curiosity; that is a very vital point in this proceeding.

Mr. CAMPBELL. You might inquire, yourself, from those gentlemen; probably you would get more direct information.

Mr. BREED. I want to know whether you had any authority for that statement.

The CHAIRMAN. Mr. Campbell, has Swift & Co., or Cudahy & Co., or Morris & Co. ever told you that?

Mr. CAMPBELL. You mean those gentlemen themselves?

The CHAIRMAN. Yes; or their representatives.

Mr. CAMPBELL. Their representatives?

The CHAIRMAN. Yes; that you recollect of.

Mr. CAMPBELL. Not in so many words; not in just that way.

Mr. BREED. Won't the chairman help me out by finding out what "so many words" means; or does it mean anything?

Mr. CAMPBELL. I am interested in knowing just what you are trying to arrive at. If you give me the ultimate conclusion you are trying to arrive at, maybe I will be able to reply to you.

Mr. BREED. I am not trying to arrive at any conclusion; but I heard your testimony, and I assume the committee heard it, and my impression was that you wished to convey the idea that these people had stated that they were opposed to modification. All I want to know is if that is a fact.

Mr. CAMPBELL. Well, that is as I understand their position.

Mr. BREED. Well, do you understand it from anything that either of them, or any of them, have told you, or their representatives?

Mr. CAMPBELL. Intimation sometimes would lead you as far—

Mr. BREED (interposing). I would like to have a direct answer on that.

Mr. CAMPBELL. I will not give you a direct answer on that, because it is impossible to give you a direct answer. I am satisfied as to my information.

The CHAIRMAN. You have never had that information in so many words from them?

Mr. CAMPBELL. Not in so many words; no.

Mr. BREED. And it is then just your suspicion of that fact?

Mr. CAMPBELL. It is very strong suspicion, if you are kicked, that a mule kicks you.

Mr. BREED. Did you go to see any of these corporations when you were in Chicago in April, or at any other time, to ascertain their position?

The CHAIRMAN. Mr. Breed, what is the purpose of all this? If you can show us the purpose of it, we will certainly let it go in.

Mr. BREED. The purpose of it is that the gentleman himself has made a statement on the record that I think the testimony shows there is no foundation for.

The CHAIRMAN. Well, I wish I could testify here freely, with perfect freedom, and not divulge any of the confidential affairs of the Government. Perhaps that influences my ideas.

Mr. BREED. Well, I just asked him if he had ever called upon any of those corporations.

The CHAIRMAN. You may answer that. Go ahead.

Mr. BREED. If you ever called upon any of those corporations to ascertain their position with reference to this decree, and did you get any such information?

Mr. CAMPBELL. The only concern I have called on in Chicago since April 15 has been Armour & Co., and I recounted to you the conversation which I had at that time with officers of that corporation.

Mr. BREED. Well, now, at about the same page of the testimony, 2016, you also testified that Armour & Co. and Wilson & Co. were favorable to the modification of the decree. Have you any authority for that statement?

Mr. CAMPBELL. Their attitude.

Mr. BREED. Well, have they ever said to you, or that in substance, or either of them?

Mr. CAMPBELL. Well, they have both said that they would not resist the modification of the decree; I took that as being favorable.

Mr. BREED. And when you asked them if they would keep still if you would come down here, and they said they would keep still, you took that as being favorable to your efforts?

Mr. CAMPBELL. That they would not oppose me.

Mr. BREED. At least, that is one fact we have got with respect to these statements about these five packers from you.

Now, you have stated, at page 2014, in answer to a question by Judge Hainer—"immediately they went out of this business," referring to export business, "or were driven out of it by this decree, we lost all of that trade," referring to export trade. Did you lose all your export trade immediately Armour & Co. went out of that business; were you referring to Armour & Co.?

Mr. CAMPBELL. Yes; I was referring to Armour & Co.

Mr. BREED. Did you lose all your export trade?

Mr. CAMPBELL. We did.

Mr. BREED. And you had no more export trade after the date of this decree?

Mr. CAMPBELL. I didn't say that.

Mr. BREED. Well, what did you say? You said you lost all your business.

Mr. CAMPBELL. We did.

Mr. BREED. Doesn't that mean that?

Mr. CAMPBELL. No, sir.

Mr. BREED. What does it mean?

Mr. CAMPBELL. It means just what it said, that we lost it at that time. Subsequent to that time we made an agreement with Armour & Co. (Ltd.), of London, which gave us some business in England. We have lost business in the other countries but got business in England.

Mr. BREED. Then you did not lose your export business?

Mr. CAMPBELL. We did lose it.

Mr. BREED. Didn't you just say that you made arrangements with Armour & Co., of London, and did business through them?

Mr. CAMPBELL. And subsequent to the loss. We did lose it.

Mr. BREED. And then you got it back again?

Mr. CAMPBELL. No; we did not. We got back the English business.

Mr. BREED. The English business?

Mr. CAMPBELL. Yes; that is quite different from getting back your entire export business.

Mr. BREED. How much of the pack of this year have you sold, of the California Cooperative Canneries?

Mr. CAMPBELL. Well, I am not in possession of the exact figures; I think it is something around 80 per cent.

Mr. BREED. In answer to the question. "Have you sold any of the season's pack to Armour & Co.?" did you testify:

"No; none to Armour & Co.; but I did make a contract with Armour & Co. (Ltd.), of London, which is a separate corporation, I think the majority of the stock of which is probably controlled by Armour & Co., of Chicago."

Is that correct?

Mr. CAMPBELL. You are quoting me correctly; yes, sir.

Mr. BREED. And you did, after the date of this decree, do the export business that you previously intended to do with Armour & Co., of the United States, with Armour & Co. (Ltd.), of London, did you?

Mr. CAMPBELL. No, sir.

Mr. BREED. Well, how do you explain the two sets of testimony?

Mr. CAMPBELL. Why, if you will analyze my testimony a little, you will readily understand. Armour & Co., of the United States, was exporting all over the world to various countries of the world, and I have just stated that the business we did get back was the business of England—the British Isles—not of the world.

Mr. BREED. Hasn't Armour & Co. separate corporations, like Armour & Co. (Ltd.), of London, in these other countries with which it does business?

Mr. CAMPBELL. It may have with some countries. I am not informed.

Mr. BREED. Who made the arrangement with Armour & Co. (Ltd.) to take over the English business?

Mr. CAMPBELL. A man by the name of Garside, the manager in London.

Mr. BREED. At whose suggestion did you open up negotiations with him?

Mr. CAMPBELL. At my own suggestion. I wrote them, and all the business was done by us with Armour & Co. (Ltd.), of London.

Mr. BREED. And you have sold all of your pack of this year except 15 to 20 per cent, have you?

Mr. CAMPBELL. About 20 per cent, I think.

Mr. BREED. Is that a normal amount to have left over at this season of the year?

Mr. CAMPBELL. You mean an unusual amount?

Mr. BREED. Is it a normal amount to have unsold at this season of the year?

Mr. CAMPBELL. Well, that is a difficult question to answer. Some concerns expect to sell—

Mr. BREED (interposing). I mean for your company?

Mr. CAMPBELL. For our company? Well, it is a less amount than we had left over last year.

Mr. BREED. So that the passage of this decree has not affected your selling a normal amount of your season's goods?

Mr. CAMPBELL. Yes; it has very greatly, because we only packed about half of our usual pack, due to the operation of this decree.

Mr. BREED. But is that the reason you only packed about half?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. How about other California packers; did they pack the full amount this year that they packed in preceding years?

Mr. CAMPBELL. Some did not even open their plants.

Mr. BREED. Was that, in your opinion, because of this decree?

Mr. CAMPBELL. Yes; it had a very strong bearing on it.

Mr. BREED. Who did you sell this 85 per cent of your pack through, and how?

Mr. CAMPBELL. If I am properly informed from my home office, about half of these goods were exported or will be exported to England, while the balance were sold to various wholesale grocers in the United States.

Mr. BREED. At page 2020 of the record in your testimony you would seem to take exception to the fact that the wholesale grocers extended credit to retail grocers. In what respect do you think it is a wrong thing to do?

Mr. CAMPBELL. Did I say it was wrong?

Mr. BREED. Well, you seem to criticize it as though there was something irregular or improper about it; at least, that was my impression. You state, at page 2020:

"Wholesale grocers freely confess through their witnesses that they finance 75 per cent of the retail dealers, thus holding their customers in their power."

Do you think that is an improper economic thing for a wholesale grocer to do?

Mr. CAMPBELL. I think so, yes, and a very dangerous thing for the general public.

Mr. BREED. You think then that when a wholesale grocer sells to a retail grocer he should insist upon cash for his sales?

Mr. CAMPBELL. I think that is a proper economic policy to follow; yes.

Mr. BREED. There are about how many retail grocers in the United States?

Mr. CAMPBELL. About 400,000.

Mr. BREED. Do you think it is an improper economic policy for a retail grocer to extend credit to a consumer to whom he sells?

Mr. CAMPBELL. I think it is an improper economic policy for the consumer. He should pay cash. If he can not pay cash he is at perfect liberty to purchase on credit, if he so desires.

Mr. BREED. Is there, or is there not, at the present time a very great amount of unemployment reported throughout the United States?

Mr. CAMPBELL. Yes; I believe so.

Mr. BREED. Where does the ordinary consumer get his daily supplies of food and groceries upon which he lives; do you mean of the retail dealer?

Mr. CAMPBELL. Certainly; of the retail dealers.

Mr. BREED. The retail store, of which you say there are some 400,000?

Mr. CAMPBELL. Yes.

Mr. BREED. Do you think it would help our economic system if a retail grocer should insist that every poor man who came to his store to buy that he should refuse him credit?

Mr. CAMPBELL. If a man is in need of charity, I think he should be extended charity of some sort.

Mr. BREED. I am asking you if you think it would be a good economic policy for a retailer to adopt, to insist that these poor men in this period of unemployment should have to pay cash or not receive this daily supply of food?

The CHAIRMAN. I think the witness has said it was a good economic thing, but that does not say it is practicable; it may be idealistic.

Mr. BREED. Do you think then the retail grocer is serving the public by extending credit on daily supplies of food sold to the consumer?

Mr. CAMPBELL. My private opinion is that he is not serving the public.

Mr. BREED. Not serving the public. You would, of course, admit that if the retail grocer who buys from the wholesale grocer extends credit to the consumer that unless he has very much capital, which the ordinary retail grocer has not, he must rely upon an extension of credit from the wholesale grocer in order to do business?

Mr. CAMPBELL. If you are trying to arrive at my private opinion, I am against the whole credit system.

Mr. BREED. Yes; that is what I am trying to arrive at, your private opinion.

Mr. CAMPBELL. I think the whole credit system is uneconomic.

Mr. BREED. And you believe then that the wholesale grocer should demand cash from the retail grocer, and the retail grocer should demand cash from the consumer?

Mr. CAMPBELL. I think that the sooner this country gets on a cash basis the better we would be off economically.

Mr. BREED. I see. Well, that is exactly what I wanted to get. And that is one of your reasons why you oppose a system of distribution through the wholesale grocer?

Mr. CAMPBELL. Yes, sir; I think it is very uneconomical and very wasteful.

The CHAIRMAN. Do you think it is practical to go on a cash basis now?

Mr. CAMPBELL. It has been practical for myself and a good many of my neighbors. It ought to be practical for everyone.

Mr. BREED. It is not very practical for me.

Judge HAINER. Well, you are not opposed, Mr. Campbell, to the elimination of the distribution through the wholesale jobbers?

Mr. CAMPBELL. I am not talking about elimination at all. He is asking me for my private opinion as to an economic theory.

Judge HAINER. No; but I thought perhaps the inference was that you were opposed to the wholesale grocers as such functioning as a distributing system.

Mr. CAMPBELL. There are wholesale grocers that demand cash.

Judge HAINER. What is that?

Mr. CAMPBELL. I say, there are many wholesale grocers and many retail dealers who ask cash on delivery of goods. Not all merchants follow the system of credits. In fact, in this country more and more we are getting on a cash basis in all lines.

Judge HAINER. That is true in Oklahoma City.

Mr. BREED. Let me ask you if these wholesale grocers to whom you sell your product and through whom you have sold this year do not pay for the goods which they buy from the California Cooperative Canneries sight draft on bill of lading?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. That is, at the time of shipment?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. So the California canneries get cash upon delivery of its goods?

Mr. CAMPBELL. Absolutely.

Mr. BREED. From the wholesale grocer?

Mr. CAMPBELL. Yes, sir; absolutely.

Mr. BREED. Does it expect to get anything different from Armour & Co. when it sells to Armour & Co.?

Mr. CAMPBELL. No, sir.

Mr. BREED. What is your theory, then, of selling to Armour & Co. upon a commission basis?

Mr. CAMPBELL. To prevent speculation in these goods by anyone.

Mr. BREED. Well, if you sold on a commission basis to Armour & Co., would they pay you their money upon delivery of the goods?

Mr. CAMPBELL. No, sir.

Mr. BREED. They would not pay you any money until they had sold the goods, would they?

Mr. CAMPBELL. They might make us an advance; probably that could be arranged.

Mr. BREED. But there would be no sale?

Mr. CAMPBELL. No settlement.

Mr. BREED. It would be utilizing the packers purely as a commission merchant?

Mr. CAMPBELL. Yes.

Mr. BREED. To sell the goods and pay you for the goods at some subsequent time?

Mr. CAMPBELL. That is right.

Mr. BREED. Is it your idea that as such commission merchant they should undertake to make the sales all over the United States?

Mr. CAMPBELL. Possibly I could give you some thought on that by recounting a conversation had with Senator Pierce, of Australia, last night at a dinner. He gave me a very clear understanding of their cooperative methods in Australia. The farmers there, dried-fruit farmers and canners and others having cooperative organizations open up their own——

Mr. BREED. Well——

Mr. CAMPBELL. Just let me give you this, and it will probably answer the question you are trying to arrive at. I think I know what you are trying to arrive at. They open up their own wholesale and retail houses in the various cities of Australia; they fix the price to the retail dealer, and they fix the price to the consumer. Each package bears the price which the merchant shall ask for these goods. They own their own distributing houses, the farmers do. The housewife does not have to pay at any time more than this price fixed upon the package. The Government of Australia is back of the farmers in Australia in their effort to restrain the profiteers and the middlemen in their profits—to hold the price down as low as possible.

The ideal that we are working for is this: To obtain the use of Armour & Co.'s facilities, or other packers' facilities, as a common carrier to deliver these goods to the consumer or to the retail dealer at a price which we, the farmers, will fix.

Mr. BREED. I see. Well, that is very interesting, and it does give me a clearer idea.

Mr. CAMPBELL. In other words, we are trying to do the same thing that they are doing in Australia, using the machinery of the packers as the engine of distribution.

Mr. BREED. That is what I wanted to find out. You, then, are aiming at bringing about the same situation in this country?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. You believe, then, in the manufacturer or grower fixing the price on his article through to the ultimate consumer?

Mr. CAMPBELL. To the consumer; yes, sir.

Mr. BREED. Are you acquainted with the fact that that doctrine has been passed upon as unconstitutional by the United States Supreme Court?

Mr. CAMPBELL. No, sir; it has not.

Mr. BREED. It has not?

Mr. CAMPBELL. You refer probably to the fixing of a minimum price.

Mr. BREED. I do not refer to anything. I did not intend to use the word "unconstitutional." I mean illegal under existing law.

Mr. CAMPBELL. It is not illegal under existing law. You are misinformed as to the decision. The question is this, whether or not——

Mr. BREED (interposing). Well, I don't care to discuss the decisions.

Mr. CAMPBELL (continuing). Whether or not the——

Mr. BREED (interposing). I do not care to discuss the decisions. I only wanted to know if you understood that.

Judge HAINER. Let him answer.

Mr. CAMPBELL. No.

Mr. BREED. And you say you think that the law is the other way, and that in the United States to-day a manufacturer or producer can fix his price and insist upon that price being maintained all the way through to the consumer?

Mr. CAMPBELL. No, sir; you can not prevent the manufacturer from putting the price on the article, but you can prevent him from fixing a minimum price at which it shall be sold.

Mr. BREED. Well, I only want to get your idea, and I think the commission and everybody is interested in knowing what you are seeking to accomplish.

Mr. CAMPBELL. What I am seeking to accomplish is to reduce the profits of the middlemen as far as possible and to get the food to the ultimate consumer at the lowest possible cost.

Mr. BREED. I see. Well, now, then, you eliminate this commission basis, and you say that you want Armour & Co. to act as common carrier?

Mr. CAMPBELL. Yes.

Mr. BREED. Now, that is the service performed by the railroads ordinarily in the United States, isn't it?

Mr. CAMPBELL. No, sir; they are a common carrier in transportation. I want a common carrier in distribution.

Mr. BREED. Well, we will stick to the transportation end first, and then we will take up the distribution. Now, you said you wanted them to act as common carriers; that is, I understand you want them to ship your goods or transport your goods in their cars to certain points throughout the United States. Is that right?

Mr. CAMPBELL. No, sir.

Mr. BREED. Well, what do you want them to do? Take one step at the time.

Mr. CAMPBELL. I want them to receive at their branch houses—

Mr. BREED (interposing). Well, let us get it to the branch houses first.

Mr. CAMPBELL. Yes.

Mr. BREED. Who is going to take it from your canneries in California to any given point in the United States?

Mr. CAMPBELL. The railroads.

Mr. BREED. And in what cars?

Mr. CAMPBELL. Any cars.

Mr. BREED. You are satisfied, then, to have it go in any cars that are offered by the railroads, from your canneries to the branch houses?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Now, that is exactly the same service that is performed by the railroads in case you sold to the wholesaler or any other person?

Mr. CAMPBELL. Exactly.

Mr. BREED. At the same cost?

Mr. CAMPBELL. Exactly.

Mr. BREED. Now, you say you want Armour & Co. to act in distribution; what do you mean by that?

Mr. CAMPBELL. To distribute the goods to the retail dealer throughout the United States.

Mr. BREED. From where?

Mr. CAMPBELL. From their branch houses.

Mr. BREED. And where are these branch houses located?

Mr. CAMPBELL. In various cities in the United States.

Mr. BREED. And your goods will be received in these branch houses and stored there until sold?

Mr. CAMPBELL. That is not exactly the point. They will be received in the branch houses as needed for distribution. Not to be stored there for any length of time.

Mr. BREED. Well, there are a good many points throughout the United States, and if your goods are going to be in hand for sale they have got to have arrived at these places and be kept in reasonable quantities, have they not?

Mr. CAMPBELL. That is right; reasonable quantities.

Mr. BREED. Now, therefore, Armour & Co. will have to have storage facilities at those points where their branch houses are, will they not?

Mr. CAMPBELL. They do; yes, sir.

Mr. BREED. Now, isn't that exactly the service that the wholesale grocer performs when he, upon the railroads, causes the goods to be shipped by you to his storage warehouse?

Mr. CAMPBELL. Not exactly.

Mr. BREED. Well, so far as the storage is concerned it is the same, isn't it?

Mr. CAMPBELL. Practically; except they seldom have cold-storage facilities.

Mr. BREED. Oh, well, I don't think you are competent to testify on that. As a matter of fact, many of them do have cold storage?

Mr. CAMPBELL. Many of them do; yes.

Mr. BREED. Yes.

Mr. CAMPBELL. Not all of them.

Mr. BREED. No; of course not. Probably all of Armour's branch houses do not have cold-storage facilities, do they?

Mr. CAMPBELL. Oh, yes.

Mr. BREED. They do?

Mr. CAMPBELL. Yes.

Mr. BREED. Well, now then, after they have arrived in the branch houses how are they going to be sold?

Mr. CAMPBELL. They are sold by Armour's traveling salesmen.

Mr. BREED. Wholesale grocers have traveling salesmen, do they not?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Who would Armour & Co. sell them to?

Mr. CAMPBELL. Retail dealers.

Mr. BREED. Who do the wholesale grocers sell them to?

Mr. CAMPBELL. Retail dealers.

Mr. BREED. Then you wish Armour & Co. to perform exactly the same service that is performed by the wholesale grocery salesman, and sell to the same people—the retail dealers?

Mr. CAMPBELL. They not only sell to the same people but to other trade which the wholesale grocers hardly ever sell to.

Mr. BREED. What trade is that, Mr. Campbell?

Mr. CAMPBELL. Meat trade.

Mr. BREED. The retail meat dealer?

Mr. CAMPBELL. The retail meat dealer.

Mr. BREED. Do you consider the retail meat dealer a good outlet for your California fruits?

Mr. CAMPBELL. They seem to be going more and more into the handling of canned goods.

Mr. BREED. The retail meat dealer?

Mr. CAMPBELL. Yes; they do.

Mr. BREED. Well, what has stirred them up to that?

Mr. CAMPBELL. Oh, I don't know. I suppose the demand for the goods. What causes the retail cigar man to handle coffee? I don't understand it, but I do notice they do have coffee in a good many of their retail houses.

Mr. BREED. Is it a fact that meat is regarded as a practical necessity of life?

Mr. CAMPBELL. Not by me. I don't eat it.

Mr. BREED. Is it in ordinary—I knew that, because you said that in the congressional investigation hearing, and there intimated to the Congress—I think you used undue influence—the fact that you should be favoring the wholesale grocer rather than the meat dealer. Whether that had any effect on them or not I don't know. But, in any event, the average town contains a great many meat shops, does it not?

Mr. CAMPBELL. I understand they do.

Mr. BREED. Almost as many as wholesale grocers?

Mr. CAMPBELL. I am not acquainted with the meat shops.

Mr. BREED. And people regard meat as one of the necessities of life in America?

Mr. CAMPBELL. Some do.

Mr. BREED. And the meat is very generally furnished by the Big Five packers, is it not?

Mr. CAMPBELL. I think 37 per cent of it.

Mr. BREED. I think you are wrong about the 37. As the chairman said yesterday, we will have to admit that that has to do with whether it is interstate or local. They have a much larger percentage of the general meat trade of the entire United States. What I want to ask is this: Do you think that the fact that the packers have such a large control of the meat supply, and their salesmen are selling meats and now taking on these unrelated lines, and the meat dealer must get his supplies of meat from these selfsame salesmen, that the packer is utilizing a means of competition that in a way might be described as unfair when he attempts to force a meat dealer to take these unrelated lines or perhaps not get quite the service on the meats?

Mr. CAMPBELL. You are making a statement that I do not agree to.

Mr. BREED. Well, I want to have you say so, if you do not agree to it.

Mr. CAMPBELL. I do not agree to your statement at all. I think it does not agree with the facts.

Mr. BREED. Well, if Armour's retail salesmen were asked to sell these unrelated lines—among them your canned goods—you think they would use probably any means possible to sell the canned goods, do you not?

Mr. CAMPBELL. No, sir.

Mr. BREED. As salesmen they would try to do their best to sell, would they not?

Mr. CAMPBELL. Well, that depends on how they—

Mr. BREED (interposing). Well, that would be human nature, wouldn't it?

Mr. CAMPBELL. That would be human nature, but they would probably lose their jobs if they followed the policy you suggest.

Mr. BREED. They would probably lose their jobs if they tried to sell the unrelated products?

Mr. CAMPBELL. No; they would probably lose their jobs if they tried to use force.

Mr. BREED. Don't you think they would lose their jobs if they did not try to sell the unrelated products?

Mr. CAMPBELL. No, sir.

Mr. BREED. I think they would.

Mr. CAMPBELL. I have sat in meetings—

Mr. BREED (interposing). That brings out my point.

Judge HAINER. What is that you were going to say, Mr. Campbell?

Mr. CAMPBELL. I was going to say that I have sat in meetings of Armour's salesmen, for instance, in different places—in San Francisco, for instance—and I have heard the manager discuss salesmanship and talk salesmanship to the men who sell their goods, and I have been there to demonstrate my goods; and the methods that are used by the salesmen, the methods that are taught them by their manager, the methods they are instructed to use in salesmanship are indeed far from the suggested methods of Mr. Breed here.

Mr. BREED. Of course, you see these are not methods that are conceived in my mind at all. I get all my information from the records of the Federal Trade Commission, which seem to show instances where these methods were used. I never could devise such a means of forcing the sale of unrelated products as that.

Mr. CAMPBELL. The records of the Federal Trade Commission seemed to show that we had four Armour men on our board of directors, too.

Mr. BREED. Now, just to button up my long list of questions here on this method of distribution—where do you get your money and when do you get your money from Armour if they sell in this method on commission?

Judge HAINER. When would you get it?

Mr. BREED. Yes; when would you get it?

Mr. CAMPBELL. Are you concerned about that?

Mr. BREED. I certainly think that you are advocating a system of distribution for yourself and others, and I think we are all interested to know if the sale is made on commission, and it is finally to be made by Armour's branch-house salesmen to retail meat dealers all over the United States—when do you get your money and how?

Mr. CAMPBELL. Inasmuch as I am following that system in England to-day, it might be well for you to know exactly how it is working out. I made this same proposal of selling on commission to the wholesale grocers of the United States, but they all refused to undertake it.

Mr. BREED. Well, I don't care about the argument. I want to know when you get your money.

Judge HAINER. Well, finish it.

Mr. CAMPBELL. I am going to try to tell you if you will let me have the chance.

Judge HAINER. Complete your statement.

Mr. BREED. All right.

Mr. CAMPBELL. We load our goods on steamers in San Francisco, and it requires some weeks for them to land in Liverpool or Glasgow or other points. Usually these goods are largely sold before they arrive, that is, sold before they arrive by Armour to the retail dealers. Immediately upon arrival at the point of destination they are shipped in small lots to the various retail dealers throughout England and Scotland. Those dealers over there pay cash for their goods—it is practically cash—within 10 days or so.

Mr. BREED. To whom?

Mr. CAMPBELL. To Armour & Co.

Mr. BREED. Of London (Ltd.)?

Mr. CAMPBELL. Of London (Ltd.). Every 90 days, according to our contract, a sales memorandum is made up, showing the number of cases sold and the prices, and so on. They deduct their 5 per cent and the freights which they have paid and remit us the balance.

Mr. BREED. Well, I am glad I let you go on. And that is the same system that would prevail in the United States, and you would get your money in substantially the same manner?

Mr. CAMPBELL. Absolutely.

Mr. BREED. Now, who would stand the loss in the event that a retail meat dealer or a retail dealer did not pay his bill to Armour & Co., who, as I understand, acts as collecting agent for you?

Mr. CAMPBELL. They must stand the loss.

Mr. BREED. Who?

Mr. CAMPBELL. Armour & Co.

Mr. BREED. Armour & Co.?

Mr. CAMPBELL. Yes.

Mr. BREED. Is that a part of the commission contract?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. That if they make a sale they guarantee the sale?

Mr. CAMPBELL. They guarantee the accounts.

Mr. BREED. They guarantee the accounts. And that is a part of the consideration of 5 per cent commission they receive?

Mr. CAMPBELL. A part of the consideration; yes, sir.

Mr. BREED. Now, you said you had made this proposition to the wholesale grocers to do business on commission and they had refused?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. I would like to make a proposition to you: That if you will put that in writing and offer it to the wholesale grocers, I doubt whether there is a wholesale grocer that would not be glad to throw the responsibility onto you and accept 5 per cent commission for selling your goods in exactly the same way that Armour does.

Mr. CAMPBELL. Well, if you could see some of the letters that we have in our files, I think that——

Mr. BREED (addressing Mr. Herscher). Am I right, Mr. Herscher?

Mr. HERSHEY. I think so.

Mr. CAMPBELL. I am glad to see that they are beginning to be converted to my way of doing business.

Mr. BREED. My idea is that the cost of handling and distributing those products is in no sense lessened, and I believe that the 5 per cent is a very much larger return to the wholesale grocers than they receive to-day for handling the same goods. That is the reason why I make the statement that I do.

Now, just one or two further questions.

Mr. CAMPBELL. Your belief, I think, Mr. Breed, is stronger than your knowledge.

Mr. BREED. That might be so, too, but I would like to see the written offer.

Now, you produced at page 1967 a resolution of the American National Live Stock Association which showed that they were in favor of modifying the consent decree, as follows:

"Resolved by the American National Live Stock Association at its midyear meeting at Salt Lake City, Utah, August 26-27, 1921, That we place ourselves on record as favoring the entrance into the retail meat trade of the 'Big Five' in order that the present system be placed on a more economical basis, and that we urge all packers not affected by the said decree to engage in the retail trade, and pledge them our moral support," etc.

Did you present that resolution because you yourself believe that this decree should be amended so as to allow the packers to go into the retail meat business?

Mr. CAMPBELL. I don't believe that the decree should be amended. I think it ought to be set aside entirely.

Mr. BREED. Well, but you presented a resolution——

Mr. CAMPBELL. I will take an amendment if I can not get anything else.

Mr. BREED. Well, I am only talking now about the retail meat end, and you presented the resolution, and I take it the committee would like to know why you presented that resolution.

Mr. CAMPBELL. To show that the stock producers of the United States were opposed to the operation of the decree in so far as it kept the meat packers out of the retail meat business.

Mr. BREED. And does it express your sentiment that the decree should also be modified so as to allow the Big Five packers to go into the retail meat business?

Mr. CAMPBELL. I feel they should; yes, sir.

Mr. BREED. Now, do you recognize, Mr. Campbell, that there is growing up in the United States a new, quite extensive method of distribution by what is known as chain-store systems?

Mr. CAMPBELL. Yes, sir; they have a certain distribution, probably about 10 per cent.

Mr. BREED. Their idea, as shown by testimony here, seems to be that they save the consumer the cost of delivery to him by selling on a cash basis. Is that about right?

Mr. CAMPBELL. Well, that was probably the testimony. I don't remember the testimony.

Mr. BREED. Yes; and to that extent they do save the consumer money by asking the consumer to be the delivery wagon and pay cash?

Mr. CAMPBELL. Probably so.

Mr. BREED. And enable the consumer to do a little work himself, and save a little money.

The CHAIRMAN. I think I saved a nickel that way last night.

Mr. BREED. It is a most commendable system. But what I wish to call your attention to is the fact that these chain stores are springing up all over the United States, and ask you if you have considered the question as to whether the possibility of the packers acquiring these retail chain stores would not give to the packers an undue power and control over the price of meats, from the very point of slaughter through to the actual price that it is sold to the consumer at?

Mr. CAMPBELL. I don't think so; no, sir.

Mr. BREED. Well, it would if he got a sufficient number of these chain stores and went sufficiently deeply into the retail meat business, would it not?

Mr. CAMPBELL. No, sir.

Mr. BREED. Well, if he was a retailer—that is, the packer—and a wholesaler and a meat packer and a producer of live stock, he practically controls the thing from the point of origin through to the consumer, does he not?

Mr. CAMPBELL. Who does?

Mr. BREED. The packer.

Mr. CAMPBELL. What packer?

Mr. BREED. The packer who performs all these different functions.

Mr. CAMPBELL. Well, there are about 1,500 of them.

Mr. BREED. Well, I am talking about any one of the Big Five packers that does that. I am merely asking you if that man does not control the price of that article from the point, practically, of origin, through to the consumer?

Mr. CAMPBELL. As I gather, you say that one of these packers will do this?

Mr. BREED. I said that if he did it?

Mr. CAMPBELL. If he did it?

Mr. BREED. Yes.

Mr. CAMPBELL. If he owned all the meat-packing houses all put together?

Mr. BREED. No; no; I didn't say that.

Mr. CAMPBELL. I am trying to get it clear in my mind what you are driving at.

Mr. BREED. My last question was the result of several questions which led up to this point: Do you favor giving the packer added opportunity to extend his control over the price of meat products by letting him go into the retail meat business?

Mr. CAMPBELL. The packer—which packer do you mean?

Mr. BREED. The meat packer.

Mr. CAMPBELL. Well, there are 1,500 meat packers.

Mr. BREED. Well, I am asking you the question.

Mr. CAMPBELL. Well, that question is—it is impossible to answer that question unless you make it more definite.

Mr. BREED. Oh, I think it can be.

Mr. CAMPBELL. I might say—the wholesale grocer, do you mean, as a class—

Mr. BREED. I want an answer to that question.

Mr. CAMPBELL. I can not in that form.

Mr. BREED. I think it vitally concerns the big questions that these three gentlemen have before them.

Mr. CAMPBELL. You are trying to get—

The CHAIRMAN. Now, wait a minute. Let us get the question. Read it.

(Mr. Breed's question was read by the reporter, as follows:)

"Mr. BREED. My last question was the result of several questions which led up to this point: Do you favor giving the packer added opportunity to extend his control over the price of meat products by letting him go into the retail meat business?"

Mr. CAMPBELL. You will have to make it more specific.

Mr. BREED. Do you want it repeated again?

The CHAIRMAN. Read the question again.

(The question was again read by the reporter as above recorded.)

The CHAIRMAN. The question assumes that the defendants already have control over the meat and meat-packing business, and asks him if he wants to give them opportunity for added control. Mr. Campbell, you do not favor giving anybody an opportunity for a monopoly, do you?

Mr. CAMPBELL. Now, I don't know just exactly what you mean by a monopoly.

The CHAIRMAN. Control of any line of business—put it that way, then—any one line of business; absolute control of that line of business.

Mr. CAMPBELL. That depends upon the business which you are talking about. The telephone business is in the hands of a monopoly in this country, and it can only be handled efficiently through that monopoly. Railroads—

The CHAIRMAN. Well, I will make it more concrete. Are you in favor of giving any concerns a monopoly of the food industry?

Mr. CAMPBELL. No, sir.

The CHAIRMAN. I think that, in substance, answers your question, doesn't it. Mr. Breed?

Mr. BREED. No; I don't think it does, because that is a pretty big question and enables him to say "No, sir," when I feel that he does believe in a certain kind of monopoly, and I was going to draw that out next. My question was more specific, Mr. Chairman:

Do you favor, Mr. Campbell, giving the Big Five meat packers, through the modification of this decree, the right to engage in the retail meat business?

Mr. CAMPBELL. Yes, sir. I think they are opposed to that, however.

The CHAIRMAN. Who; the meat packers?

Mr. CAMPBELL. Yes; to the retail meat business. So voiced their sentiments to me, different ones have, that they do not want to engage in it.

Mr. BREED. Now, let us get some information on that point. Who is against this modification of the decree as to retail meat business?

Mr. CAMPBELL. I believe all the packers are, but I know that two of them have expressed their opinion to me in that way.

Mr. BREED. Who is that?

Mr. CAMPBELL. The attorneys for Armour and Wilson have both told me that they were not in favor of entering the retail meat business.

Mr. BREED. Do you consider that it would be a menace to the interests of the consumer to have the Big Five meat packers not only interested in the slaughtering, dressing, transportation, wholesaling, but also the retailing of meat food products?

Mr. CAMPBELL. I think that they should be compelled to sell their meats at one price to all at their branch houses, and that all slaughtering concerns should be compelled likewise to sell at one price.

Mr. BREED. Oh, then your theory is that this decree should be opened as to retail meats so as to permit the packer to sell meat from his branch houses to consumer?

Mr. CAMPBELL. Yes, sir.

The CHAIRMAN. Mr. Campbell, don't you think that that same would apply to every line of business?

Mr. CAMPBELL. Yes, sir.

The CHAIRMAN. That anybody that wants to purchase should be permitted to purchase upon equal terms?

Mr. CAMPBELL. That is just my theory, exactly.

Mr. BREED. Yes, sir.

Mr. CAMPBELL. In my own warehouses I am unable to sell to the consumer for the reason that the National and Southern Wholesale Grocers' Associations object to it.

Mr. BREED. Don't give them so much authority in the matter, because I am inclined to think that you give them undue credit.

Mr. CAMPBELL. I laid some information before the Federal Trade Commission; that is, before Thompson, last spring when he asked me if I didn't want to proceed against the National Wholesale Grocers' Association.

Mr. BREED. Now, do you believe that the wholesale grocer should do the same as you think the branch house of the packer should do?

Mr. CAMPBELL. Absolutely.

Mr. BREED. Namely, open his wholesale grocery establishment and sell at one price to consumer, retailer, and all?

Mr. CAMPBELL. Absolutely.

Mr. BREED. And that is another economic theory which you believe is a sound one?

Mr. CAMPBELL. Absolutely. I think that is Americanism. I do not believe in these trade combinations.

Mr. BREED. Do you think that that would have the effect of reducing the great number of retail grocers in the United States?

Mr. CAMPBELL. I couldn't answer as to that. I don't know.

Mr. BREED. Well, if the wholesalers would open up their wholesale houses and sell to consumers at one price, and could do this successfully, would it not reduce the number of retailers?

Mr. CAMPBELL. It might reduce those who were engaged in the practice of profiteering and could not live except by profiteering methods.

Mr. BREED. Yes. Would it not also reduce the number of retail meat establishments if the packers should open up their branch houses and sell to consumers at the same price that they sold to the retail meat dealers?

Mr. CAMPBELL. I should say that it would put the profiteers out of business; yes, sir.

Mr. BREED. Now have you considered the fact that if the packers opened up their branch houses to sell meat to the consumer, and the wholesale grocer did the same thing, the wholesale grocer would have to practically perform all the services of the retailer, namely, delivery and otherwise, would he not?

Mr. CAMPBELL. Not necessarily.

Mr. BREED. He wouldn't?

Mr. CAMPBELL. No.

Mr. BREED. Wouldn't the wholesaler have to have his goods all broken up into separate packages, whereas now they are carried ordinarily in bulk?

Mr. CAMPBELL. Not necessarily.

Mr. BREED. Why not?

Mr. CAMPBELL. He could only sell in original package lots. In original package lots only.

Mr. BREED. Oh, in case lots?

Mr. CAMPBELL. Yes; original package lots.

Mr. BREED. Oh, you don't mean that the wholesaler would sell to me, or my wife, if she wanted a package of oatmeal, one package of oatmeal at the same price that he would sell it to the retail grocer; but you mean a case of oatmeal?

Mr. CAMPBELL. He could, if he would, follow both methods, if he desired, and open up a department of that sort in connection with his business.

Mr. BREED. I am merely asking you if he follows the method by which he enables my wife to buy one package of oatmeal, he would have to have some system of handling that one package of oatmeal similar to the retailer?

Mr. CAMPBELL. He would have to have a retail department.

Mr. BREED. Then the wholesaler would become a retailer.

Mr. CAMPBELL. Combined wholesale and retail concern. The cost of delivery in a smaller package—

Mr. BREED (interposing). Now, you were asked by the—

Mr. CAMPBELL. Just let me add this to my answer (continuing). The cost of selling the smaller package would have to be, of course, proportionately greater than that of selling a larger quantity in a larger package.

Mr. BREED. Oh, would that be added to the price, then, the cost?

Mr. CAMPBELL. The cost would necessarily have to be added to the price over and above the price of the larger package.

Mr. BREED. Well, would the cost of doing the retail business—delivering of one package of oatmeal—have to be added to the price which the wholesaler would sell it at to the retailer if sold in a case lot?

Mr. CAMPBELL. My suggestion was not that the wholesaler go into the delivery business at all, but to open his doors to the general public, to sell these commodities at his cost price; that is, his regular sales price.

Mr. BREED. And go into competition with the parties to whom he is selling in larger quantities?

Mr. CAMPBELL. That is right; absolutely.

Mr. BREED. Referring to these cooperative associations in California, how many of them are there?

Mr. CAMPBELL. I believe there are 37—37 or 40.

Mr. BREED. I thought we agreed last night on 44.

Mr. CAMPBELL. Well, I don't know; something around 40 anyway. I believe there are 37 members of our State organizations.

Mr. BREED. About 40 to 44.

Mr. CAMPBELL. Something like that.

Mr. BREED. Of which the California Cooperative Growers' Association is one?

Mr. CAMPBELL. Is one; yes.

Mr. BREED. And represents a thousand growers?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Now, I asked Mr. Gray, and now I would like to ask you, if your idea is that in each of these lines of California fruits the growers should get together, own their own packing plants, and sell their goods through the representatives of that packing plant, which really represents them? Is that your idea?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Now, would you favor one cooperative association representing an entire line of fruits, say dried fruit, or pears, or peaches?

Mr. CAMPBELL. Do you mean a commodity organization?

Mr. BREED. Yes.

Mr. CAMPBELL. Yes; we are favorable to the commodity organization plan; yes, sir.

Mr. BREED. In other words, all of the growers in one commodity getting together?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Now, would you favor their naming their price on their product?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Through to the consumer?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Would you or would you not say that that was a monopoly so far as California is concerned if this plan is carried out in that particular line of fruit?

Mr. CAMPBELL. In the commonly accepted definition of monopoly I do not consider it a monopoly. I consider it an efficiency organization for the delivery of the products at the lowest possible price to the consumer. The ordinary accepted idea of monopoly is that it is an organization for the purpose of increasing the price or of extorting unjust prices from the ultimate consumer. Now, that is not our idea of organization of commodity concerns.

Mr. BREED. Well, I think perhaps you and I are just talking about the same thing, but our definitions are different. I did not give the definition of monopoly that you first stated. I am just trying to inquire if the growers of raisins, we will say, got together, 100 per cent of them, would they not have a complete control over the raisins of California?

Mr. CAMPBELL. Yes, sir. We believe that is necessary; yes, sir.

Mr. BREED. And would that thing be a monopoly?

Mr. CAMPBELL. Not in the common accepted idea of the term monopoly.

Mr. BREED. Well, it would be control of the entire product?

Mr. CAMPBELL. Yes.

Mr. BREED. And in the commonly accepted meaning of the word "monopoly" it would be a monopoly, wouldn't it?

Mr. CAMPBELL. I think that the general public has an erroneous idea of the general term monopoly. There are good monopolies and bad monopolies. A monopoly which is organized for the purpose of extorting money from the people—

Mr. BREED (interposing). Is a bad monopoly.

Mr. CAMPBELL. Is a bad monopoly. A monopoly that is organized for the purpose of reducing the price to the consumer, or assisting both the consumer and producer, is a good monopoly.

Mr. BREED. And raising the price which the farmer or the grower may obtain is a good monopoly. And I agree with you that anything that can be done to improve the price that the farmer can receive for his fruit or otherwise is just what I would like to see done. But you regard that as a good monopoly?

Mr. CAMPBELL. There may be beneficial monopolies and dangerous monopolies. We consider an organization of the producers a beneficial monopoly.

Mr. BREED. Well, now, it still would be a monopoly—a good monopoly—according to you?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. And you believe in that theory of monopoly?

Mr. CAMPBELL. I think it is absolutely necessary; yes, sir.

Mr. BREED. You believe it should be fostered by the laws of the United States?

Mr. CAMPBELL. Yes, sir; I do.

Mr. BREED. And you believe that it should be exempted from all antitrust laws of the United States, do you not?

Mr. CAMPBELL. Yes, sir; in Australia they have so exempted them. They do not even bring those laws to bear. They have laws exactly like ours, fashioned after our Sherman antitrust laws, and in Australia there, the Parliament has never felt, and neither have the courts felt, that the farmers should ever be brought under the control of any antitrust laws. On the other hand, their government is doing everything possible to foster absolute monopolies by the growers in order to restrain the activity of speculators and middlemen.

Mr. BREED. And it is your opinion that this type of monopoly should be relieved from all provisions of antitrust laws?

Mr. CAMPBELL. Not only should be relieved, but should be fostered by the Government.

Mr. BREED. You are familiar with the California Raisin Association?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Does that association at the present time control about 93 per cent of the raisins produced in California?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. And it is illustrative of the method of handling of food products that you approve of?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Do you consider that it is for the benefit, ultimate benefit of the grower, farmer, or producer, that there should not be some restraining influence to prevent him from making exactions that might increase the price to the consumer?

Mr. CAMPBELL. No, sir; I think there is no restraining influence needed, for if he raises the price to the consumer, and there are no excessive tolls taken along the line, so that the product is delivered to the consumer at the lowest possible price of distribution, and so that the producer receives a high price for his product, we have what we organization leaders call a stimulating price; the immediate effect of that will be an enormous increase in production, so that the increase in production will automatically force a lowering of the price. Or, in other words, we have an operation of the law of supply and demand absolutely as it should act without restraint of trade.

Mr. BREED. How can the laws of supply and demand operate where one association controls the entire supply?

Mr. CAMPBELL. Very easily. Would you like me to illustrate that point?

Mr. BREED. Please.

Mr. CAMPBELL. I will illustrate it by the Raisin Association which you have just spoken of. Due not to the growers' manipulations of the product over which they had control, but due largely to our prohibition law, raisins went soaring in price. The speculators shot the price up—

Mr. BREED (interposing). You mean the price to the consumer?

Mr. CAMPBELL. Yes; the price to the consumer went up. So much, that one year—I think it was 1918—the price to the grower or to the jobber was about 13 cents, but the speculative values went up to 26 cents—double, practically, the price which the association received for raisins. And the following year the Raisin Association raised their price, knowing that the market, the speculative market—the demand was great, so that they felt that the grower should receive a larger proportion of the consumer's dollar. But the increase in price to the raisin grower had the effect of enormously increasing planting, so that the grower at the present time is faced with a tremendous crop increase, which will, within a year or two, probably amount to some 400,000 tons. They feel that it will be impossible to sell these raisins at any sort of a price, possibly. The immediate effect of that has been a forcing of a much lower price to the producer. They are now selling their raisins around 7 to 8 cents—that is, that is the price that the producer is receiving, and it is a good example of the working of the stimulating price as to the increased production of any sort of a farm product.

Mr. BREED. That is, as the price goes up that can be obtained in the market, the inclination of the individual grower is to increase his plantings?

Mr. CAMPBELL. And many more go into the business.

Mr. BREED. Now, I would like to ask you why, if all these growers are in one cooperative organization which they, themselves own, hold the stock in, can they not control the amount of acreage or production?

Mr. CAMPBELL. Impossible.

Mr. BREED. Why?

Mr. CAMPBELL. For men leave the cities and leave their lines of production, and enter that field of production, and they do it constantly, and are doing it.

Mr. BREED. Well, the raisin-growing country is limited, is it not?

Mr. CAMPBELL. There are millions of acres that can be still planted to raisins.

Mr. BREED. But we are talking about a situation where at least during the period of time when a new raisin field, or whatever you call it, may be developed, the cooperative organization controlling 100 per cent—what is there to prevent them from also controlling the amount of acreage that shall be allowed to be grown, thus enabling them to continue to get the high prices?

Mr. CAMPBELL. They are unable to control the planting; they can not control the acreage.

Mr. BREED. Well, they can control themselves, can they not?

Mr. CAMPBELL. Well, they can not control you or me if we want to go into the business.

Mr. BREED. Not outsiders. They can control themselves, can they not?

Mr. CAMPBELL. No, sir; it is impossible to control themselves.

Mr. BREED. Well, I would think your conclusion is contrary to logic.

Mr. CAMPBELL. No; I will make it clear to you, then. We will suppose that you are a raisin grower around Fresno. You have 160 acres of land. You have 40 of that land planted to raisins. The price goes up, and you will say, "I will plant another 40 acres." Who can compel you to keep out of the raisin business any further than the 40 acres?

Mr. BREED. Well, I could tell you who can compel me. I am a member of this cooperative association, and I take it—in fact, I understand that the cooperative association makes a contract with me and with all the individual members as growers to take their crop of raisins, and it is a very simple thing for the cooperative association to put into its contract the fact that it will take raisins from 40 acres and not from any more this next year; therefore I will not plant any more.

Mr. CAMPBELL. Why, certainly you would plant them.

Mr. BREED. Why, no; I would not, because I have no contract to sell.

The CHAIRMAN. Let us go ahead with the cross-examination.

Mr. CAMPBELL. There are plenty of others to buy raisins on the outside.

Mr. BREED. We come now to our concluding question.

The CHAIRMAN. That is interesting.

Mr. BREED. Not the final question, but on this line. I think this is a very great economic question, and I believe that we are getting light.

I go back now to my question as to whether, Mr. Campbell, you do not think it is for the interests of the grower, now—the farmer—that there should be some restraining influence over his cooperative endeavors that will protect future farmers from the exercise by him of those powers in too broad a fashion?

Mr. CAMPBELL. I would say that instead of a restraining influence we need the assistance of government to establish these cooperative organizations. Restraint is not needed. Restraint might be needed at some time in any activity, but certainly not at the present time do we need any restraining influence.

Mr. BREED. I agree with you about the need and the value of assistance by Government in this cooperative movement, but I disagree with you about the fact that the complete removal of all restraints, all anti-trust provision of law, is in the interest of either the grower or the farmer himself—I mean his ultimate future interest.

Judge HAINER. Let us go on.

Mr. CAMPBELL. That is a matter of opinion, Mr. Breed.

Mr. BREED. I would like that to be in the record. But you do not agree with me on that.

Mr. CAMPBELL. No; you have not thought far enough on that subject.

Judge HAINER. That is a proper matter for Congress to deal with.

Mr. BREED. Following that—of course, Mr. Campbell, there are many other cooperative movements throughout the country outside of the cooperative movement in the fruit line?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Such as grain and elevator systems, and many others?

Mr. CAMPBELL. Yes.

Mr. BREED. And the ultimate question of any legal or congressional action in aid of cooperative movement must take into consideration all of those cooperative movements and their varying rights and interests?

Mr. CAMPBELL. The principals are all the same.

Mr. BREED. But conditions are different, are they not?

Mr. CAMPBELL. Conditions may be different.

Mr. BREED. You favor modification of this decree by striking out the provision as to unrelated lines?

Mr. CAMPBELL. If we can not get any more than that; yes, sir.

Mr. BREED. You favor the modification of this decree by striking out the provision that the Big Five packers shall not go into the retail meat business?

Mr. CAMPBELL. Yes, sir; I do.

Mr. BREED. Do you favor the modification of this decree by eliminating the provision that the meat packers shall not continue in the stockyards and stock-market paper, etc.?

Mr. CAMPBELL. I am not competent to pass on those questions, but as a general proposition I am opposed to the decree in toto, the whole thing. I believe it is illegal.

Mr. BREED. And you are also in favor of the decree being modified as to the provision that the packers shall go out of the cold-storage business, of which it is alleged they have a control?

Mr. CAMPBELL. Go out of the cold-storage business?

Mr. BREED. Cold-storage warehouse ownership.

Mr. CAMPBELL. How could they take care of their meat without cold storage?

Mr. BREED. But the decree does not prevent them from handling their own. This is only public cold storage.

Mr. CAMPBELL. As a general proposition, I don't think that the Government has a right to say to any man that he shall or shall not engage in any kind of a business except the saloon business.

Mr. BREED. And you apply that principle irrespective of whether they are a monopoly or are not a monopoly?

Mr. CAMPBELL. That is my notion. I do not think we have any right to say to anyone as to what business he shall or shall not engage in.

Mr. BREED. Do you favor the type of legislation such as represented by the present packers' control bill?

Mr. CAMPBELL. Yes; I think that is constructive, probably.

Mr. BREED. Then you do believe in legislation with respect to alleged monopolies containing control and prohibitory provisions?

Mr. CAMPBELL. I believe in control legislation where it is necessary to safeguard the public interest in any manner.

Mr. BREED. Well, would you favor putting any of the provisions of the present decree into additional legislation with respect to the packers and the control of the Big Five packers?

Mr. CAMPBELL. No, sir; I do not see any good in that decree at all, or any of its provisions.

Mr. BREED. And you do not want any of its provisions in any legislation or in any decree either?

Mr. CAMPBELL. No, sir; so far as I am acquainted with it.

Mr. BREED. All right.

Mr. CAMPBELL. I think it is a very vicious measure.

Mr. BREED. And you would think that if Congress passed legislation to the same effect it would be vicious legislation?

Mr. CAMPBELL. Yes, sir; worse than that.

Mr. BREED. All right. That is all.

The CHAIRMAN. Mr. Stevens, have you anything?

Mr. STEVENS. Yes. Mr. Campbell, I have been tempted to interrupt Mr. Breed several times, but out of consideration for you, and not wishing to confuse you. I have waited until now. There are a few questions, but not many. I take it you do favor the prohibition law, so far as the saloon business is concerned?

Mr. CAMPBELL. Yes, sir; I think that is an evil institution.

Mr. STEVENS. Now, why do you believe it is evil? Is it detrimental to the public interest?

Mr. CAMPBELL. The saloon business?

The CHAIRMAN. Well, I don't think we need to go into that.

Mr. CAMPBELL. I would rather not get into the question of prohibition, because I will tell you, my wife is sort of strong on this prohibition question, and I would not want to say anything that would get me into trouble at home, you know.

Mr. STEVENS. Well, let me ask you this. I take it that you believe the saloon business should be prohibited because it is detrimental, isn't that so?

Mr. CAMPBELL. Yes, sir.

Mr. STEVENS. Well, now, if it is shown that any other business or combination of business is really detrimental to public interest, do you not think, following the same reasoning, that that should be restrained or prohibited?

Mr. CAMPBELL. I think it ought to be controlled, not prohibited.

Mr. STEVENS. Well, if it brings suffering, hunger?

Mr. CAMPBELL. Well, you are going a long ways now beyond the point.

Mr. STEVENS. Well, wouldn't you, by the same parity of reasoning, think that ought to be done?

Mr. CAMPBELL. Well, then, I think the wholesale grocers ought to be restrained right away.

Mr. STEVENS. And the canners?

Mr. CAMPBELL. How is that?

Mr. STEVENS. Well, I won't press that. Now here is another thing that occurred to me. You advocate the combined wholesale and retail business?

Mr. CAMPBELL. Yes, sir.

Mr. STEVENS. That is, you say the wholesaler should sell to the retailer at exactly the same price that he sells to the consumer?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. What is that question?

Mr. CAMPBELL. To the consumer.

Mr. BREED. To the consumer?

Mr. CAMPBELL. To the consumer.

Mr. BREED. Yes.

Mr. CAMPBELL. In the same quantities; yes; in the same volume.

The CHAIRMAN. Will you read the question? I don't believe I got that question right.

(Mr. Stevens' question was read by the reporter as above recorded.)

Mr. STEVENS. Well, now, if that were carried out, to whom would the wholesaler sell at wholesale prices? Who would want to buy at wholesale prices?

Mr. CAMPBELL. Do you mean to say that you must protect the retail dealer in his profits if you are to expect his patronage?

Mr. STEVENS. Well, would there be any retail stores at all?

Mr. CAMPBELL. Oh, yes, sir.

Mr. STEVENS. If the retailer had to sell at exactly the same price he paid?

Mr. CAMPBELL. Certainly.

Mr. STEVENS. I don't believe that.

Mr. CAMPBELL. You don't? Why don't you believe it?

Mr. STEVENS. Why, I don't believe any man could afford to go into business and sell the commodities at exactly the same price he paid for them.

Mr. CAMPBELL. I guess you don't understand the proposition.

Mr. STEVENS. Well, perhaps I don't.

Mr. CAMPBELL. Suppose in this town there is a wholesale house which opens up a retail department, and there sells to the consumer at the same price it sells to the retail dealer, of the same size package.

Mr. STEVENS. Yes.

Mr. CAMPBELL. Whether that package is a small package or a large package, whatever the package is, it is sold at the same price to all comers. It is easy for you to understand that within 5 or 10 miles of that wholesale house there will be a community which will not—at least not all of the inhabitants thereof—go to this wholesale house to purchase its supplies. It would have to have local accommodations, and it would be willing to pay for that service what the service is worth. A number of these consumers might get together and form a little cooperative society in case the local retail dealer who was distributing foods to them charged an excessive price. They could go to this same wholesale house there and purchase their supplies and distribute to their patrons at cost. That is one thing that this country needs; that is one thing we have been unable to establish, because of these trade combinations. In other words, the retail dealer would be able to charge a sufficient amount to cover the service which the people are willing to pay for. And if the charge for service was too great they would, of course, go to the trouble of going to the wholesale house and getting their supplies. That, I think, is what the meat dealers or packers in this country should do.

Mr. STEVENS. Well, then, you do not believe that that could be a workable system, except in a very restricted area?

Mr. CAMPBELL. I believe this: That it would restrain profiteering and reduce these excessive profits that are made by some retail dealers and by some wholesale dealers.

Mr. STEVENS. Well, now, take for instance the Raisin Growers' Association in California. What is there to prevent a retail dealer in some far-away town where there is no competition from raising his price to the consumer at his will?

Mr. CAMPBELL. He can do it; certainly.

Mr. STEVENS. So your theory would not cure that situation, would it? The consumer would have to suffer, wouldn't he?

Mr. CAMPBELL. It is possible there would be another retailer there, and he would compete with him and reduce the price, possibly. But that is the condition we have got to-day, and that is the condition we would like to get relief on as producers and consumers.

Mr. STEVENS. Well, suppose there was another retail dealer there, and they would agree to not interfere with each other in something, and sell at the same price. The consumer is the ultimate bearer of the increased price, isn't he?

Mr. CAMPBELL. Yes, sir.

The CHAIRMAN. Wouldn't that be a violation of law if they agreed to sell at the same price?

Mr. STEVENS. Well, there are various ways of agreeing.

(At this point Mr. Campbell offered to read a telegram from D. C. Moore, but after some discussion Mr. Campbell withdrew the telegram, and the telegram and the discussion in connection with it, were stricken from the record.)

Mr. STEVENS. Mr. Campbell, you have stated several times, and I think the chairman did in the beginning, that no packer was interested here in this hearing in the modification, or was interested in the modification of this decree. Have you not?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Well, except—I thought you said except Armour and Wilson, who were interested?

Mr. CAMPBELL. Well, they said they would not oppose it.

Mr. BREED. Oh.

Mr. STEVENS. He said no one actively interested. No one, so far as you know, was actively interested?

Mr. CAMPBELL. No, sir.

Mr. STEVENS. Or has ever attempted to get this decree modified, so far as you know?

Mr. CAMPBELL. No, sir; they have not, so far as I know.

Mr. STEVENS. And I think you also said that you have never made any application to any one excepting the Attorney General, or the Department of Justice—

Mr. CAMPBELL (interposing). To the Department of Justice.

Mr. STEVENS (continuing). To have this decree modified. Well, now, Mr. Campbell, is it true or is it not true that at some time during the last six or eight months you, in company with Congressman Free of California, and Conrad H. Syme, an attorney for Armour & Co., went to Vermont to interview Justice Stafford at his summer home in regard to this same matter—modifying the decree?

Mr. CAMPBELL. We did go up there to get some information regarding the decree.

Mr. STEVENS. Did you discuss at that time with Mr. Justice Stafford—

The CHAIRMAN (interposing). Well, I think I will rule all that out, because I went there at the request of the Attorney General on a confidential mission, and I don't think that it is competent for this witness to testify as to the confidential mission of the Department of Justice.

Mr. STEVENS. Well, what I was trying to get at was what action he, himself, took.

The CHAIRMAN. Well, he may tell his own actions, if he wants to.

Mr. STEVENS. Yes.

The CHAIRMAN. But I object to anything that the Department of Justice did there, because we went on a confidential mission.

Mr. STEVENS. I am asking him what he did. I simply asked him his activity.

Mr. CAMPBELL. My activity was simply as a listener and a learner. All I was trying to find out was some matters in regard to this decree, as to its entry; that is all.

Mr. STEVENS. Well, did you not at that time yourself advocate to Mr. Justice Stafford that it would be a good thing for you and your associates in business to have this decree modified?

Mr. CAMPBELL. I don't think I made any remarks there.

Mr. STEVENS. Well, now, Mr. Syme was an attorney, was he not, for Armour & Co.?

Mr. CAMPBELL. Well, I don't know about that.

Mr. BREED. Who is Mr. Syme?

The CHAIRMAN. Conrad H. Syme, of this city.

Mr. BREED. A lawyer?

The CHAIRMAN. Yes.

Mr. STEVENS. He is an attorney for Armour & Co.?

Mr. CAMPBELL. I don't know those facts.

Mr. STEVENS. You don't know that he was an attorney for Armour & Co.?

Mr. CAMPBELL. He may be.

Mr. STEVENS. Well, he went with you, didn't he?

Mr. CAMPBELL. Well, he joined us up there somewhere on the road, but I don't think he was in this city at that time.

Mr. STEVENS. Now, didn't he, in your presence—

Mr. CAMPBELL (interposing). I imagine that he had something to do with this decree in the first place.

Mr. STEVENS. Well, didn't he, in your presence and in the presence of the gentleman that were with you, discuss this matter with Mr. Justice Stafford?

The CHAIRMAN. Mr. Campbell, you don't have to answer that question unless you want to. I wish to state for the benefit of the record that I was instructed by the Attorney General to see Justice Stafford about this matter, which I did, and that I made the appointment for myself with Justice Stafford, and I don't think that anything that occurred there is competent in any public hearing of this kind, because it is a confidential mission of the Department of Justice, and I don't think it should be brought out in this kind of a proceeding.

Mr. STEVENS. Well, Mr. Chairman, I am not attempting to—

Judge HAINER. Do you wish to reflect on the justice?

Mr. STEVENS. No; not at all; no. The only point I am trying to show here is this, that Mr. Campbell has given us all to understand that this whole thing was started by himself and those interested with him in business.

The CHAIRMAN. Well, was there ever any formal application filed in court?

Mr. STEVENS. Well, not that I know of; not that I know of. We are not attempting to go into the secret proceedings of the Department of Justice, or have anything to do with the Department of Justice, necessarily. If a representative of the Department of Justice was with Mr. Campbell, we could not, of course, help that. But what I was interested in is this: Didn't Mr. Campbell know at that time, being accompanied by an attorney of Armour & Co., that Armour & Co. at least was interested in having this decree modified?

Mr. CAMPBELL. No; as a matter of fact, I had never heard of the man Syme; I had never seen him before, and as near as I can get this whole matter it was that the Department of Justice was trying to get all the information it could with reference to this decree and to its history, and so on, and I would suppose that the Attorney General in trying to get this information would reach out to every point that he could to get such information as he needed to guide him in his action. That is why we are all here now, I suppose.

Mr. STEVENS. I am not inferring anything improper.

The CHAIRMAN. Well, Mr. Syme at that time was an attorney of record in the packers' case, and the visit with Justice Stafford was perfectly proper, as having both sides of the case represented.

Mr. STEVENS. Yes; that is absolutely true.

The CHAIRMAN. And I think that is sufficient to account for Mr. Syme's presence there, perhaps.

Mr. STEVENS. I think that is true; in fact, I understand that is exactly so. There is nothing at all improper, because both sides were represented there. But the only point was that we have been led to believe right along that Armour & Co. and none of the packers was really interested in opening up this decree for modification.

The CHAIRMAN. I am not sure but what Mr. Syme went at my invitation. I would not say positively.

Mr. BREED. Well, what difference does it make?

The CHAIRMAN. That is what I want to know.

Mr. CAMPBELL. You are right in that conclusion. I have told you right through here in regard to my statement of facts, as to conversation I had with Mr. Meeker, that the packers themselves have not been interested in this modification. That two of them would be acquiescent, provided the Government was agreeable, but they were not actively engaged and refused to be actively engaged

in it, in fact. Much to my chagrin, because I thought I should have some assistance.

The CHAIRMAN. Mr. Syme and Mr. Charles A. Douglas are the only two local counsel of record in the packers' case, and I am not sure but what Mr. Syme went at my invitation, in order that both sides should be represented. I am not positive about that, however.

Mr. BREED. Well, I don't see, Mr. Chairman, how that makes any difference. I don't think Mr. Stevens attempts to examine on any line at all except as to whether Armour & Co. are interested in getting this decree modified.

Mr. STEVENS. Not at all. There is nothing covert in Mr. Syme——

Mr. BREED (Interposing). And as far as Mr. Syme is concerned there is nothing improper whatever.

Mr. STEVENS. Not at all. The only point was to connect Armour & Co. in this action here, which we think seems to be established. That is all.

I think you stated that the proponents of this movement had no attorney? You have no attorney?

Mr. CAMPBELL. No, sir.

Mr. STEVENS. Do you know Mr. E. F. Feagans?

Mr. CAMPBELL. I have met him. I know Mr. —— I know all the attorneys for the packers. I have met them at different times during the past two years.

Mr. STEVENS. Is Mr. Feagans one of the attorneys?

Mr. CAMPBELL. Well, I think he holds a subordinate position.

Mr. STEVENS. Has he had anything at all to do with these hearings?

Mr. CAMPBELL. Nothing at all.

Mr. STEVENS. Confer with you about them?

Mr. CAMPBELL. Except, for instance, I have asked him for books; occasionally I wanted a reference, and he was the only party that had them. For instance, these two books here [indicating books on the table], I insisted that he let me have these two books. I knew he had them. That is the transcript, or abstract of evidence in the Interstate Commerce Commission business. And some of these matters I found; for instance, I got this book of the Interstate Commerce Commission and several of the books I got. These two books I got [indicating].

Mr. STEVENS. Is he in Washington?

Mr. CAMPBELL. I am perfectly competent to take care of my business without any attorney to help me. I think you will agree with me.

Mr. STEVENS. I agree with you.

Mr. CAMPBELL. I don't like counsel and advice from a lawyer. I think I can handle my business without their counsel and advice.

Mr. STEVENS. Well, I am in hopes that you can.

Mr. CAMPBELL. Yes.

Mr. STEVENS. I think that is all.

The CHAIRMAN. Mr. Daily?

Mr. DAILY. No questions, Mr. Chairman.

Mr. STEVENS. One question. Isn't Mr. Feagans an attorney for one of the packers in this case?

Mr. CAMPBELL. I don't think so. I think he is only an assistant.

Mr. BREED. Which packer?

Mr. CAMPBELL. He is an assistant of the attorney for Armour & Co.; he is with Mr. Faulkner, I think, in Chicago.

Mr. BREED. Yes; Mr. Faulkner is general counsel for Armour & Co.

Mr. STEVENS. Isn't Mr. Feagans attorney of record for Armour & Co. in the matter of the Federal Trade Commission against Armour & Co., Docket No. 351, do you know?

Mr. CAMPBELL. I don't know.

The CHAIRMAN. Oh, I know Mr. Feagans personally, and I know that he is in the legal department of Armour & Co. I don't know what position he holds, however.

Mr. STEVENS. Well, his name does appear on the answer filed by Armour & Co.

Mr. BREED. Has he been in Washington during all these hearings?

Mr. CAMPBELL. I don't think all of them, but he has been here most of the time. But Armour & Co. have an attorney here most of the time; so does Swift & Co.

The CHAIRMAN. Swift & Co. has a local attorney here, or a representative; a local representative here who is a lawyer.

Mr. BREED. I would like to ask if any of them have been invited to attend the proceedings? That is the only point.

The CHAIRMAN. The invitation was sent direct to the general counsel of each company.

Mr. BREED. May I ask, Mr. Chairman, if the packers replied that they would would not be represented?

The CHAIRMAN. I received no reply.

Mr. BREED. No reply?

The CHAIRMAN. No reply, sir.

Mr. BREED. So that, so far as this record goes, all we know is the statement made by the chairman at the beginning, that no one of the five packers had applied to the Attorney General?

The CHAIRMAN. They have not applied to the department in any way.

Mr. BREED. To modify the decree?

The CHAIRMAN. No.

Mr. STEVENS. That is all.

Mr. CAMPBELL. If I might be permitted to make this statement: It seems to me that this discussion here has been practically all an economic discussion, and I don't see that the packers could have bettered their case one way or the other by appearing here, even if they had so desired. That is, there is nothing to be gained by the packers and there is nothing to be gained by either side here of this controversy, because those proponents who are in favor of a modification have been discussing it from an economic standpoint, not with reference to the packers individually, but with reference to the machinery of distribution that the packers have.

Mr. BREED. Was Congressman Free, as it has been stated, attorney or counsel for the California Canneries prior to his coming to Congress?

Mr. CAMPBELL. Prior to his election to Congress he was. Of course, immediately upon his election to Congress he had to drop our business entirely, and he did drop it.

Mr. STEVENS. Didn't he go to Vermont with you?

Mr. CAMPBELL. He did. He just went to Canada with Hearst the other day, too. He is a great fellow to travel.

Mr. STEVENS. Well, I mean when you went up to see Mr. Justice Stafford?

Mr. CAMPBELL. Yes; he did. But he didn't go there as counsel for us at all. He went because he wanted to take the trip with me. He and I are very good friends. He is a good fellow, even though he is a friend of mine.

Mr. STEVENS. I am not questioning that.

Mr. BREED. Do I understand that the hearings are closed?

The CHAIRMAN. Will Senator Smith be here?

Mr. BREED. No.

The CHAIRMAN. If he will have no questions to ask, Mr. Campbell, why that will be all. Have you anything further, Mr. Stevens?

Mr. STEVENS. No.

The CHAIRMAN. And you have no more questions to ask Mr. Campbell, Mr. Breed?

Mr. BREED. No.

The CHAIRMAN. Gentlemen, the committee has decided to read into the record a few remarks of former Attorney General Palmer in order to clear up a few things that have been brought into this hearing, especially with reference to the criminal prosecution.

Judge HAINER. In the congressional hearings.

The CHAIRMAN. At page 38 of the hearings before the Committee on Agriculture and Forestry of the United States Senate, on Senate bill 2199, Attorney General Palmer said this:

"Senator NORRIS. The suit had not yet been commenced?

"The ATTORNEY GENERAL. No.

"Pending these discussions I withheld a further proceeding before the grand jury in New York without any agreement so to do. I hoped that possibly would come to a point where I could call it a finished piece of business without a grand jury investigation.

"Senator RANSDELL. You mean Chicago, do you not?

"The ATTORNEY GENERAL. No; I did not; I started in Chicago, but I moved to New York.

"What I had in mind, gentlemen, was this: An indictment, even if followed by a conviction, and even if that were followed by putting somebody in jail,

would not of itself have brought any relief directly to the situation which had been the ground for so many complaints.

"A bill in equity under the Sherman antitrust law, bitterly contested, might not have achieved some of the things that I felt and thought everybody else who had given this question any study felt ought to be accomplished if we were going to have any real results from some disintegration of this business. Therefore, it seems to me that it was perfectly proper if I could, to require, in the circumstances, that certain things be done which, under other circumstances, we might not be able to accomplish, and if I were able to get that much I would do more for my client, the Government of the United States and the people, than if I blazed away in an adverse proceeding either in criminal or civil court."

Again, reading at page 43 of the same hearing, this occurs:

"Senator NORRIS. That reminds me, when you read that, that the Government is not prohibited—that the Government is not prohibited from commencing an action, either civil or criminal, in the cheese, poultry, and egg business.

"The ATTORNEY GENERAL. No.

"Senator NORRIS. Is it prohibited from bringing a civil or criminal action in any other way?

"The ATTORNEY GENERAL. No, sir.

"Senator NORRIS. Is there anything in this decree, either directly or indirectly, that would prohibit the Government from proceeding against the packers or any of them in regard to any illegal action in the past, about meats, for instance?

"The ATTORNEY GENERAL. No, sir; on the contrary, there is specifically permitted the Government may do so, and that is the very clause which I read, Senator."

Again, on page 47 of the same hearing, the following appears:

"Senator NORRIS. In your examination of the evidence that was submitted to you by the Federal Trade Commission and other evidence which you examined, did you reach the conclusion as a lawyer that the packers or any of them had violated the criminal statute or were criminally liable?

"The ATTORNEY GENERAL. I think they had violated the Sherman antitrust law; that is both a criminal and a civil statute, Senator.

"Senator NORRIS. Under your settlement, while you have made no agreement, of course, you do not expect to proceed against them criminally for that violation, do you?

"The ATTORNEY GENERAL. This is the first time I have ever announced it, but I do not expect to proceed against them criminally.

"Senator NORRIS. So that this agreed decree there is, as far as the Department of Justice is concerned, at least to forgive any criminal offense they may have committed?

"The ATTORNEY GENERAL. Oh, no; we forgive nothing in the Department of Justice.

"Senator NORRIS. If you do not prosecute them it has that effect, does it not?

"Senator SMITH of Georgia. But the grand juries of the country have the right to prosecute and institute prosecution?

"Senator NORRIS. Yes; but they do not do it unless there is a prosecuting attorney somewhere to bring it out."

Again, in the hearings before the Committee on Agriculture of the House of Representatives on meat packer legislation, part 31, at page 2314, this Congress, in a statement by the Attorney General before that committee, the following:

"It takes them out and forever keeps them out, directly and indirectly, of the public stock yard business.

"It requires all of these corporation defendants to divest themselves of all their interests of every kind and character in every public storage warehouse and every public stockyards company in America, of every stockyard and terminal railroad, and of every market or stockyard journal or publication; it takes them out and forever keeps them out, directly and indirectly, from every line of retail business whatever, both in the meat line and in every other line. It takes them out and forever keeps them out, both directly and indirectly, of all of the so-called unrelated lines, and particularly of all the lines of wholesale groceries which had been the cause of the most widespread complaint in the country. The number of articles which these defendants are no longer permitted to engage in, production, distribution, and sale of, running into the

hundreds, is set forth in the decree itself. It provides that the corporation defendants shall immediately go out of the business and that the individual defendants shall not jointly or collectively ever be interested to the extent of control in any corporation or firm or partnership which engages in any of those businesses. It does this far-reaching thing, Mr. Chairman, which could not by any possibility have been accomplished by a decree in adverse litigation, which these defendants would have opposed and which I doubt if it could ever be done by legislation as well.

"This decree takes these defendants from all of these unrelated lines and brings them back with a sharp turn to the point where they began. I do not want to appear brutal in using the term, but this decree makes butchers of these five great packers, and nothing else."

Again, on page 2315 of the same hearing, this occurs in the remarks of the Attorney General:

"In every phase of the history of the Sherman antitrust law during the 30 years it has been upon the statute books no business man has ever been sent to jail under it. If any has been convicted, he has been finally released upon appeal. So far as my recollection goes, in only two comparatively minor cases have jail sentences been actually imposed under that act.

"There is of course doubt in every criminal case; more doubt in a criminal case as to its results than in a civil case. I have been engaged in the practice of law long enough to realize that men sometimes lose the best cases they have and win the poorest. There is not anything more uncertain in the world than the verdict of a petit jury unless it be the judgment of an appellate court. There is no possible human way of being assured as to what the result would be if I presented an indictment against these defendants. However, if I presented an indictment, while the facts undoubtedly would have justified an indictment, and if I had failed to convict the people's case was gone, and I could not then go into a court of equity and by any possibility get anything like the result which I was able to get as long as the doubt of the outcome of a criminal proceeding remained in the minds of the parties concerned. I did not of course use the possibility of a criminal proceeding in securing this decree; it was not necessary among men of intelligence, judgment, and experience. I was able to use the situation as it was then presented, Mr. Chairman, with an appeal to these great interests in these difficult days immediately following the war, to cooperate with the Government in its desire to bring business back to normal levels and thus compel the entry of a decree which gave to us very much more than we could have ever hoped to secure at the end of adverse litigation."

Again, on page 2340 of the same hearing, the following appears:

"Mr. McLAUGHLIN of Michigan. Is not a decree usually based on the determination of the court that the law has been violated, or that there is a threat, and therefore danger that the law may be violated? As a general proposition that is right, is it not?"

"Attorney General PALMER. Stated generally, possibly that is right.

"Mr. McLAUGHLIN of Michigan. But this decree forbids the doing of things which are entirely lawful.

"Attorney General PALMER. No.

"Mr. McLAUGHLIN of Michigan. I beg your pardon; I think you will find that.

"Attorney General PALMER. This forbids the doing of a great many things which are unlawful.

"Mr. McLAUGHLIN of Michigan. That is true, but it includes also acts which are entirely lawful.

"Attorney General PALMER. There may be things in it which, in our opinion, we could not have succeeded in getting if there had been a contest, but that will not make the decree any the less enforceable, Mr. McLaughlin, if that is what you are getting at."

The CHAIRMAN. That is all, gentlemen. Mr. Breed?

Mr. BREED. Mr. Chairman, I note you have read certain extracts from Attorney General Palmer's testimony. I believe the committee here should read his entire testimony, as he was examined at length on this subject.

The CHAIRMAN. Yes.

Mr. BREED. I would also like to call to your attention the fact that the Clayton Act under its provisions specifies in pretty broad language prohibitions against acts which substantially tend to lessen competition or to create a mo-

nopoly, and that this statute would have been involved in any trial in an equity suit had it been contested.

I should also like to call your attention to the fact that I have already referred to a very large number of equity actions of which I think we are all cognizant; that there have been literally hundreds conducted by the Department of Justice not only in Washington but through the United States district attorneys in various districts throughout the United States in which equity actions have been brought up alleged violations of the Sherman law, the Clayton Act, and other antitrust acts, and which have been concluded by decrees entered by consent of the defendants in these actions.

It seems to me that the results which have been accomplished by the Department of Justice and various United States district attorneys in the interest of preventing undue extension of monopoly and restraints of trade, unfair competition, etc., have been obtained of greater benefit to the people of the United States and consumers at large through these equity actions, and in many cases through decrees that were agreed to by the defendants, than in criminal prosecutions as a result of indictments based upon grand jury investigations. I don't think that the fact that this is a consent decree in any way detracts from its force or legality or its value.

Let me add one more fact which I would like to have the committee consider in making the recommendation to the Attorney General, and that is that we are dealing with a decree of the Supreme Court of the District of Columbia in an equity action, in which the parties are the United States Government, plaintiff, and the five packers, defendants. I firmly believe that any direct application on the part of the United States Government asking that this decree be modified—and if followed by the court by a modification—is practically an open invitation to the defendants, the Big Five packers, to come back into the fields of activity which they themselves agreed not to go further into.

I would further call attention to the fact that if no decree had ever been entered and no action brought, the position of the United States Government in the future enforcement of antitrust laws would be far stronger than it ever will be in the future if the United States Government now goes into court and asks for a modification of this decree and obtains the same.

There is a difference between what might be termed an active act seeking to undo something and no act at all, and the burden that is put upon the Department of Justice in the future to enforce those laws, in my opinion, will be greater, and it will be greatly weakened by any active step in going into court and asking that a decree of the court be modified in favor of the defendant meat packers.

I want also on behalf of everybody here present to thank the committee for the uniform courtesy which they have extended to all parties, and the patience with which they have listened to a very great variety of unique evidence, straying widely sometimes from the fields which your committee evidently feel was what you intended to investigate. We feel confident that you appreciate that a very great number of principles are involved in any decision which you make, because the questions at issue here involve not only legal questions but economic questions which are the very base of our life in America, and it may be even political questions, which are also economic questions in their final essence, as they affect the direct life of the people.

If it were possible that at the concluding arguments the Attorney General and any one of the secretaries could find the time in their busy life to be present, we would very greatly hope that your committee might invite them to be present, as our only idea is to aid the Government and yourself in arriving at what is a conclusion which is just to all parties and which shall properly serve the rights of the people, so far as they are involved in this decree.

The CHAIRMAN. The committee will inform the various counsel appearing here of the time fixed for the arguments, and in fixing such time we will, of course, endeavor, so far as it is possible, to take into consideration the desires, convenience, etc., of such counsel. And the request just made as to the Attorney General and the secretaries, of course, will be called to their attention, and if they are able to hear the arguments, I am quite sure they would be glad to do so.

Mr. STEVENS. Mr. Chairman and gentlemen, I hope I made it sufficiently plain that my purpose in questioning Mr. Campbell about that trip to Vermont has no connection whatever with any reflection upon Mr. Justice Stafford or the Department of Justice. If not, I want to emphasize that. Mr. Conrad Syme talked with me as freely as I am talking with you now, and I have the utmost respect for him as a man and a brother lawyer. And I did not want the suspicion of any such thought in my mind to go out.

Judge HAINER. I am glad you said that for yourself.

Mr. STEVENS. Of record no one of the packers appears here. That is absolutely so. We do think, however, that as the chairman has justly stated, both sides to this decree matter were present, as they had a right to be, before the justice, and that does connect the packer in interest.

The CHAIRMAN. The hearings are concluded.

(Thereupon, at 4.55 o'clock p. m., Thursday, December 15, 1921, the hearings were concluded.)

FEDERAL TRADE COMMISSION,
Washington, December 19, 1921.

Mr. HERMAN J. GALLOWAY,
Chairman, Committee on Packers Consent Decree,
Department of Justice, Washington, D. C.

DEAR MR. GALLOWAY: I am submitting herewith the additional material requested of me by the committee in connection with my testimony last week.

As to your question on page 2292 of the record as to how far out of proportion Armour's purchases of raisins, etc., were as compared to purchases by other large wholesale grocers—out of proportion, that is, to the total grocery business of Armour & Co., and the total business of the wholesale grocers—I find that our records are not sufficiently complete to enable us to answer the question.

Cordially yours,

FEDERAL TRADE COMMISSION,
WALTER Y. DURAND,
Assistant Chief Economist.

Big packer companies producing or handling unrelated lines.

[Based on tables on pp. 283-299, Part IV, meat report.]

(A.) SWIFT & CO.

Company.	Relation to big packer.	Foods.	
		Produced and handled.	Handled.
Swift & Co., purchasers of Mullen-Blackledge-Nellis Co., Brazil, Ind.		Tomato products and food specialties.	
SUBSIDIARY AND AFFILIATED COMPANIES.			
Ahuimanu Pine & Ranch Co., Honolulu, Hawaii.	100 per cent owned by Libby, McNeill & Libby (Maine), in which Swift & Co. owns 99.8 per cent. It is understood this stock was recently distributed pro rata to the stockholders of Swift & Co.	Pineapples (grown)...	
Alaska Fisherman's Packing Co., Chicago, Ill.	Trade name of Libby, McNeill & Libby, but inactive at time of report, 1918.	.....
Canfield Commission Co., Newark, N. J.	100 per cent owned by Swift & Co.	.....	Produce.
Continental Packing Co., Chicago, Ill.	100 per cent owned by Libby, McNeill & Libby.	.....	Condensed, evaporated, and powdered milk; canned vegetables and salmon.
F. & C. Crittenden Co., Rochester, N. Y.	50 per cent owned by Swift & Co.	.....	Produce.
Delaware Canning Co., Chicago, Ill.	Trade name of Libby, McNeill & Libby, but inactive at time of report, 1918.	.....
H. C. Derby Co., New York City.	100 per cent owned by Swift & Co.	Beets.....	
Emery Food Co., Chicago, Ill.	100 per cent owned by Libby, McNeill & Libby (Maine), in which Swift & Co. owns 99.8 per cent.	Libby, McNeill & Libby cans certain products under this trade name.	Canned goods (as brokerage business).
Emery Provision Co., Chicago, Ill.	Trade name of Libby, McNeill & Libby, but inactive at time of report, 1918.	.....
Foster Packing Co., Chicago, Ill.	Trade name of Libby, McNeill & Libby.	Libby, McNeill & Libby cans certain products under this trade name.	

Big packer companies producing or handling unrelated lines—Continued.

(A.) SWIFT & CO—Continued.

Company.	Relation to big packer.	Foods.	
		Produced and handled.	Handled.
France-Swiss Catering Co., Chicago, Ill.	Trade name of Libby, McNeill & Libby, but inactive at time of report, 1918.	.....
Honolulu Pine Co., Honolulu, Hawaii.	100 per cent owned by Libby, McNeill & Libby, of Honolulu (Ltd.), in which Libby, McNeill & Libby (Maine) owns 95.7 per cent.	Pineapples (grown)...	
Kahului Pine & Ranch Co., Honolulu, Hawaii.	66 2/3 per cent owned by Libby, McNeill & Libby, of Honolulu (Ltd.).	.....do.....	
Kerlau Fruit Co., Honolulu, Hawaii.	100 per cent owned by Libby, McNeill & Libby, of Honolulu (Ltd.).	.....do.....	
S. S. Learned Co., Boston, Mass.	51 per cent owned by Consolidated Rendering Co., which 77 per cent owned by the Swift family.	.....	Canned goods.
Libby, McNeill & Libby (Maine), Chicago, Ill.	99.8 per cent owned by Swift & Co.	Canned foods, such as fruits, vegetables, pickles, sauerkraut, and other condiments; milk, and salmon. Canned foods.....	
Libby, McNeill & Libby of Canada, Chatham, Ontario.	100 per cent owned by Libby, McNeill & Libby (Maine).	.....
Libby, McNeill & Libby of Honolulu (Ltd.), Honolulu, Hawaii.	95.7 per cent owned by Libby, McNeill & Libby (Maine).	Fruits (grown and canned).	
Libby, McNeill & Libby of London, London, England.	100 per cent owned by Libby, McNeill & Libby (Maine).	.....	Canned foods.
Libby, McNeill & Libby of Louisiana, Chicago, Ill.	.....do.....	.....	Do.
Libby, McNeill & Libby of West Virginia, Chicago, Ill.	.....do.....	.....	Do.
Nevada Packing Co., Reno, Nev.	100 per cent owned by Western Meat Co., in which Swift & Co. owns 44.5 per cent; Morris & Co., 29.9 per cent; Armour & Co., 2.6 per cent; Wilson & Co. (Inc.), 1.5 per cent; the Cudahy Packing Co., 0.2 per cent.	Lard compounds and substitutes.	Poultry, butter, eggs, cheese, and apples.
North Packing & Provision Co., Somerville, Mass. ¹	77 per cent owned by Swift family interests.	.....do.....	Produce.
George Nye Co., Springfield, Mass.	50 per cent owned by Swift & Co.	.....	Butter, eggs, poultry, cheese, game, beans, peas, etc.
E. K. Pond Packing Co., Chicago, Ill.	.....do.....	Canned poultry and peanut butter.	
Statson & Eilsson Co., Camden, Del.	50 per cent owned by Libby, McNeill & Libby (Maine).	Fruits, vegetables, and tomato products. Pineapples (grown and canned).	
Thomas Pineapple Co., Honolulu, Hawaii.	100 per cent owned by Libby, McNeill & Libby of Honolulu (Ltd.), in which Libby, McNeill & Libby (Maine) owns 95.7 per cent.	.....
Union Meat Co., Portland, Oreg.	100 per cent owned by Swift & Co. Western Meat Co. held 20 per cent of the stock in the name of Edw. F. Swift. In March, 1919, the estate of G. F. Swift secured the balance of the stock necessary to complete 100 per cent ownership, and sold the entire stock to Swift & Co.	Lard substitutes and better.	Poultry, eggs, cheese, apples, cranberries, fish, canned goods, and butterine.
B. K. Willard Co., Chicago, Ill.	Trade name of Libby, McNeill & Libby.	.....	Libby products.
Wilson & Rogers, Philadelphia, Pa.	100 per cent owned by Libby, McNeill & Libby.	.....	Oleomargarine and other food products.

¹ See footnote on p. 931.

Big packer companies producing or handling unrelated lines—Continued.

(B) ARMOUR & CO.

Company.	Relation to big packer.	Foods.	
		Produced and handled.	Handled.
Armour & Co.: Chicago, Ill.....		Butterine, lard substitutes, and compounds; jelly, preserves, canned goods, such as beans, soups, chicken, etc.	
Frankfort, Mich.....		Canned and crushed fruits.	
Mattawan, Mich.....		Grape juice.....	
Ridgely, Md.....		Canned and crushed strawberries.	
Westfield, N. Y.....		Grape juice.....	
SUBSIDIARY OR AFFILIATED COMPANIES.			
Armour Canadian Grain Co., Winnipeg, Canada.	100 per cent owned by the Armour Grain Co.		Grain.
Armour Grain Co., Chicago, Ill. ¹	87 per cent owned by Armour family interests. The remainder of the stock is held by officers of the company.		Do.
Buffalo Cereal Co. (Inc.), Buffalo, N. Y.	100 per cent owned by the Armour Grain Co.	Cereals.....	
The Erie Co., New York City.	65 per cent owned by the Armour Grain Co.		Do.
Export Elevator Co., Buffalo, N. Y.	100 per cent owned by the Armour Grain Co.		Do
Fremont Kraut Co., Fremont, Ohio.	51 per cent owned by Armour & Co.	Pickles, kraut, etc.....	
Hansen Grain Co., Winnipeg, Canada.	100 per cent owned by the Armour Grain Co.		Do.
Lewellyn Bean Co., Big Rapids, Mich.	51 per cent owned by Armour & Co.	Canned beans.....	
Loudon Packing Co., Terre Haute, Ind.	50 per cent owned by Armour & Co.	Fancy canned and bottled goods, such as tomato ketchup, chile sauce, oyster cocktail, salad dressing, etc.	
Maple-Flake Mills, Battle Creek, Mich.	100 per cent owned by the Armour Grain Co.	Cereals.....	
Neola Elevator Co., Chicago, Ill.	do.....		Do.
Lewis E. Sands Co. (Inc.), Albion, N. Y.	66 $\frac{2}{3}$ per cent owned by the Lewellyn Bean Co. prior to Nov. 9, 1918, on which date its interest was disposed of to L. E. Sands.		Beans and grain.
Scottville Produce Co., Scottville, Mich.	51 per cent owned by the Lewellyn Bean Co.		Grain.
Vin Fiz Co., Chicago, Ill.	100 per cent owned by Armour & Co.		Soft drinks, crushed fruits, soda-fountain supplies, and general mercantile business.

¹ Shares held by corporate defendants, none. Held by individual defendants: Edward F. Swift, 6,678. Louis F. Swift, 6,294; E. F. Swift, 742; L. F. Swift, 619; George H. Swift, 459; Charles H. Swift, 428; G. F. Swift, Jr., 186; Harold H. Swift, 70; Alden B. Swift, 60. Held by trusted employees for L. F. Swift, 1,705; Held by trusted employees for Edward F. Swift, 1,005. Total, 18,217, or 60.72 per cent of 30,000 shares. Held by family nondefendants: G. F. Swift, 443; Hortense N. Swift, 375; estate of G. F. Swift, 39; Theodore P. Swift, 63; trustees under will of Noble H. Swift, 38. Trusted employees holding for estate of G. F. Swift, 3,801. Total, 4,759, or 15.86 per cent of 30,000 shares. Total Swift interests, 76.58 per cent of 30,000 shares.

Big packer companies producing or handling unrelated lines—Continued.

(C) MORRIS & CO.

Company.	Relation to big packer.	Foods.	
		Produced and handled.	Handled.
SUBSIDIARY COMPANY.			
Barataria Canning Co., Biloxi, Miss.	67 per cent owned by Morris & Co.	Canned shrimp, oysters, beans, sweet potatoes, and pumpkin.	

NOTE.—The schedule returned by Morris & Co. did not show the company itself as handling unrelated lines, but "The rapid expansion of this phase of the packers' business and the enormous increase of the range of goods handled is well illustrated by growth in this field of Morris & Co. In the wholesale weekly price list of Morris's car-route department for Sept. 17, 1917, only one fruit appears. This was 'sliced Hawaiian pineapple, Trubadour brand.' In the price list of the same department for June 9, 1919, however, there is almost as complete a list of canned and preserved fruits as a regular wholesale grocer would have." (See p. 240, Part IV.)

(D) WILSON & CO. (INC.).

Wilson & Co. (Inc.), Chicago, Ill.		Lard compounds and substitutes, butterine, preserves, and condiments.	
SUBSIDIARY OR AFFILIATED COMPANIES.			
Alaska Herring & Sardine Co., Seattle, Wash.	98 per cent owned by the Wilson Fisheries Co., which is 51 per cent owned by Wilson & Co. (Inc.).	Canned fish.....	
Alden Banks Fish Co.	100 per cent owned by the Apex Fish Co.	.....do.....	
Apex Fish Co., Anacortes, Wash.	Acquired by the Wilson Fisheries Co. on Apr. 8, 1919.	Canned salmon.....	
Brownie Fish Co.	100 per cent owned by the Apex Fish Co.	Canned fish.....	
Empire Provision & Produce Co., Chicago, Ill.	100 per cent owned by Wilson & Co., but reported as practically inactive since June 1, 1917.	.....	Produce.
The Fame Canning Co., Indianapolis, Ind.	99.8 per cent owned by Wilson & Co. (Inc.).	Canned vegetables....	
Lisianski Packing Co., Seattle, Wash.	79 per cent owned by the Wilson Fisheries Co.	Canned fish.....	
Migley Fish Co.	100 per cent owned by the Apex Fish Co.	Canned salmon.....	
Morton-Gregson Co. (delivered), Nebraska City, Nebr.	100 per cent owned by Wilson & Co. (Inc.).	.....	Canned fruits and vegetables, cheese, and butter.
Pacific Fisheries Corporation, Seattle, Wash.	99.9 per cent owned by Wilson & Co. (Inc.).	Canned salmon.....	
Paul O. Revmann Co., Wheeling, W. Va.	100 per cent owned by Wilson & Co. (Inc.).	.....	Groceries, canned fruits, vegetables, and produce.
Sinclair Provision Co., Portland, Oreg.	All the stock except 3 directors' qualifying shares owned by T. M. Sinclair Co. (Ltd.).	.....	Canned goods.
J. L. Smiley Co., Seattle, Wash.	99.5 per cent owned by the Pacific Fisheries Corporation..	Canned fish.....	
South Dakota Provision Co., Sioux Falls, S. Dak.	100 per cent owned by Wilson & Co. (Inc.).	.....	Canned vegetables, compounds, butter, and cheese.
Superior Fish Co.	100 per cent owned by the Apex Fish Co.	Canned, smoked, salted, and pickled fish.	
Wakefield & Co., Seattle, Wash.	100 per cent owned by the Wilson Fisheries Co.	Canned salmon.....	Fish (as brokerage business).
Wilson Fisheries Co. (delivered), Seattle, Wash.	51 per cent owned by Wilson & Co. (Inc.).	Canned fish.....	

Big packer companies producing or handling unrelated lines—Continued.

(E) THE CUDAHY PACKING CO.

Company.	Relation to big packer.	Foods.	
		Produced and handled.	Handled.
SUBSIDIARY OR AFFILIATED COMPANIES.			
American Pumice Co., Chicago, Ill.	100 per cent owned by the Cudahy Packing Co.	Fruits prepared by the extraction of juices.	
The Red Wing Co. (Inc.), Fredonia, N. Y. ¹	99.9 per cent owned by Cudahy family interests.	Grape juice, jellies, jams, and other food products.	

¹ E. A. Cudahy, defendant, owns 4,998 shares and E. A. Cudahy, Jr., defendant, owns 1,000 shares out of 6,000 shares, which accounts for all but 2 shares.

Copy of contract between California Cooperative Canneries (by its predecessors, Producers' Warehouse Co.) and Armour & Co., with particular reference to the provision permitting Armour & Co. prior option of the purchase of the canning plant in case of its sale. (See contract of October 5, 1918, paragraph No. 5.)

(Submitted by W. Y. Durand in response to the requests of the committee.)

This agreement, made and entered into this 5th day of October, 1918, by and between the Producers' Warehouse Co., a corporation, organized and existing under and by virtue of the laws of the State of California, with principal office at San Francisco, Calif., first party, and Armour & Co., a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with principal office in the city of Chicago, Ill., second party, witnesseth:

That whereas the first party proposes to construct a canning factory and an assembling and storage warehouse as hereinafter described, together with a power plant, adjacent to its tomato canning factory at San Jose, Calif.; and

Whereas second party is engaged in the business of dealing in canned fruits and proposes to enter into a contract with the California Growers' Association, and the said first party for the purchase from them of its requirements of canned fruits, and also the requirements of Armour & Co., an Illinois corporation; and

Whereas the said canning facilities will be necessary to the said first party in order to enable it to supply part of said requirements; and

Whereas second party is willing to assist first party in financing the construction of said canning factory, power plant, and storage warehouse:

Now, therefore, it is understood and agreed by and between the parties hereto as follows:

* * * * *

(Paragraphs 1, 2, 3, and 4 are omitted.)

5. In case first party at any time decides to sell said land, canning facilities, including the said tomato canning factory, and warehouse, power plant, and equipment, it will first offer them to second party before offering them to any other parties, and in case second party elects to purchase the same and the parties hereto are unable to agree upon the price to be paid therefor, then in that case the price shall be fixed by arbitration; each of the parties hereto to select one arbitrator, and those two to select a third, and the decision of the majority thereof shall be final and binding upon the parties hereto.

* * * * *

(Paragraphs 6, 7, and 8 are omitted.)

In witness whereof the parties hereto have caused this instrument to be executed in duplicate by their duly authorized agents in this behalf the day and year first above written.

PRODUCERS' WAREHOUSE Co.,
By JAMES MADISON, *President*.

Attest:

R. W. CRARY, *Secretary*.

ARMOUR & Co.,
By F. EDSON WHITE, *Vice President*.

Attest:

GEO. M. WILLITS, *Secretary*.

Form approved: H. K. C.

Terms and conditions approved: C. H. D.; J. J. Hamilton.

(Note by Mr. Durand: Foregoing contract of October 5, 1918, was modified in certain respects by a subsequent contract between the same parties dated February 10, 1919, but paragraph 5 was not modified thereby.)

MEMORANDUM OF SUPPORTING EVIDENCE.

In re statement concerning Armour's purchase of dried peaches, first half of paragraph 4, page 244, of part 4 of the commission's report on the meat-packing industry and other passages from that report, as requested by the committee on page 2291 of this record.

SEPTEMBER 27, 1918.

Mr. A. J. STURTEVANT, Jr.,

Sales Manager California Peach Growers (Inc.), Fresno, Calif.

DEAR SIR: The commission is informed that Armour & Co. and its branches are among your heaviest bidders for dried peaches. Kindly state by return mail:

1. The number of carloads of dried or other peaches purchased from you by Armour & Co., or its branches, during 1917 and 1918 to date.
2. The number of carloads asked or bid by Armour & Co., but not sold by you during the same years.
3. The prices at which the above purchases and bids were made.
4. The opening and present prices set by your organization.
5. The total sales to all customers in carloads and dollars by your exchange during the years 1917 and 1918 to date.

A franked envelope is inclosed for your convenience in replying.

Very truly yours,

FEDERAL TRADE COMMISSION.

FRESNO, CALIF., November 30, 1918.

FEDERAL TRADE COMMISSION,
Washington, D. C.

GENTLEMEN: Replying to yours of September 27, beg to advise that Armour & Co. purchased of us, in 1917, 10 carloads of peaches; in 1918 they purchased of us 2 carloads of peaches.

They also asked us to accept 10 additional cars of peaches in 1918, which we refused. The average price paid by them for their 1917 peaches is \$6,000 a car; for their 1918 peaches, \$7,800 a car.

In regard to our opening and present prices, beg to advise that this is set by the Government, and we average the price to be 13 cents per pound.

Our entire sales to jobbers in 1917 were 465 cars, the valuation being \$2,918,802. This year we sold 420 cars, which have a valuation of \$3,267,000.

Trusting this is the information you desire, we are,

Very truly yours,

CALIFORNIA PEACH GROWERS,
By B. BLOOM,
Order and Shipping Department.

In re statement concerning Armour's purchase of raisins, paragraph 4, page 244, the following correspondence is given:

SEPTEMBER 27, 1918.

Mr. HOLGATE THOMAS,
Sales Manager, California Raisin Association,
Fresno, Calif.

DEAR SIR: The commission is informed that Armour & Co. and its branches are among your heaviest purchasers.

Kindly state by return mail—

1. The number of carloads of raisins purchased by Armour & Co. from or through your association during 1917 and 1918 to date.
2. The number of additional carloads on which Armour & Co. made bids or gave orders which your association did not accept.
3. Prices at which the above purchases and bids were made.
4. The opening and the present price of raisins set by your association.
5. The total sales in carloads and dollars to all customers made by your association during 1917 and 1918 to date.

A franked envelope is inclosed for your convenience in replying.

Very truly yours,

FEDERAL TRADE COMMISSION.

CALIFORNIA ASSOCIATED RAISIN Co.,
Fresno, Calif., October 17, 1918.

FEDERAL TRADE COMMISSION,
Washington, D. C.

GENTLEMEN: We have delayed answering your letter of September 27. file JGO, as it required some time to secure all the information requested by you regarding sales made to Armour & Co.

Attached hereto you will find sheets Nos. 1 to 4, inclusive, showing the details of these sales; also recapitulation sheet showing the total weight and amount, and total sales made by us to all customers, with amounts, from October 1, 1917, to date, and we wish to add the following supplementary information:

The sales enumerated by us cover a period from October 1, 1917, to date, as our fiscal year, so far as crop is concerned, begins October 1 each year.

Sheet No. 1 covers coast shipments made by us to Armour & Co. from October 1, 1917, to October 1, 1918.

Sheet No. 2 covers deliveries made by us to Armour & Co. from eastern spot stocks from October 1, 1917, to October 1, 1918.

Sheet No. 3 covers orders booked by us for shipment to Armour & Co. from the 1918 crop.

The layers, clusters, three and four crown loose Muscatels and Sun-Maid carton seeded orders on sheet No. 3 will, of course, be reduced in accordance with our sales department circular No. 120, copy of which is herewith attached.

Sheet No. 4 covers raisins supplied by us between October 1, 1917, and October 1, 1918, but sold and shipped by other packers.

Regarding orders which were submitted by Armour & Co. and not confirmed by us, will say that on July 15 they submitted an order for 10 carloads package seeded to be packed under their own brand, which was refused by us. We wish also to state that our sales manager was indirectly informed that Armour's 1918 crop requirements would be several hundred carloads, which they expected to place with us, provided their private brand could be used. This business, however, was not offered to us.

We have endeavored to answer your questions as fully as possible, but if additional information is needed, we shall be glad to go into further detail upon request.

Yours very truly,

CALIFORNIA ASSOCIATED RAISIN Co.,
By J. L. REEDER, Sales Department.

Armour sales.

Number of cases.	Variety.	Price.	Weight.	Amount.
			<i>Pounds.</i>	
1,935	20-pound 3 Crown Layers.....	\$1.50 per box.....	38,700	\$2,902.50
240	20-pound 3 Crown Tray Pack Layers.....	\$1.60 per box.....	4,800	384.00
10	1-pound Fancy Clusters.....	\$2.60 per box.....	200	26.00
5	20-pound 4 Crown Clusters.....	\$1.85 per box.....	100	9.25
5	5-pound 4 Crown Clusters.....	\$0.60 per box.....	25	3.00
60	16-pound 3 Crown Layers.....	\$0.875 per box.....	600	52.51
40	10-pound 3 Crown Layers.....	\$0.95 per box.....	400	38.00
5	50-pound Vineyard Run Layers.....	\$3.25 per box.....	250	16.25
15	20/1-pound Clusters.....	\$1.95 per box.....	300	29.25
10	24/1-pound Clusters.....	\$2.35 per box.....	240	23.50
7,120	36/16 Sun-Maid Seeded.....	\$3.15 per box.....	256,320	22,420.00
1,450	36/16 Sun-Maid Seeded.....	\$3 per box.....	52,200	4,350.00
12,870	25-pound Sun-Maid Bakers Seeded.....	\$1.75 per box.....	321,750	22,522.50
10	25-pound Fancy Seeded.....	\$1.90 per box.....	250	19.00
3,260	45/12 Choice Seeded.....	\$3.10 per box.....	110,025	10,106.00
95	45/12 Fancy Seeded.....	\$3.25 per box.....	3,207	308.75
155	50-pound 1 Crown Loose Muscatels.....	\$4.15 per box.....	7,750	643.25
10	50-pound 1 Crown Loose Muscatels.....	\$3.90 per box.....	500	39.00
40	25-pound 1 Crown Loose Muscatels.....	\$2.15 per box.....	1,000	86.00
10	10-pound 2 Crown Loose Muscatels.....	\$1.80 per box.....	250	18.00
1,340	50-pound 2 Crown Loose Muscatels.....	\$3.40 per box.....	67,000	4,556.00
10	25-pound 3 Crown Loose Muscatels.....	\$1.90 per box.....	250	19.00
580	50-pound 3 Crown Loose Muscatels.....	\$3.65 per box.....	29,000	2,117.00
115	50-pound 4 Crown Loose Muscatels.....	\$3.90 per box.....	5,750	448.50
510	50-pound Sun-Maid Seedless.....	\$4.50 per box.....	25,500	2,295.00
160	35/12 Sun-Maid Seedless.....	\$2.80 per box.....	4,320	448.00
30	50/12 Sun-Maid Seedless.....	\$4 per box.....	1,125	120.00
140	48/16 Sun-Maid Seedless.....	\$4.75 per box.....	6,720	665.00
665	47/16 Sun-Maid Seedless.....	\$4.65 per box.....	31,920	3,092.25
20	50-pound Bakers Sun-Maid Seedless.....	\$4.90 per box.....	1,000	98.00
170	50-pound Sun-Maid Sultanas.....	\$4.50 per box.....	8,500	765.00
4	50-pound Fancy Bleached Thompsons.....	\$5.25 per box.....	200	21.00
45	50-pound Fancy Bleached Thompsons.....	\$5.125 per box.....	2,250	230.62
75	50-pound Choice Bleached Thompsons.....	\$4.875 per box.....	3,750	365.63
485	35/12 oz. Thompsons.....	\$3.16 per box ¹	12,731	1,532.60
1396	48/16 Thompsons.....	\$5.365 per box ¹	76,608	8,562.54
21	50-pound Bakers Thompsons.....	\$5.477 per box ¹	1,050	115.02
914	47/16 Thompsons.....	\$5.206 per box ¹	42,958	4,758.28
300	36/16 Sun-Maid Seeded.....	\$3.60 per box ¹	10,800	1,080.00
84	50-pound 3 Crown Loose Muscatels.....	\$3.75 per box ¹	4,200	315.00
4	20-pound Tray Pack Layers.....	\$1.84 per box ¹	80	7.36
150	20-pound 3 Crown London Layers.....	\$1.91 per box ¹	3,000	286.50
124	20/1-pound Sun-Maid Clusters.....	\$2.10 per box ¹	2,480	260.40
3202	25-pound Bakers Sun-Maid Seeded.....	\$2.07 per box ¹	80,050	8,628.14
11,700	25-pound Bakers Sun-Maid Seeded.....	\$0.08 per pound.....	292,500	23,400.00
1,525	36/16 Sun-Maid Seeded.....	\$0.093 per pound.....	54,900	5,284.12
700	48/12 Choice Seeded.....	\$0.073 per package.....	25,200	2,478.00
200	36/12 Sun-Maid Thompsons.....	\$0.08 per package.....	5,400	576.00
25	48/16 Sun-Maid Thompsons.....	\$0.099 per pound.....	1,200	118.80
400	25-pound 4 Crown Loose Muscatels.....	\$0.083 per pound.....	10,000	875.00
3,700	25-pound 3 Crown Loose Muscatels.....	\$0.08 per pound.....	92,500	7,400.00
650	20-pound 3 Crown Layers.....	\$1.85 per box.....	13,000	1,202.50
50	20/1-pound Sun-Maid Clusters.....	\$2.35 per box.....	1,000	117.50
3,350	25-pound Sun-Maid Thompsons.....	\$0.091 per pound.....	83,750	7,746.88
3,200	25-pound 3 Crown Loose Muscatels.....	\$0.071 per pound.....	80,000	6,000.00
PHOENIX PACKING CO.'S REPORT.				
<i>Boxes.</i>				
150	20-pound 3 Crown Layers.....	\$1.50 per box.....	3,000	225.00
25	45/12 oz. Choice Seeded.....	\$3.10 per box.....	844	77.50
100	25-pound Choice Seeded.....	\$1.75 per box.....	2,500	175.00
CASTLE BROTHERS' REPORT.				
150	20-pound 3 Crown Layers.....	\$1.50 per box.....	3,000	225.00
289	20-pound 3 Crown Layers.....	\$1.75 per box.....	5,780	505.75
5	20 1-pound clusters.....	\$1.85 per box.....	100	9.25
75	45/12 oz. Choice Seeded.....	\$3.10 per box.....	2,531	232.50
25	50-pound Reclined Thompsons.....	\$4.50 per box.....	1,250	112.50
50	25-pound Reclined Thompsons.....	\$2.35 per box.....	1,250	117.50
160	50-pound Bleached Thompsons.....	\$5.25 per box.....	8,000	840.00
2,100	50-pound 2 Crown Loose Muscats.....	\$3.40 per box.....	105,000	7,140.00
250	50-pound 3 Crown Loose Muscats.....	\$3.65 per box.....	12,500	912.50
4,100	25-pound Choice Seeded.....	\$1.75 per box.....	102,500	7,175.00
1,500	36/16 oz. Fancy Seeded.....	\$3.15 per box.....	54,000	4,725.00

¹ Case prices are approximated. Many small deliveries were made and as the prices varied from 1 cent to 2 cents per case, we took, as nearly as possible, the average price per case on each variety and grade.

Armour sales—Continued.

Number of cases.	Variety.	Price.	Weight.	Amount.
	ROSENBERG BROS. & CO.'S REPORT.			
	Approximately, various.....		<i>Pounds.</i> 421,900	\$34,500.00
	GRIFFIN & SKELLEY CO.'S REPORT.			
	Various.....		322,091	29,184.52
	CALIFORNIA FRUIT CANNERS ASSOCIATION.			
	Various.....		798,420	68,211.11
	Total.....		3,719,214	312,350.53

Total sales to all customers from 1917 and 1918 crops.

	Weight.	Amount.
	<i>Pounds.</i>	
From 1917 crop.....	232,623,079	\$18,617,114.43
From 1918 crop.....	186,346,528	15,811,411.42
Total.....	418,969,605	34,428,525.35

NOTE.—All 1918 crop sales are subject to reduction as outlined in our circular No. 120, hereto attached. You will also find attached copies of circulars showing our opening prices on both 1917 and 1918 crop raisins. Prices on 1918 crop, per circular No. 108, are effective to date (October 17, 1918).

NOTE.—Prices on 12-ounce and 16-ounce carton goods are figured per package instead of per pound. Prices on layers and clusters are figured per box. In addition to the quantities above, Armour & Co. has submitted an order for 9,600 25-pound Bakers Sun-Maid Seeded, 240,000 pounds, at 8 cents per pound, which we will accept, provided stock is available

In re the latter half of paragraph 4, p. 244 of Part IV of the commission's report on the meat-packing industry:

These statements are based on an interview on the part of the commission's examiner (Vanderveer Custis) with Wylie M. Giffin, president of the California Associated Raisin Co.; J. L. Reeder, assistant sales manager; F. A. Seymour, assistant to the president; and C. A. Murdick, secretary. The interviews were held at Fresno, Calif., September 18 and 19, 1918.

The following is quoted from the examiner's interviews:

"About a year ago the company's broker informed it that Armour & Co. wished to buy 800 cars of raisins, or about 20 per cent of the total marketed by the Associated Raisin Co. Armour & Co. wished to have these raisins put up under their own brand. The Associated Raisin Co. had no objection to making the sale to Armour & Co., or anyone else, but it felt that there would be a serious danger to it in allowing such a large amount to be sold under any brand but its own. If such an arrangement were permitted it was easily possible that Armour & Co. would get control of the entire business. On this account the Associated Raisin Co. immediately adopted a policy that it would have in all probability adopted within a very few years in any event. It announced that, except for its already established customers, it would put up no raisins for sale under any but its own brands. The same policy would be applied in all cases whatever after January 1, 1919. The company felt, however, that it would be unjust to apply this policy to its established customers without giving them such notice as would permit them to dispose of boxes, labels, etc., that they might already have on hand. It was for this reason that January 1, 1919, was set as the date on which the policy in question should be applied to all."

Because of this Armour & Co. did not make the large purchase contemplated. They did, however, buy 609 tons of raisins. This is shown by a memorandum dated September 13, 1918, a copy of which is hereto appended as Exhibit VI. This, on the face of it, refers only to the amount delivered, not the amount sold. Mr. Murdick, however, assured your examiner that it is substantially, if not absolutely correct, for the amount sold. He believes it to be absolutely correct.

[Custis Report No. 67, Exhibit VI.]

FRESNO, CALIF., September 18, 1918.

Mr. REEDER: Our records indicate 1,217,810 pounds or approximately 609 tons of raisins having been delivered to Armour & Co. from October 1, 1917, to the present date.

Our records show 11,725 pounds raisins delivered to Cudahy Packing Co., in addition to 15 tons damaged Muscats being delivered to these people at Los Angeles, price of which was 2 cents per pound, between October 1, 1917, and present date.

With reference to Libby, McNeil & Libby would say our records do not indicate any sales as having been made to these people during the past year.

NIXON.

With regard to the statement of an 88 per cent control of the entire crop of the country the following is from the examiner's interview referred to above: "The company controls 88 per cent of the crop. This estimate is based on records in the hands of the company. It may be 1 per cent off but is certainly within 5 per cent of being correct. The control is so large that the company has no fear of competition."

The amount of \$102,783.60 of raisins purchased by Armour & Co. direct from the California Associated Raisin Co. during the year ending October 1, 1918, as stated by the report, is the sum of the sales as shown on sheets No. 1 and No. 2 above. The amount of \$154,386.13 of raisins, as given by the report, which were supplied by the California Associated Raisin Co. during the year ending October 1, 1918, but sold and shipped to Armour & Co. by other packers of raisins, is the sum of the sales on sheet No. 4 above. The sales sheet No. 3 covering orders booked by the California Associated Raisin Co. for shipment to Armour & Co. are for the 1918 crop and are not shown in the report.

In re Armour's purchase of almonds from the Almond Growers' Exchange in 1917, paragraph 3, page 264, of Part IV of the commission's report on the meat-packing industry, the following correspondence is placed in evidence:

SEPTEMBER 27, 1918.

Mr. TUCKER, Esq.,

*Manager California Almond Growers' Exchange,
San Francisco, Calif.*

DEAR SIR: The commission is informed that Armour & Co. and its branches are among your largest purchasers of almonds.

Kindly state by return mail:

1. The number of carloads of almonds purchased by Armour & Co. through your exchange during 1917 and 1918 to date.
2. The number of additional carloads for which Armour & Co. gave or promised to give orders to your exchange.
3. Prices at which the above purchases and bids were made.
4. The opening and the present prices of almonds set by your exchange.
5. The total sales in carloads and dollars made by your exchange during the years 1917 and 1918 to date.

A franked envelop is inclosed for your convenience in replying.

Very truly yours,

FEDERAL TRADE COMMISSION.

CALIFORNIA ALMOND GROWERS' EXCHANGE.
San Francisco, Calif., October 7, 1918.

FEDERAL TRADE COMMISSION,
Washington, D. C.

GENTLEMEN: Replying to your letter of September 27, per J. G. O., we give you the following information:

Question No. 1: Sales to Armour & Co. in 1917, nothing. Sales to Armour & Co. in 1918, as follows:

March 17, 1918, through Walter A. Frost & Co., brokers in Chicago: One hundred and fifty bags Nonpareil, at opening prices; 150 bags I X L, at opening prices; 300 bags Drakes, at opening prices.

April 10, 1918, through Potts Brokerage Co., Fort Worth, Tex.: Two hundred and fifty bags Drakes, opening prices; 250 bags Languedoc, at opening prices.

September 12, 1918, through Potts Brokerage Co., Fort Worth: Five hundred bags Drakes or Languedocs, seller's option, rain stained, at 21 cents per pound.
 September 19, 1918, through Potts Brokerage Co., Fort Worth: Ninety-five bags I X L almonds, at 27½ cents.

March 4, 1918, through Cartan & Jeffrey Co., Sioux City, Iowa: Fifty bags Drakes, at opening prices.

September 25, 1918, through Ariss, Campbell & Gault, Seattle: Three hundred and fifty I X L, at 27 cents.

Question No. 2: Do not quite understand your question. We have been advised by several of our brokers that if we had additional almonds to offer Armour would be interested.

Question No. 3: This question is answered in our question No. 1.

Question No. 4: Opening prices of the varieties of almonds purchased by Armour & Co. were: Nonpareil, 27½ cents; IXL, 25½ cents; Languedoc, 20 cents; Drake, 20 cents, f. o. b. California, less 1 per cent cash 10 days. On a certain volume of our business, entered at a certain time, a special discount of one-half cent per pound was given, but Armour did not receive the one-half cent discount, as his orders were entered at a later date. The exchange at the present time has no set quotations on almonds. Small lots are being offered from time to time as the crop warrants.

Question No. 5: We do not keep our records in carloads, but by dollars; 1917 sales, \$896,819.53; 1918 invoices to date total \$590,771.97.

May we ask the reason for all of this inquiry? Practically the same information was given to your representative, Mr. Custis, who called here on September 13.

Yours very truly,

T. C. TUCKER, *Manager.*

OCTOBER 15, 1918.

MR. W. D. BREAKER,
 U. H. DUDLEY & Co.,

New York City.

DEAR SIR: The commission was informed by you through its examiner, Mr. R. H. Beebe, about Armour & Co.'s purchase of almonds in terms of carloads. Direct information from the Almond Growers' Exchange gives these purchases in bags.

Kindly advise the commission at your earliest convenience as to how many bags of almonds there are to the carload and how many tons would ordinarily be called a carload.

Very truly yours,

FEDERAL TRADE COMMISSION.

[United States Food Administration License No. G-00077.]

NEW YORK, *October 18, 1918.*

FEDERAL TRADE COMMISSION,

Washington, D. C.

GENTLEMEN: Your letter of October 15 received.

Our report to you was, as we recall it, that Armour & Co. were willing to buy 25 carloads of a possible surplus of almonds which the almond exchange might have after their orders were filled.

A minimum car is 24,000 pounds, but, owing to a new ruling on loading, cars are being loaded to capacity, so, of course, that makes a carload quite an uncertain amount.

It would be our idea that when this amount was originally mentioned that referred to 24,000-pound cars. Since then, however, the crop has developed in such a way that there seems to be practically no surplus at all.

Yours truly,

U. H. DUDLEY & Co.

Confirmatory of the last letter in respect to the statement in the commission's report that Armour apparently would have taken two or three times the amount he did, the following two paragraphs from the interview of the commission's examiner (Vanderveer Custis) with T. C. Tucker, manager of the exchange, are given:

"It seems clear that Armour & Co. was unable to buy this year as large a quantity of nuts as it wished, and apparently it would have taken two or

three times the amount it did had the exchange been able and willing to take its orders. Mr. Tucker states that the exchange was unable to take larger orders because it had already sold as much as it dared in view of the crop prospects. Mr. Tucker says that it is the policy of the exchange to take only such orders as will make it reasonably certain that it can make 100 per cent deliveries. It does not wish to prorate.

"It appears, however, that the exchange is not positively anxious to have Armour as a customer but fears him as a competitor. Mr. Tucker stated that one of the chief considerations leading the exchange to accept Armour's orders was the fear that if it refused, Armour would go out into the field and deal directly with the growers. The files of the exchange contain a copy of a telegram to a correspondent asking him to find out quietly, if possible, what Armour is seeking to do in the almond field."

The statements made in the last part of paragraph 3 are based on the eighth annual report of the California Almond Growers' Exchange, April 12, 1918, page 6, which groups sales by sizes of sales; and on the statement made to the examiner (Vanderveer Custis) by T. C. Tucker, manager of the exchange giving the party who purchased these lots.

The question was asked by the committee as to the price paid by Armour & Co. for almonds purchased from the California Almond Growers' Exchange and as to the influence of that price on the market prices. Prices paid are shown in the letter of October 7, 1918, written by the exchange to the commission and quoted above. What the extent of influence of Armour's purchase on the market price is is purely a matter of speculation.

In re paragraph 5, page 264. Part IV, of the commission's report on the meat-packing industry the following is given from the interview on the part of the commission's examiner (Vanderveer Custis) with C. Thorpe, general manager of the California Walnut Growers' Association, September 20, 1918:

"Armour & Co. is just getting into the walnut business. Because of his grocery business and especially his large sale of nuts for soda-fountain use, he is a large purchaser of both unshelled and shelled nuts. This year he wanted to buy 25 carloads (about 300 tons) of unshelled nuts. The association sold him 11 cars. He wanted to buy 50,000 pounds of shelled walnuts, but the association has not so far sold him any and will not do so until the end of the season. As a purchaser of shelled walnuts Armour is a particularly desirable customer, since his soda-fountain supply business permits him to take nuts which while of good quality are unattractive."

STATEMENT REGARDING CHANGE IN PERSONNEL OF THE BOARD OF THE CALIFORNIA COOPERATIVE CANNERIES.

(Submitted by Mr. Durand in response to question by Chairman Galloway on page 2555 of this record.)

The question asked by the chairman, as furnished me by the reporter, was this:

"Would you just ascertain whether your record shows that three or four who were alleged to be agents of Armour & Co. did resign?"

The application for complaint named three persons as alleged agents of Armour & Co. on the board of trustees and stated that the place of one of these persons was subsequently taken by a fourth person, whom the applicant regarded as also an agent of Armour & Co. Thus, while applicant alleged that there were four persons in all as agents of Armour & Co. on the board of trustees, it was not claimed that there were more than three at any one time.

As respects the first person who severed his connection with the board, the statement of the applicant was simply that his "place was taken by" the fourth person above referred to. The commission's examiner in his final report referred to one of the other three as having been "left off the board of trustees" and to another as having "resigned, effective when the Canneries is able to make certain financial arrangements with him." When the applicant requested the withdrawal of its application for complaint one of the reasons assigned therefor was that two of the alleged agents of Armour & Co. are "now reported as having resigned as such trustees or as having become inactive in their connection with the canneries."

EXTRACTS FROM BOOK "COOPERATION IN AGRICULTURE," BY G. HAROLD POWELL,
GENERAL MANAGER OF THE CALIFORNIA FRUIT GROWERS' EXCHANGE.

(Submitted by Mr. Durand.)

On page 2286 of this record, following certain statements I made regarding the cooperative associations of California, the committee permitted me to furnish later in substantiation of my statements quotations from G. Harold Powell's works on the subject.

In accordance with this permission I refer to Mr. Powell's book on "Cooperation in Agriculture" (the MacMillan Co., 1913, one of the Rural Science series edited by L. H. Bailey). Without encumbering the record with an undue amount of quotation, I refer to chapter 1 of this book, especially page 1 to top of page 3, page 8 to top of page 13; and in chapter 2, entitled "Fundamentals in Cooperation," I refer to the following passage from the middle of page 21 to bottom of page 22:

"The reason for an industrial organization among farmers must lie in some vital service which it is expected to perform, if it is to have virility enough to live in the face of the competition to which every new farmers' organization is subjected. A farmers' business association can not be formed without competing with agencies already established.

"If it is a serious business undertaking, the forces of competition will be directed toward crushing it; it will be viciously attacked by its competitors; insidious suspicions of all kinds which are apt to influence the average farmer will be circulated regarding it; it may be crippled by the railroads through quiet discrimination in the furnishing of cars or in the extending of transportation facilities to its competitors, or by some other influence over which its competitors have control; and it is likely to fail at the start in the face of the fire which it will have to meet unless it is founded on the bed rock of necessity. Among farmers, who, under existing conditions, are already prosperous the need of business organization is not usually felt, even though the costs of marketing and the extravagant profits of the middlemen or the railroads might be greatly reduced. They must feel the pressure of need before they can launch a successful business association. When the farmers buy their supplies at reasonable prices, and sell their products readily at a good profit, they do not feel the necessity of organization. It has been the experience of the past that they must feel the need of getting together to meet a crisis in their affairs, and the realization of the need must spring from within and not be forced on them from without by the enthusiasm of some opportunist who seeks to unite the farmers on the principle that organization is a good thing. American agriculture is strewn with the wrecks of associations that were the outcome of high motives and impractical enthusiasm. It will continue to be filled with derelict associations as long as they are formed by professional organizers, by middlemen who seek to control the products of a community, or by impractical farmers who affiliate to fight some evil, but who fail to form on a broad, constructive basis for the upbuilding of the business side of their industry."

Respectfully submitted.

WALTER Y. DURAND.

ARGUMENT BEFORE INTERDEPARTMENTAL COMMITTEE.

THURSDAY, JANUARY 12, 1922.

The committee met in room 704, Department of Commerce, at 10 o'clock a. m., Hon. Herman J. Galloway (chairman) presiding.

The CHAIRMAN. Gentlemen, let us come to order and proceed with the arguments.

Does anyone representing those proposing a modification of this consent decree wish to make an oral argument?

Mr. CAMPBELL. Mr. Chairman, I feel that I do not wish to make an oral argument. I am preparing a brief that I will submit some time to-day to the committee, if that is entirely satisfactory.

The CHAIRMAN. Have you the brief prepared?

Mr. CAMPBELL. I have it in preparation, but the typist has not quite finished typing it. It is being typed. It will be done in an hour or two.

The CHAIRMAN. And you will file it then?

Mr. CAMPBELL. Yes, sir.

Mr. BREED. Mr. Chairman, if Mr. Campbell could get his brief and begin the reading of it, it seems to me it would be very helpful to those who oppose

modification to hear and listen to the arguments of those who favor a modification. We were somewhat embarrassed, as you remember, in the hearing, by the fact that the opponents, in large measure, were asked to go on and give their testimony without having heard the full list of those who proposed modifications, and, therefore, may not have been able to answer as well as they might such arguments as those who were in favor of it had to present. So I would suggest that Mr. Campbell, if he can do so, read his brief, to enable us to know what the points are that are made by those who favor modification.

Mr. CAMPBELL. My thought was, Mr. Chairman—I might be in error as to that—but my thought was that we were to prepare a résumé of the testimony as presented and add such few arguments as we thought were necessary. I did not prepare the argument or brief in a manner to be brought up as an argument here to-day, but simply as a résumé of the previous testimony. I do not believe I had any new arguments.

Judge HAINER. I suppose it is always the province of counsel to waive oral argument and submit their briefs, especially a man not being an attorney.

Mr. BREED. Of course, we will not have an opportunity to see this brief, and we also understood that the committee wished to have the briefs filed to-day.

The CHAIRMAN. Yes; to-day.

Mr. BREED. We are prepared to file our brief to-day, and we supposed the proponents would also.

Mr. CAMPBELL. I do not have it all typed, but the girl is now typing it.

Judge HAINER. Will you have copies made?

Mr. CAMPBELL. I do not have copies made. I made one for myself. I did not know we were to have oral arguments, but a résumé of the previous arguments and testimony. Not being an attorney, I am not prepared to make an argument here with the expectation of interesting the attorneys on the other side. I will submit to whatever ruling the committee makes, or may wish to make, with regard to the matter.

The point is this: Of course, personally I made no application for a hearing here, and my appearance here has been simply in the way of accommodation, not only for the Government but those on the other side.

The CHAIRMAN. I think, Mr. Campbell, that you should file your brief to-day some time and serve one copy on the opposing counsel. I do not feel that there is any necessity for a reading of the briefs here in the oral hearings. That was not the intention in furnishing the briefs.

Mr. STEVENS. In that case, Mr. Chairman, could we be granted sufficient time to read the brief and file a supplemental brief if we wanted to? That is customary, I believe.

The CHAIRMAN. If you do, he will ask for sufficient time to reply to your brief.

Mr. CAMPBELL. So far as I am concerned, Mr. Chairman, I am not interested, nor care particularly about answering the brief of the opposing counsel here.

The CHAIRMAN. Well, I think this is what we will do: We will give either side five days to reply to the brief of opposing counsel.

Judge HAINER. And file a memorandum.

The CHAIRMAN. Yes.

Mr. CAMPBELL. Then to-day, some time after luncheon, I think the brief will be ready, and I will bring it up and file it.

The CHAIRMAN. Does anyone else representing those proposing a modification of the decree wish to be heard?

Mr. BREED. May we ask, Mr. Chairman, whether any other briefs have been filed with the committee in favor of modification?

The CHAIRMAN. None.

Mr. BREED. If any other briefs are filed with the committee in favor of modification, may we have copies of those too?

The CHAIRMAN. You may.

Mr. STEVENS. And if such briefs are filed, may we also have five days to reply to those briefs?

The CHAIRMAN. We will give you five days from the time you receive it.

Mr. STEVENS. That is a rather short time.

The CHAIRMAN. The brief of a layman will not be much to answer.

Gentlemen, have those opposed to modification arranged among themselves any time for the order in which you wish to be heard?

Mr. BREED. Mr. Chairman, I would like to suggest that I, personally, would like to give way to Senator Smith, who represents the Southern Wholesale Grocers' Association, if that is agreeable to you?

The CHAIRMAN. The committee would be very glad to hear all of you, of course, and Senator Smith we will hear you, if you wish to precede the others.

Mr. BREED. I wish to make an argument, but I give way to Senator Smith in point of time.

The CHAIRMAN. Yes.

Mr. SMITH. And Mr. Watkins will wish to present some views.

The CHAIRMAN. We will be very glad to hear Mr. Watkins.

ARGUMENT OF HON. HOKE SMITH, REPRESENTING THE SOUTHERN WHOLESALE GROCERS' ASSOCIATION.

Mr. SMITH. Gentlemen of the committee, I have prepared practically all that I wish to say, in writing. I shall be able to furnish the reporter a copy of what I shall say; I shall adhere very closely to the memorandum I have before me, and such additions as I wish to make I will add and give him a copy of it, if I depart from my notes.

I addressed this to the committee and set out the title of the case, as follows:

Messrs. GALLOWAY, HAINER, and HALL,

Interdepartmental commission to hear evidence and report upon the advisability of the Department of Justice moving to modify consent decree entered in the Supreme Court of the District of Columbia February 27, 1920, in the case of the United States of America v. Swift & Co. et al.

The above referred to case was an action by the United States of America against the five big meat packers and numerous corporations and individuals associated with the five big meat packers, 127 in number and residents of different States.

HISTORY PRECEDING BILL AND FACTS UPON WHICH IT WAS FOUNDED.

On February 7, 1917, the President of the United States directed the Federal Trade Commission to "investigate and report facts relating to the production, ownership, manufacture, storage, and distribution of foodstuffs" and "to ascertain the facts bearing upon alleged violations of the antitrust acts, and particularly upon the question whether there are manipulations, controls, trusts, combinations, conspiracies, or restraints of trade out of harmony with the law or the public interests."

The Federal Trade Commission conducted its investigation for months.

I am now discussing the history of the proceedings that antedated the bill and the facts upon which the bill was founded.

The Federal Trade Commission conducted its investigation for months, and the facts which they discovered, together with their findings, are contained in five printed parts. The first part is entitled "Report on the Meat Packing Industry"; the second part, "Evidence of Combination Among Packers"; the third part, "Methods of the Five Packers in Controlling the Meat Industry"; the fourth, "Five Large Packers in Produce and Grocery Foods"; the fifth, "Profits of the Packers."

The story of the growth of the five big meat packers, as told in these five parts, of their marvelous increase in wealth and complete domination of practically one-half of the food supply of the country, would read like a fairy tale were it not amply supported by evidence. It shows their business has increased to over \$3,000,000,000 a year, and is equal to that of the 4,000 wholesale grocers of the United States. It shows cooperation amounting to combination between them, both as to prices paid to original producers and distribution of territory for sale of products. It declares, part 1, page 24:

"Not only is the business of gathering, preparing, and selling meat products in their control, but an almost countless number of by-product industries are similarly dominated; and not content with reaching out for mastery as to commodities which substitute for meat and its by-products, they have invaded allied industries and even unrelated ones."

Again, on the same page, is found:

"The producer of live stock is at the mercy of these five companies, because they control the market and the marketing facilities and, to some extent, the rolling stock which transports the product to the market.

"The competitors of these five concerns are at their mercy because of the control of the market places, storage facilities, and the refrigerator cars for distribution.

"The consumer of meat products is at the mercy of these five because both producer and competitor are helpless to bring relief."

Referring to foodstuffs, described as unrelated to the meat industry, on page 36 of the same part, the following statements are made:

"Canned fruits, vegetables, etc.: Fruit and vegetable canning and preserving are remote from slaughtering and meat packing, but the big packers, through ownership of refrigerator-car lines and their branch-house system of distribution possess special advantages for control of this field of industry. The Big Five's advantage in this field rests not so much on their ownership of canning factories, although in some branches their output amounts to more than a quarter of the total for the United States, as upon their rapidly growing control of the wholesale distribution of canned goods. Indicative of the size and rapid expansion of the packers' canned-goods business is the fact that Armour & Co. increased their canned-goods sales from about \$6,500,000 in 1915 to about \$16,000,000 in 1917, whereas the combined sales of these products by Austin Nichols Co. and Sprague, Warner & Co., two of the largest independent wholesalers, amounted to only a little more than \$6,000,000 in 1917."

On page 42 the following statement is made:

"Already even the oldest and most strongly established wholesale houses are seeing line after line of their merchandise absorbed by the packers' branch-house system. First, they saw the packers encroach on the handling of butter and eggs and cheese, then canned goods, then various kinds of 'package goods,' and now rice, sugar, coffee, and other staples are being increasingly handled by the packers. Last year the Big Five's combined sales totaled \$2,127,245,000. At the present rate of expansion, within a few years the big packers would control the wholesale distribution of the Nation's food supply."

Part 2 presents the evidence of combination between the five big meat packers. It gives the story and the evidence with reference to the Veeder pools and the National Packing Co., by the use of which competition between the big packers was eliminated, and shows how the combination still operates to eliminate competition.

I stop a moment to say that I call attention to these extracts from the Federal Trade Commission's report, partly because the question has been asked occasionally by the members of this committee as to what proportion of the unrelated foods the packers handled. That is not the real issue. The real issue is what proportion, and what did they do with that they concluded to handle? Wherever they have moved out into these unrelated foods their tendency has been monopolistic, and they have rapidly extended their domination over it as they did with the meats and those commodities related to meats. And that is the finding of the Federal Trade Commission, and that is the evidence contained in these reports.

Part 3 discusses and presents evidence of the activities of the five big packers in produce and grocery foods. On page 13 it is stated:

"These packers had entered the wholesale grocery trade, and in practically all the more important centers of distribution they bid fair to dominate a field which a few years ago was almost exclusively occupied by the independent provision jobber and wholesale grocer."

On page 31 of part 4, and on pages following, are pointed out the packers' undue advantages and unfair practices in competition. On pages 217 the entrance of Armour & Co. into the rice business was discussed. This subject is also discussed in other parts of the report, showing that Armour & Co. purchased large quantities of rice, withdrew some from the market, left certain sections without rice, and then advanced the price 65 per cent, and then sold. That story is the story of monopoly, the exclusion from use by purchasers and by communities, and finally increasing the cost 65 per cent.

Part 5 discusses the profits of the packers, their enormous increase of capital through profits, and their ability to dominate any line of foodstuffs which they handle.

EVIDENCE PRESENTED TO THE DEPARTMENT OF JUSTICE.

This is a brief outline of the situation and of the evidence brought to the attention of the Department of Justice before the bill in the case of the United States v. The Big Packers was filed in February, 1920. It was in view of the

accumulated facts that were in reach of the Department of Justice that the packers offered a consent decree by which certain of their methods as to meat and allied products should be restrained, and by which they should be excluded from broadening their monopoly in what has been termed "unrelated products." It has been pointed out to the commission that the term "unrelated products" is perhaps a misnomer, for all foodstuffs are competitive, as all foodstuffs can furnish subsistence. The prices of the foodstuffs called unrelated where the difference between those prices and the prices of meat products is great, increase the consumption of the unrelated foodstuffs and thereby lessen the consumption of meat. To prevent the big packers from dominating unrelated foodstuffs helps hold down the price of meats. To enable them to control all foodstuffs would put it within their power to increase the price to the ultimate consumer of everything he eats.

Realizing the danger from this accumulated evidence the packers consented to the decree taken in the case under consideration.

I entertain no doubt that the evidence at hand was sufficient to have obtained from the court every provision of restraint found in the consent decree.

The original petition by the United States in the case alleged that the packers had eliminated competition in meats and had set about controlling the entire food supply of the country, and those referred to as unrelated to the meat business.

The following is the allegation in the petition upon this subject:

"Having eliminated competition in the meat products, the defendants next took cognizance of the competition which might be expected from what we here refer to as substitute foods. Their experience had taught them that if meat prices advanced out of proportion to that of other substitute foods, the consuming public manifested a tendency to turn to such substitutes. To prevent this the defendants set about controlling the Nation's supply of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other substitute foods ordinarily handled by the wholesale grocers or produce dealers. To accomplish this purpose the defendants availed themselves of the advantages afforded by the refrigerator cars, route cars, auto trucks, branch houses, and storage warehouses owned or controlled by them. These facilities, intended primarily for the sale of meats, were employed with comparatively no increase of overhead in the distribution of the substitute foods and unrelated commodities. The defendants were enabled thereby to reach remote spots. This advantage was also employed temporarily"—mark the word "temporarily"—"to fix prices so low as to gradually eliminate competition.

"These attempts to monopolize have resulted in complete control in many of the substitute food lines. They have made substantial headway in others. The control is extensively and rapidly increasing. New fields are gradually being invaded, and unless prevented by a decree of this court the defendants will within the compass of a few years control the quantity and price of each article of food found on the American table."

That is the allegation made by the United States of America in this bill.

Among other things, the consent decree enjoined the defendants from handling the foods termed unrelated to the meat business.

THE LEGALITY OF THE DECREE.

It has been suggested that proof should be presented to show that the packers violated the antitrust laws with regard to unrelated products, for without such proof there was no ground for the restraining order preventing them from handling such products. The evidence within the reach at that time of the Attorney General is elaborately presented by the Federal Trade Commission. It clearly shows combination and monopoly by the Big Five packers in the meat business; it clearly shows that in the extension of their business to related commodities, such as butter and cheese and like products, their methods were monopolistic and their treatment of any commodity that they took hold of eliminated competition. The evidence also shows that the same methods were followed as to unrelated foodstuffs, such as canned goods. And even as to rice the evidence before the Federal Trade Board disclosed the fact that immediately Armour & Co. obtained control of a large quantity of rice at low prices, holding it off the market for several months, leaving many without rice, when the public was being urged to use it in place of wheat products, communities were deprived of rice by reason of this holding, and the same was finally sold at a substantial increase.

Taken in connection with their past record in other commodities, any court or jury to which the subject might be submitted must have found well-justified apprehension that the antitrust acts would be violated if the five big packers were allowed to engage in handling unrelated foodstuffs, and that this would prove an injury to others engaged in the business, to producers and to the public. It is not necessary that the actual injury come upon the public, upon the producers, or upon those engaged in similar business before the court will enjoin action likely to lead to such results.

The Supreme Court of the United States in the case of the Vicksburg Water Co. v. Vicksburg, in 185 U. S., page 65, 46 Law Edition, 808, held that a reasonable apprehension that the wrong would be committed is sufficient to sustain an injunction to restrain the evil threatened.

We need not turn to the decisions of the courts to sustain this view, for the Clayton Act expressly provides in section 16:

"That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief in any court of the United States having jurisdiction of the parties against threatened loss or damage by a violation of the antitrust laws, including sections 2, 3, 7, and 8 of this act."

With the record made before the Federal Trade Board, the decree given by consent could have been sustained by proof. Indeed, the decree might have gone much further. The five big packers realized the situation, and gave their consent to the decree. Congress has had the entire subject before it; it has legislated with knowledge that this consent decree restrained the packers from broadening their monopoly by engaging in the handling of foodstuffs unrelated to meat products. No suggestion of objection to this decree was made before the Senate Committee on Agriculture, which heard much evidence on the subject. It was the necessity of going further and still more fully protecting the public that occupied the thought of the Representatives of the people in the Congress.

The packers' control act was to take care of the public still further and was drawn in reliance upon the continuation of the consent decree now under consideration. It is scarcely conceivable that the Government, with the history of the packers fully developed in the published reports of the Federal Trade Board, should now ally itself with the packers and consent to, much less move, a modification of the consent decree.

It has been suggested that the decree, by taking the packers out of the business of handling unrelated foodstuffs, lessens competition. It is hardly necessary to reply that the packers have never touched a commodity which they handled without lessening or destroying competition. There are more than 4,000 wholesale grocers engaged in handling foodstuffs. They are scattered all over the United States, with the most active competition between them. The return of the packers to the handling of unrelated foodstuffs would eliminate the wholesale grocery merchants in these lines, which the packers determined to handle, and would destroy—not increase—competition.

If this decree is set aside, the packers will control the food supply and drive the wholesale grocers out of business:

In support of the above statement, I cite the findings of the Federal Trade Board:

"At the present rate of expansion, within a few years the big packers would control the wholesale distribution of the Nation's food supply."

I cite also the petition filed in this case by the United States of America, in which it is charged, with reference to these five big meat packers:

"Their attempts to monopolize have resulted in complete control in many of the substitute food lines. They have made substantial headway in others. The control is extensively and rapidly increasing. New fields are gradually being invaded, and unless prevented by a decree of this court the defendants will, within the compass of a few years, control the quantity and price of each article of food found on the American table."

This is the solemn charge of our Government, through the Department of Justice. Do you intend to recommend that this charge be withdrawn or stricken from the pleadings? While it stands, you can not recommend that the decree be modified.

But it is easy to see, without these statements from the Federal Trade Commission and the Department of Justice that the big packers now have control of so much of the food supply of the country, which the retail merchant must buy, that he can not afford to decline the purchase of any other commodity pressed upon him by the big packers.

I stop here, gentlemen, to say that if we were to allow them such power to dominate the food supply on their part, the situation which I am about to mention, in my opinion, would make it easy for them to control any commodity which they undertake to sell.

If part of the retail merchants should insist upon doing business with the wholesale merchants in lines handled by either of the big packers, would not the big packers inevitably give preference to the retailer who purchased all of his supplies from them? Would the retailer dare decline the purchase from the monopoly which controls almost one-half of the goods he must buy? The volume of goods required by the retailers, already controlled by the big packers alone, would enable them to force the retailer to purchase from them all goods which they handled and enable an expansion of their monopoly to everything which goes upon the American table.

They now control meat and related products. The retail merchant must buy his supplies from them. As they advance their business into unrelated products and ask their customer, who must buy nearly half of what he uses from them, to take their additional goods as they add additional lines, that retailer who takes from them will get preferential service from them as to the commodities which he must have, and only a reasonable degree of intelligence will prompt the retail merchant to buy from the Big Five any commodity they determine to handle. It is the only safe way for him to do business, and their domination of so great a part of the food supply makes it easy for them to dominate any additional line they determine to handle.

Turn the big packers loose again to handle unrelated foodstuffs, which they are now, by the consent decree, prevented from handling, and in a few years there will be no wholesale grocers, and the foodstuffs of the entire country will be distributed and controlled by the five big packers. If they had no other advantage, their control over so large a portion of the foods required by the retail grocer would enable them to control all the food supply they desired, and the monopoly of the big packers would be substituted for the competitive business now being conducted by 4,000 wholesale grocers.

There are 400,000 retail grocers in the United States. Their national association has passed resolutions urging that this decree be not modified. It is no wonder that they passed such resolutions protesting against a modification of this decree, which would turn loose the big packers and enable them to control the goods which the retail grocer must buy.

The powers of the big packers over the retailer is shown in the story given you by Mr. Stevens, describing conditions in his State of Vermont. There, he told you, Swift & Co. controlled the entire meat supply of the State. I understand from him that that is largely true, although some meat is sold in the State by one or two of the big packers, but practically all the meat that is sold in the State is sold by Swift & Co. A few years ago sheep and beef were raised and butchered in Vermont and sold there at fair prices, making it profitable to the producer and more economical to the consumer. Now the butchers will not handle mutton or beef coming from the farm. Why will they not handle it? Because their supply is dependent upon Swift & Co., and they do not dare encourage competition against that company. They may not have been told to avoid this competition by domestic production; but if they possess an iota of intelligence, they would understand how little this development of competition would be relished by a corporation controlling the supplies for their business and upon which they are dependent. So Mr. Stevens told you of having butchered a fat young cow and how he was unable to obtain a market for it. The butchers could not afford to buy and sell it, except it came from the big packers. They were practically dependent upon them for the bulk of what they sold, and they had sense enough to know that competition would not be allowed. So the power they have, dominating practically one-half of the commodities that the retail merchant must sell, puts it easily within their power to compel the retail merchant to buy from them any additional commodity they undertake to handle.

SHOULD THE DEPARTMENT OF JUSTICE AND THE ADMINISTRATION AID IN BRINGING ABOUT AN INCREASED MONOPOLY IN THE FOOD SUPPLY BY TURNING OVER THE BUSINESS OF THE WHOLESALE GROCERS TO THE PACKERS?

It is easy to answer this question. Regardless of its effect upon the producer and consumer, the administration has no right to aid in bringing about such a result, because the law of the land forbids it. The law of the land, embodied

in the Sherman Antitrust Act and the Clayton Act, forbids monopolies and forbids those things which tend to a monopoly. The administrative branch of the Government has no right to disregard the policy of the country, established by congressional action, even should it believe that a change would be beneficial. The administration can not help to violate the law, even if it should believe that the producer and the consumer would be benefited thereby. But no such conclusion as to the public benefit can be urged. No one can fail to see that the monopolistic policy of the packers is less beneficial both to the producer and the consumer than the present competitive system of distribution by the 4,000 wholesale grocers.

The wholesale grocers have their warehouses and storehouses where goods in carload lots are stored from various parts of the country. These commodities which they handle must be assembled; they must then be distributed to the retailers. Salesmen are necessary for their distribution. The wholesale grocers make a profit of 2 per cent. Their cost of distribution has been shown to be economical—less than 10 per cent.

And let me stop here a moment to say that the transportation by the wholesale merchants in carload lots, as distinguished from the transportation by the retailers in broken lots, saves, as a matter of distribution, as much and more than the wholesalers make; more than 2 per cent is saved in freight by bringing these commodities in carload lots rather than by the retailer through his rather small orders.

They are the bankers for the manufacturers of foodstuffs in many instances. The canners of California show that they are financed through their advance sales to the wholesalers, and thus they are enabled to purchase from the producer. Again, the wholesale grocers extend credit to the retailers and in a sense are their bankers. This enables the retailer to extend credit to his customer. A majority of the final consumers depend upon this credit from the retailer. Few purchase for cash. Many do not settle at the end of 30 days. In times of stress the man temporarily out of a job is not deprived by the retailer of food, if his character is good, but the retailer relies upon his honesty and credits him for the food required for the daily needs of himself and family. This is one of the reasons why, even during the past two years, when many have been out of employment and times have been hard, so few in America have suffered from lack of food. The wholesale grocery merchant is the banker who makes this condition possible. Destroy this system by turning it over to a monopoly of the five big packers and you will have a weekly settlement system immediately substituted and you drag down the economic system upon which more than one-half of the people of our country depend for their food.

We may say that the cash system is more economical in one sense than the credit system; in one sense it is, but we have built up this credit system. It is a part of the system of our country, and it helps to relieve suffering, it helps to relieve distress, and it is an enormous service to the people as a whole. And while the man who pays cash might be able to buy a little cheaper if the cash system was entirely in force, it is because he has ample means, and this contribution from him through the system that we have built up toward the needy is one that we can not afford to destroy and one to which he ought to be willing to contribute.

We do not urge that the system is perfect. We believe there is room for improvement.

I heartily indorse every movement looking to the cooperation by producers for the sale of their commodities as directly as possible to the ultimate consumer or to whomever is their best customer. But the wholesale grocer will always be an essential part of our distributing system, regardless of the growth of cooperative selling by the producers. We should seek to improve the system. We should not substitute monopoly on the part of the big packers and destroy it.

I had the privilege of presenting in the Senate a bill under which the Bureau of Markets in the Department of Agriculture was created. The object of this bureau was to study the needs of communities and sales by original producers and to do all possible to eliminate waste and bring about economies in marketing. Nearly every State in the Union now has a bureau of markets. Much is being accomplished in this way. I believe in encouraging it. The establishment of a monopoly in the hands of the big packers, however, would destroy it, not help it.

PARTIES URGING MODIFICATION.

The suggestion that the advantages derived, by the public from the packer decree should be modified and the packers turned loose to handle unrelated foodstuffs was presented by Mr. Vernon Campbell and supported by Mr. Dallas H. Gray, both from California. It was also presented by Messrs. La France and Salesman, of Ohio, representing the National Kraut Packers Association, by certain small canners from Virginia and Maryland, and by Mr. Roland Morrill, of Michigan.

Mr. Campbell had given months of his time to seeking a modification of the consent decree and to inducing the Department of Justice to move for such modification. He was connected with a cooperative canning plant in California to which Armour & Co. had loaned \$250,000, and which still owed Armour & Co. \$200,000. Mr. Campbell's company had given Armour & Co. a 10 years' contract for the sale of its output. The most persuasive appeal to Mr. Campbell to furnish for publication a copy of this contract between his company and Armour & Co. did not prevail. He declined to make the contract a document of record. That Armour & Co. were thoroughly identified with the cooperative canning company represent by Mr. Campbell can not be doubted.

Mr. McKinney, secretary of the California Canners' League, stated that he had visited the California Cooperative Canning Co., represented by Mr. Campbell, and that this canning company was known to the trade as the Armour cannery, and that whenever he went on business to the office of this company a traffic manager of Armour & Co. always sat at the table opposite him. It is but natural that a company so closely identified with Armour & Co. should desire the return of Armour & Co. into the trade. Indeed, when Mr. Campbell pleads for a modification of the consent decree so as to permit Armour & Co. to be relieved of its provisions we are almost persuaded that Armour & Co. desire its modification.

But neither Mr. Campbell nor his company represent the wishes or the interests of the fruit growers, canners, or fruit packers of California.

Mr. Gray spoke long and fluently. He plead for cooperation among the fruit growers. This part of his speech, so far as it was practicable, we thoroughly indorse. However, how the presence of the five big packers would help a cooperative movement of fruit growers he never disclosed. On the contrary, it appeared that, since the packers had been enjoined from handling unrelated foodstuffs, the California Association of Raisin Growers, which is a cooperative association, has grown rapidly and now handles more than 90 per cent of the raisins of California. And they have taken no part in the movement looking to a modification of the consent decree. Mr. Gray complained bitterly of the treatment he had received in different parts of the United States, and particularly in New York City. There he specified the parties, and the answer came promptly with crushing force showing that at least Mr. Gray was mistaken in his charges.

From California we had Elmer E. Chase and Mr. Preston McKinney. Mr. Chase is president of the Canners' League of California, comprising about 90 per cent of the canners of that State. He spoke for the canners of California and urged that the decree be not modified, as it would mean the reentrance of the five big packers into the canning business and would be most disastrous to the canners. In addition to this organization, Mr. Chase represented, by appointment, the Dried Fruit Association of California, which represents over 90 per cent of the dried-fruit output of that State. Included in that organization, he said, are the three cooperative fruit growers' associations—the Raisin Growers' Association, with a membership of about 14,000; the Prune and Apricot Growers' Association, with a membership of 11,000; and the Peach and Fig Growers' Association, with a membership, the exact number of whom he was unable to recall; and also all the principal independent fruit packers. His testimony was:

"The total membership represented by these dried-fruit associations is in the neighborhood of 35,000 grower members. I think it is significant that practically all of the dried-fruit interests of the State of California and nearly all of the canned-fruit interests, also, object and protest against any modification of this decree which would permit the meat packers to again handle their product."

Mr. McKinney, secretary of the California Canners' League, furnished you with statistics and definite information as to the attitude on this subject of the canners and growers, and showed you that their desires and their interests re-

quired that the five big packers be kept out of the business and that no modification be made of the decree. The chambers of commerce of the leading cities of California also entered their emphatic protest against the modification. You can not doubt from the evidence that the overwhelming conviction of the growers and cannerymen of fruits in California, and of the handlers of dried fruits in California, is opposed to any modification of this decree.

Finally, Senator Shortridge, of California, appeared before you. He read telegram after telegram, letter after letter, together with a mass of resolutions from his State, protesting against the proposed modification of the consent decree and picturing the injury, both to the growers and the cannerymen, which would result should the five big packers again be permitted to handle the products so largely produced in California. You could not doubt, from the attitude of Senator Shortridge, having at heart the best interests of the people of his State, his conviction that the people of his State were opposed to any modification of the decree, and that the interests of the people of California would be injured by such a modification.

The movement for a modification of the decree, if it did not originate in the office of one of the five big packers, originated in California. It was reported that the modification was proposed in the interest of the California fruit growers. California was presented as the State to be benefited in largest measure. You have heard from California. And you can not escape the conviction that California is opposed to a modification of the decree, and that the producers, the fruit driers, and the cannerymen of that State view even the suggestion of a modification with alarm. If California, reported to be the State to receive the greatest benefits from the modification, repudiates the suggestion and protests against the reinvansion of the field by the big packers, what advantage can there be to the remainder of the country—except to the packers?

Next come Messrs. La France and Slessman, representing the National Kraut Packers Association. The former stated that he had been requested to present the resolutions of the national association, he supposed, because his relations with the meat packers had been pleasant. He was not present when the resolutions were passed and advanced no valid argument for relieving the packers from the decree entered by their consent.

Mr. Slessman, capable of irritation even by a tone of the voice, was quite earnest as an advocate of the cause of the packers. This was not unnatural, as a majority of the stock in his company was at one time owned by Armour & Co. However, he advanced no argument in favor of the modification, but devoted most of his time to a criticism of the resolutions passed by the Western Cannerymen Association objecting to a modification of the consent decree.

There were representatives from seven small cannerymen of Maryland and Virginia who expressed a desire that the decree should be modified. They insisted that in 1920 and 1921 the wholesale and retail grocery merchants had not been as active in handling their goods as they thought should have been the case, and it was their belief that the packers would have done more with their output. Upon further examination it was developed that they had canned their goods from fruits and vegetables purchased in the early part of 1920, paying high prices for their raw tomatoes, and they had not lowered prices in the latter part of 1920 and in 1921 on the goods. It was further developed that the wholesale and retail merchants of the country were all loaded up with canned goods, especially canned tomatoes; that prices on these commodities had fallen and that it had been necessary for the merchants to take a loss in order to dispose of such canned goods. It was also brought out that the Government had a large supply of canned goods that it was placing on the market at reduced prices. So that finally it was perfectly evident that neither the packers nor anybody else could have handled the canned goods of these seven cannerymen at the prices they sought to sell, because the market had dropped and the sales were being made by the merchants themselves at prices much lower than those which these seven cannerymen wanted for their goods. And this seems to me to answer completely their suggestion.

Mr. Morrell brought from Michigan a complaint that the removal of the packers from the business of handling fruits had injured the fruit growers of Michigan, because the packers had a supply of cars, before they were removed from the business, which were used in Michigan for handling fresh fruits, and the handling of the fresh and canned fruit by the packers was a substantial advantage to the growers and cannerymen in Michigan.

Investigation since the hearing has brought to me information which I call to your attention, and which I have substantially in a letter from the Fruit Growers' Express. The commission can obtain the facts readily.

Investigation since the hearing has brought to me the information that the fruit cars handled in Michigan by the big packers prior to the decree were purchased by the Fruit Growers' Express Co., which is an organization independent of the railroads, but whose directors are connected with the 14 eastern lines. This refrigerator car association purchased from the Armour interests in May, 1920, 4,280 refrigerator cars. In addition, they purchased 1,000 refrigerator cars from the Chicago & Eastern Illinois Railroad. These facts are of record on page 93 of the publication entitled "The Railway Equipment Register." Those facts we get from that publication. I have been advised that the Fruit Growers' Express Co. has continued the refrigerator service which the Armour interests had previously performed, and, in fact, have taken over practically all of the old organization. The traffic man in the State of Michigan, who served the Armours' Fruit Growers Express for 15 years, now holds the same position with the new organization. Indeed, the Armour company did this business under the name of the Fruit Growers' Express (Inc.). First it was the Fruit Growers' Express (Inc.), and now it is the Fruit Growers' Express Co. The same kind of contracts are made with the railroads. This new organization has taken over not only the refrigerator cars but the icing stations, as well, of Armour & Co.

I am further advised that during the season of 1920 the Fruit Growers' Express Co. handled 8,800 carloads out of Michigan. This is one-third more than had been handled in any one season since 1911 by the Armour Fruit Growers' Express.

With the fruit crop estimated at about 25 per cent of normal in the season of 1921, the Fruit Growers' Express Co. hauled more than 4,300 refrigerator carloads out of Michigan, and I am advised that at no time during the past season was there any shortage of refrigerator cars which they were offering in that territory. This information I get from the Fruit Growers' Express itself.

It is said that this new company was congratulated by the farm bureau of Michigan for its excellent service during the season of 1920.

In a letter dated January 5, 1922, Mr. E. J. Roth, general manager of the Fruit Growers' Express Co., advises that as to the carloads of perishable fruits and vegetables handled out of Michigan in cars supplied by the Fruit Growers' Express (Inc.) prior to May 1, 1920, and by the Fruit Growers' Express Co. (the new company) subsequent to that date, the figures from 1911 to date as are follows:

	Carloads.		Carloads.
1911-----	6, 678	1918-----	2, 086
1912-----	3, 907	1919-----	5, 058
1913-----	2, 558	1920 (the first year that the new	
1914-----	6, 375	company operated succeeding	
1915-----	3, 872	Armour & Co.'s company)-----	3, 869
1916-----	4, 001	1921-----	4, 322
1917-----	3, 428		

These facts mentioned above are within your reach and are subject to your investigation, and from them it would certainly appear that Mr. Morrill is mistaken when he claims that the Michigan fruit growers have in any way suffered from the removal of the big packers from the business of handling fruits.

As against Mr. Morrill's view upon this subject, Mr. Roach appeared before your committee and insisted that the interests of the cannery and fruit growers of Michigan required the retention of the consent decree in its present form.

I have fairly reviewed the only evidence presented to you as a reason for action by the Department of Justice favorable to the packers. If there had been nothing before you but the statement made by those who favored the modification of the decree, the Department of Justice could not afford to act in this matter and align the Government on the side of further packer domination of the food supply of the Nation. But this feeble evidence presented in favor of a modification of the decree was overwhelmingly answered by those opposed to it.

I have called your attention to the reply from California voiced by 80 per cent of the canning industry, by 95 per cent of the dried-fruit industry, by the chambers of commerce, and by those speaking for an overwhelming majority of the fruit growers. This evidence places the interests of the greatest fruit growing State in the Union seriously in jeopardy if the decree should be modified.

I have shown the feebleness of the statement from the sauerkraut association and their connection with Armour & Co. I have shown how unsound was the view of the small canners of Virginia and Maryland. I have called your attention to the fact that Michigan received more service from refrigerator and fruit cars since the packers were divorced from the unrelated lines than the State received prior to that time.

On the other hand, you have opposing the modification of the decree representatives of the following organizations appearing before you and entering their earnest protest against a return to the old order of things:

- Canners' League of California (90 per cent of the canners of California).
- Dried Fruit Association of California (95 per cent of dried fruit output).
- Western Canners' Association.
- Dried Fruit Association of New York.
- W. R. Roach & Co. (representing 4,000 Michigan growers).
- Rice Millers' Association.
- People's Reconstruction League (comprising 20 farmer and labor organizations).
- National Consumers' League (represented by Miss Kelley, 40,000 consumers).
- National Retail Grocers' Association (retail grocers number 400,000).
- National Chain Stores' Association of the United States (35 companies, 50,000 stores).
- National Coffee Roasters' Association.
- National Retail Tea and Coffee Merchants' Association.
- National Food Brokers' Association.
- H. O. Cereal Co.
- Cocoa and Chocolate Manufacturers' Association.
- National Wholesale Grocers' Association (numbering over 1,300 wholesalers).
- Southern Wholesale Grocers' Association (numbering over 2,000 wholesalers).
- Grocers and Importers' Exchange of Philadelphia.
- Wholesale Grocers' Sales Co., of Philadelphia.
- Ohio Wholesale Grocers' Association.
- Illinois Wholesale Grocers' Association.
- Michigan Wholesale Grocers' Association.
- Arkansas Wholesale Grocers' Association.
- Wholesale Grocers of Vermont.
- St. Louis Wholesale Grocers' Association.
- Boston Wholesale Grocers' Association.
- Iowa-Nebraska-Minnesota Wholesale Grocers' Association.
- New England Executive Association of Wholesale Grocers.
- Federal Trade Commission.

Of course, all of these parties have come before you as the representatives of their own interests. But their interests are so varied and so far-reaching that they represent an enormous number of people. The evidence before you, however, does not stop here. You have the evidence of the Federal Trade Commission. You have their five volumes of evidence, and you have the chairman of this commission coming before you to protest against a modification of the decree. The Federal Trade Commission appears as the representative of a branch of the Government created to investigate questions of this character with no interest except that of the public good.

You have also the following expressions from two members of the President's Cabinet: Senator Weeks, now Secretary of War, wrote Senator Kenyon in December, 1919, in part as follows:

"As I see it they (the packers) are gradually reaching out and either temporarily or permanently controlling other food products.

"I am told, for example, that the Cudahys are building enormous canning factories in the Hawaiian Islands and purpose controlling the canned pineapple industry, which is a very important one there, as you know. I do not think that that kind of activity should go on. It would be unthinkable and certainly unbearable to permit a half dozen men or a half dozen firms to obtain control of the food supply of this country, even assuming that it would, on the whole, be efficiently managed. * * *

"If you could work out a solution of this difficulty which would divorce the packers from handling of any food products not related to the legitimate packing industry my impression is that you would leave that part of the high cost of living problem in the best possible shape."

Again, in a letter to the President, dated September 11, 1918, Mr. Hoover, now Secretary of Commerce, referred to the packer activities as follows:

"I scarcely need to repeat the views which I expressed to you nearly a year ago that there is here a growing and danger domination of the handling of the Nation's foodstuffs.

* * * * *

"Through their practical railway privileges, the numerous branch establishments, the elimination of wholesale intermediaries, and with large banking alliances, this group have found themselves in position not only to dominate the distribution of interstate animal products, but to successfully invade many other lines of food and commodity preparation and distribution. Their excellence of organization, the standing of their brands, and control of facilities now threaten even further inroads against the independent manufacturers and wholesalers of other food products. They now vend scores of different articles and their constantly increasing list now approaches a dominating proportion of the interstate business in several different food lines.

* * * * *

"Of equal importance is the fact that their strategic advantage in marketing equipment, capital, and organization must tend to further increase the area of their invasion into trades outside of animal products.

* * * * *

"The worst social result of this whole growth in domination of trades is the undermining of the initiative and the equal opportunity of our people and the tyranny which necessarily follows in the commercial world.

* * * * *

"Another phase of the question lies around the fact that I feel the solution propounded by the Trade Commission will not entirely solve the problem of the invasion of many other lines of food handling besides animal products. This portion of their business is more largely supported by their larger credits and their elimination of the wholesale grocer, rather than upon railway privilege. As to whether such goods can be vended more economically direct than through the wholesaler is a matter of much contention. It seems to me, however, that this whole phase of absorption of other food industries requires consideration. It appears to me at least worth thought as to whether these aggregations should not be confined to more narrow and limited activities—say those involved in the slaughter of animals, the preparation and marketing of the products therefrom alone."

Mr. Hoover is taking the broad view of the subject, the preservation of independence, the preservation of the opportunity for initiative, the preservation of the opportunity that is to be left to the average man to do business for himself, as well as the independence of the buyers.

Again I call your attention to those appearing in behalf of modification of the consent degree and those opposing it. I just put them side by side that the eye might grasp it as well as the mind. It seems to me it is an impressive list.

Mr. Smith handed to the committee a list of those for modification and those against modification, in the following form:

For modification: California Cooperative Canning Co.; National Kraut Packers' Association; certain small canners from Virginia and Maryland; three oyster canners from Pennsylvania; Mr. Dallas H. Gray, for himself; Mr. Morrill.

Against modification: Canners' League of California; Dried Fruit Association of California; Western Canners' Association; Dried Fruit Association of New York; W. R. Roach & Co. (representing Michigan growers); Rice Millers' Association; People's Reconstruction League; National Consumers' League; National Retail Grocers' Association; National Chain Stores Association; National Coffee Roasters' Association; National Retail Tea and Coffee Merchants' Association; National Food Brokers' Association; H. O. Cereal Co.; Cocoa and Chocolate Manufacturers' Association; National Wholesale Grocers' Association; Southern Wholesale Grocers' Association; Grocers and Importers' Exchange of Philadelphia; Wholesale Grocers Sales Co. of Philadelphia; Ohio Wholesale Grocers' Association; Illinois Wholesale Grocers' Association; Michigan Wholesale Grocers' Association; Arkansas Wholesale Grocers' Association; Wholesale Grocers of Vermont; St. Louis Wholesale Grocers' Association; Boston Wholesale Grocers' Association; Iowa

Nebraska-Minnesota Wholesale Grocers' Association; New England Executive Association of Wholesale Grocers; Federal Trade Commission.

The total of your hearing is a weak request for a modification of the decree to allow the packers to engage in handling all classes of foodstuffs, with an overwhelming protest from citizens engaged in various lines of occupations against the modification, and with the citizens supported in their contention by the Federal Trade Commission and expressions from two members of the present Cabinet.

The Big Five are now enjoined from handling certain foods. What would be the attitude of the Department of Justice if you should recommend, and the Attorney General should seek, a modification of the decree to permit the Big Five packers to engage in the business of handling all classes of foodstuffs? To do this the Department of Justice must disregard the evidence contained in the report of the Federal Trade Commission and the recommendation of this arm of our Government, created for the purpose, in part, of making just such investigations as it did make of the Big Five meat packers.

If you should recommend and the Department of Justice should adopt this policy, the complications surrounding the procedure would have just begun. How would the Attorney General proceed? Would you have him move to vacate a portion of the decree? If so, he must also move to amend the original petition filed in the case, for that petition shows cause for all the decree accomplishes, and if he should move to modify the present decree without moving to amend the original petition, he would be called on to sustain a more far-reaching injunction against the Big Five packers than that covered by the present consent decree.

What attitude would the Department of Justice occupy if the Attorney General moved to strike the charges of combination and monopoly contained in the petition brought against the Big Five packers? If you recommend such a course you would have the Department of Justice striking the allegations of monopoly in the original petition and giving the Big Five packers a clean record, when the charges in the petition are sustained by the evidence and report of the Federal Trade Commission, and when you have heard nothing to contradict their conclusions.

If a motion to modify the decree ever reached the stage of taking evidence, the Department of Justice would be confronted by a long drawn out fight, for the interveners would, of course, fight for the right to exist in business.

The consent decree is, in effect, a contract between the Government of the United States, acting as trustee for the public with a general interest, and for interveners with a special interest and the packers. Consent decrees are agreements of record between the parties. These interveners are now permitted by the court to represent their special interests and to speak for themselves. A consent decree can not be modified except by the consent of the parties legally before the court when the modification takes place. These interveners will never consent.

Now let me call your attention to some authorities upon that subject contained in the first brief that I filed.

In *Pacific Railroad Co. v. Ketchum* (101 U. S. 289, 297; 35 L. Ed. 932, 936), the Supreme Court of the United States said:

"Parties to a suit have the right to agree to anything they please in reference to the subject matter of their litigation, and the court, when applied to, will ordinarily grant effect to their agreement if it comes within the general scope of the case made by the pleadings. It is within the power of the parties to this suit to agree that a decree might be entered for a sale of the mortgaged property without any specific finding of the amount due."

The principle is stated in 23 Cyc. at page 733, as follows:

"A court has power to open or vacate a judgment entered by consent or agreement of parties, on adequate grounds, but it can not alter or correct it, except with the consent of all the parties affected by the judgment; nor can it set aside such a judgment after the expiration of the time allowed by statute for instituting proceedings for that purpose."

To sustain the principle numerous authorities are cited.

In *Daniell, Chancery Practice*, volume 1, page 79 d, the learned author says: "After a decree has been made of such a kind that other persons besides the parties on the record are interested in the prosecution of it, neither the plaintiff, nor defendant, on the consent of the others, can obtain an order for the dismissal of the bill. Thus, where a plaintiff sues on behalf of himself and all other persons of the same class, although he acts on his own mere motion, and

retains the absolute dominion of the suit until the decree, and may dismiss the bill at his pleasure, yet after a decree he can not by his conduct deprive others of the same class of the benefit of a decree if they think fit to prosecute it."

The court, in *Collins v. Taylor's Executors*, 4 N. J. Eq. 163, said:

"After decree made establishing right of legatees to recover on a bill filed by one of several legatees, the complainant can not after such decree dismiss his bill to the prejudice of the other legatees."

Originally the United States of America represented the public interests and the special interests concerned in this decree. Now, by the order of the court the wholesale grocers are looking after their special interests themselves and are parties. They are now before the court. It takes the consent of all the parties at interest to modify this decree. And if the Department of Justice should make a motion to modify this decree I insist that it would be subject to demurrer, because it can only be modified in its essential features by the consent of the parties, and the wholesale merchants, who were parties in interest before, though not actual parties, parties recognized as parties in interest by Justice Stafford in his decision overruling the motion to strike the Southern Wholesale Grocers, for he said, "They abandoned the pursuit of other remedies in reliance on this decree. The protection offered them by this decree might have been secured in a proceeding in their own name and behalf. The change suggested would leave them in an embarrassing position in now seeking to secure the same protection."

I differ slightly from those associated with us now in that we insist—and insisted in our intervention—that we participated with the Attorney General in the study of this question, that through counsel—Mr. Watkins—we were in touch with the procedure, and while not actually named as parties, we were in reality participating and parties, being the beneficiaries of that decree. And now we are actual parties, parties in name as well as parties in interest. We have ceased to be the beneficiaries of the work of the Department of Justice, and we are speaking for the special interest ourselves in this litigation, and our consent is essential to the modification of this decree in any substantial way, and any motion to modify would meet demurrer upon the ground that it can only come from all the parties at interest before the court.

It is claimed that the eighteenth provision of the decree would authorize an application to modify the decree to the extent of striking the provision which excludes the Big Five packers from handling foodstuffs unrelated to the meat business. We contest with great confidence such a construction of the eighteenth provision of the decree. It reads as follows:

"Eighteenth. That jurisdiction of the case be, and is hereby, retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree."

Now I understand it has been suggested that this clause, "entertaining at any time hereafter any application which the parties may make with respect to this decree," covers an application to strike the substance of the decree. Such a construction is fairly inconsistent with the entire language used. If it means that, the packers could move to strike their own consent. And yet the courts hold without variation that a consent decree is binding and can only be modified upon the consent of all the parties. Such a construction is inconsistent with the balance of the language, for the language says "taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree."

If the meaning were to be given to the last clause of this paragraph which has been urged, then there isn't any use for any other language in it. If it means that anybody party to the decree can move for anything they want, why put this other language in it? It covered everything. The language must be taken as a whole. It must be taken in connection with the fact that a consent decree requires the consent of all to modify it. And therefore, construed as a whole, and construed in recognition of that principle of law, this clause simply means such measures incident to the enforcement of the decree, and no other possible interpretation could be put upon it:

It is inconceivable that the parties reserved the right to move to vacate the substance of the decree. The Big Five could not have made the motion, for

their consent to the decree bound them. No one can believe for a moment that the Department of Justice at that time meant to reserve the right to modify the substance of this decree. The statements of the Attorney General before the Senate Committee on Agriculture show conclusively that he regarded the substance of the decree as a final determination of the policies therein fixed, and especially he regarded it as finally excluding the Big Five from handling unrelated foodstuffs.

If that clause were extended as it has been suggested, then the Big Five themselves could move to vacate. The decree can not be vacated in its substance except by the consent of all of the parties. That is the established rule of law with reference to consent decree. So that this paragraph 18 does not extend to the substance of the decree but to those measures incident to its enforcement and incident to its perfection as might be required or suggested from time to time.

You must construe this eighteenth provision of the decree in the light of all of its language, and in the light of the surrounding circumstances, and so construing it, I confidently rely upon a refusal by the court to entertain a motion to modify the substance of this decree. The Attorney General would fail if he made the motion, because, as a matter of law, the decree is conclusive as to its substance. If he passed this unsurmountable obstacle, he would then be confronted by the evidence, and, after vast expenditure of public money incident to the expense of the trial, he would fail, for the facts contained in the report of the Federal Trade Commission justify and require, not only this decree, but, if changed, a still further restraint against the five big packers.

There is only one road by which the removal of this decree can be reached. That is simple and clear. If the Attorney General and the administration desire to put the five big packers back into the business of handling all lines of goods they should recommend Congress to pass legislation declaring from and after its passage the Big Five packers shall have the right to handle all lines of food stuffs. The advantage of such a course would be clear. The subject would be brought before the people for public discussion, and the future policy of our Government upon this question, if it is to be changed from the Sherman Antitrust Act and the Clayton Act, will receive public consideration and action by the legislative branch of the Government.

This is especially appropriate in view of the fact that this decree was before committees of Congress at the time the packers' control bill was passed. No suggestion at that time came from any Congressman that the consent decree was unwise or improvidently passed, except that the occasional suggestion was made that it should have gone farther. On the contrary, so far as it went, it met universal approval. It has, in effect, been indorsed by Congress through the failure of objection in connection with the passage of the packers' control bill.

My suggestion is, that if you believe the packers should be permitted to handle all lines of foodstuffs, that you recommend legislation on this subject, giving them such authority. Seriously, gentlemen of the commission, do you believe such a measure would find a Congressman or Senator who would offer it or support it? And, if so, do you believe a dozen in either House could be found who would approve it? With the utmost confidence, I assert that an overwhelming majority in both branches would oppose such action. And if this is true, even though the legal obstacles which I have presented were not in the way of success on the part of the Department of Justice if the Attorney General moved to vacate the portion of the decree which restrained the five big packers from handling foodstuffs unrelated to meats, would it not be a mistake almost amounting to a tragedy for the Department of Justice to engage in such an effort?

I have great regard for the Attorney General, and I am not so much a partisan in politics as to desire to see him embarrassed by such an effort.

I thank you, gentlemen.

The CHAIRMAN. Gentlemen, it is now 12.30. I think we should adjourn for luncheon. We will reconvene here at 1.30.

(Thereupon, at 12.30 o'clock p. m., a recess was taken until 1.30 p. m. of the same day, Thursday, January 12, 1922.)

AFTER RECESS.

The committee resumed its session at 1.30 o'clock p. m., pursuant to the taking of recess.

The CHAIRMAN. Gentlemen, let us proceed with the argument.

Mr. Watkins, do you wish to follow the Senator?

Mr. WATKINS. Yes; I should like to make a short statement.

The CHAIRMAN. You may proceed.

**ARGUMENT OF MR. EDGAR WATKINS, ATTORNEY FOR THE
SOUTHERN WHOLESALE GROCERS' ASSOCIATION.**

Mr. WATKINS. Gentlemen, it shall not be my purpose to go into any details in the discussion of the evidence of the case, for two reasons: First, I have not heard it; and, second, it seems to me that this case rests on fundamental principles that are not very much affected by the testimony that has been presented to you gentlemen.

The original decree resulted from complaints made primarily by wholesale grocers. After those complaints were made the President directed the Federal Trade Commission to institute an investigation, which having been had, was referred to the Department of Justice, and that department continued the investigation and determined its course. It had determined, and was proceeding with that determination, that criminal indictments ought to be obtained. Proceedings were begun in Chicago and in New York. Pending those proceedings, the proposition for this consent decree was made. The defendants, in making that proposition and in agreeing to the decree that was entered, must have had in their minds one of two things: Either these gentlemen, the defendants in the original decree, sought to escape what would be a worse fate, or they believed that they were guilty of some practices that were not economic.

They did, in my opinion, escape a worse fate. They certainly escaped prosecution, and probably escaped suits for dissolution. Having escaped these worse things, it is both unlawful and dishonest for them now to attempt to evade the thing that they agreed to in order to make that escape.

So, after they consented to the decree for that purpose, they are estopped in law and in equity and in justice and in fact from consenting to or obtaining or accepting any modification of the decree.

We might assume that they consented to the decree because they were convinced that their practices were wrong. If they were wrong then, they are wrong now. At least their consent goes very far toward establishing the proposition that their practices were wrong.

Presumably, if their practices had been lawful and just and economic, they would have insisted upon continuing. And while they do not admit the facts of the allegations of the original petition filed by the Government, they did consent to the decree. That is one fact indisputable, and it seems to me of considerable force, which should affect the judgment of this committee in determining whether or not you would attempt to modify the decree.

Speaking broadly, and without attempting to go into the details of the evidence, the persons who come here seeking this modification might be placed in one or two classes: The first class, it seems to me, I am justified in saying here are but the representatives of Armour & Co. It is the hand of Jacob, but the voice of Esau. They are directly and personally interested, and that fact should be considered in determining their contentions. The second class, assuming that they are not affected by any definite interest—and there is no proof that they are, and no proof that they are not—come here under a mistake of logic.

These gentlemen found shortly after this decree was entered that they had less distribution than they had had theretofore, and they fell into the common fallacy that the thing that occurred after some other thing is the result of that thing. They saw no further than that fact. They saw the decree, and subsequently they saw a lesser distribution, and they thought the lesser distribution was the result of the decree.

But you all know that there are other causes, independent of the decree, directly resulting in this lesser distribution. The decree had absolutely nothing to do with it. Prices fell. Cannerymen and producers generally hesitated as long as they could before they met the lower prices. The public was suffering. There was less money for the purpose of buying things. There was a buyers' strike. That was one of the causes. And another cause was the character of contracts that these gentlemen who, when it was a sellers' market, exacted. They required the buyers to sign a contract, what is known as the fair-and-open price contract. The buyers did not know what they were to pay for the goods.

Judge HAINER. Who do you mean by "they"?

Mr. WATKINS. The canners, who come here asking for this modification; those in Virginia and Maryland and that class of gentlemen. Those are the ones, that is the class, that I say assumed that the decree was the cause of their troubles, and that they were acting on a mistaken logic.

Now, these gentlemen exacted the fair-open price contract. It is not a fair contract. When the market is a sellers' market, the buyer has to take anything he can get. They signed that kind of a contract. There was also exacted what was known as the S. A. P. contract, which meant a contract subject to approval. It meant nothing; it was really not a contract; it was merely an option. That was another form of contract. They had also a contract, what was known as the pro rata contract. For instance, you bought 1,000 cases of goods. The canner sold many times more than he would ordinarily produce, because he knew that he would never deliver, and would not have to deliver, and in the end the buyer got a prorated. They took the buyers' orders and prorated them with all their orders, and delivered simply a percentage. Naturally, when the market changed and became a buyers' market, the buyers would not sign that sort of contract.

And that became a cause of complaint, and indicated something was wrong, and they ascribed improperly to this decree.

So if these gentlemen had understood the matter they would not be here asking for a modification of this decree. In fact, most of them, as is shown by the record and as is shown by the comprehensive argument of Senator Smith, are convinced the decree had nothing to do with it, and that it should remain as it is.

I shall not go very deeply into the legal questions here, but I do want to make a remark or two about the right of the court to modify this decree.

In order properly to construe paragraph 18 of the decree, the history of that decree should be considered somewhat, and the history is apparent from the record. I presume Mr. Galloway was familiar with it at the time. The statement of the Attorney General before the Senate committee, and the petition itself, shows that there was an effort to broaden the decree. The dairy-products men, and the cheese men especially, were very much interested in being included in the decree. I had some personal knowledge of what was going on. I appeared at the request of the cheese men and suggested that they be included. I never felt very strongly that they were as much entitled to be included as some other matters were entitled to be included, because they were representing somewhat perishable products. But they were insistent upon being included in the decree.

Mr. Attorney General Palmer in his testimony before the Senate committee mentioned that fact, and he himself expressed some doubt about their right to be included in the decree, and it was finally determined that they should not be included. But Mr. Attorney General Palmer told the Senate committee that while they were not included, and these gentlemen were not entitled to be included in the decree, it was left open for them. That is why paragraph 18 was put in the decree. And it is apparent that was the reason paragraph 18 was put in the decree, and in construing the paragraph those facts should be considered.

"That jurisdiction of this cause be, and is hereby, retained"—

For what cause—

"be retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may be necessary or appropriate for the carrying out and enforcement of this decree," etc.

Those of us who are familiar with equity practice know the custom of adding at the foot of the decree in equity cases. In equity decrees you may add such things as may be necessary to carry out the general purposes of the decree. But in all the practice I have had in chancery matters and in studying chancery practice, and such works as Daniels' Chancery Practice, I have never seen anything added at the foot of a decree which limited the decree; it is merely some purpose to extend or carry out or enforce the decree that may be added at the foot. So the language is very clear.

Now, what does this last language mean? "For the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree."

If that language were put just in paragraph 18, there would be no question but that it is left wide open for anything, but, as Senator Smith argued, if it is left wide open, why put in this other language that I read just before that? You must construe the decree as all law books say written documents shall

be construed. You must take generic—*sui generis* is the rule applied. So that this later language means the same genus as the language before; it does not mean something different, but something of the same kind and character. So that language means this: That any party may at any time make application in respect to this decree, in so far as may be necessary for the purpose of taking action which will grant some other or additional relief. "Additional relief" modifies the whole language of the paragraph of the decree. And the court has no jurisdiction in law, after the term has expired and after the date for an appeal has expired, to make any change unless there is universal agreement, and as universal agreement is not procurable it is futile to attempt to go on and change the decree. It would merely result in a long and useless trial unless the court sustained a general demurrer.

I assume that in determining this question you gentlemen will, as is natural and proper, consider it as an economic question—a broad economic question.

These gentlemen who have come here and made their arguments can not conclude you, because it is not merely a question of fact, and you are going to give it a broad economic consideration. It seems to me you properly should.

I know there are some people who think a middleman—a wholesale grocer, to be specific—is not necessary. That is a matter which you may consider. He has existed for over 300 years. In England he began as an exporter, and the law against forestalling and regrading prohibited them, so far as local laws were concerned, but the importer was there practically what the wholesaler is here. The wholesaler is an importer. He imports from other States. England, being a small State, he imported from France and other countries, and he did not import as much as the wholesaler of Illinois to-day imports from Iowa and Michigan. So the relation of the wholesaler to the importer is quite close. It began away back in a small way, but it grew up. It was a natural growth. That system has been brought to this country and has existed ever since, and the fact that it has existed for 300 years and over clearly indicates that it has its places in the economy of this country.

Did you ever stop to think that there is nothing that the wholesale grocer does that must not be done by somebody? He assembles goods; he assembles them from all quarters of the earth. He puts them in his warehouse. He must buy them sometimes months or a year before they are needed. That is a service somebody has to perform. He credits the retailer. That is a necessary service to the community.

I can illustrate that by a case which I argued the other day before the Federal Trade Commission—just a few days ago. In Atlanta there are 1,800 retailers. They serve every section of the city. They are necessary for the convenience of the public, the chain stores, and the large manufacturers, who perform somewhat the same functions as the defendants in this case perform, sell to less than 200 of those groceries. The other 1,600 would have to go out of business, unless the wholesale grocer existed.

So far as the wholesaler performs a necessary service at a reasonable price, he has established the fact that he has a proper method of distributing the commodities of the country. If he charged more than it was worth, hundreds of others would come in and get the benefit of his prices, and force the prices down. So competition forces him to do it at a reasonable price, and it is necessary, and you gentlemen can see that that is true.

But if I am wrong about that, if the wholesaler had no place in the economy of this country, you gentlemen have no power to change it. You might think that the trusts are the best method; you might think that the Government itself might distribute this food. There are only three ways in which it could be done; by the trusts, or by the Government itself, or that the present competitive methods shall continue.

The Government is not going to do it; our laws prohibit the trusts from doing it; so that that leaves only the method now in vogue. So, whether you gentlemen think it is proper or not; you might be socialists, and have radical ideas; you might think the Government should do it. You might think that the best method would be to let the trusts do it, but until Congress changes these laws we have got to follow the present methods. So, economically, gentlemen, there is a need for it, and you can not prevent that the wholesale grocers shall continue as they have been in the past.

The testimony in this case, which, as I have already said, I shall not attempt to analyze—if you consider it as testimony—is composed of interested parties altogether in behalf of modification. Partially, you may say that it is interested

parties against modification. But there are at least three classes of evidence against the modification that are entirely free from any personal interest.

Senator Weeks, before he became a member of the Cabinet, as Senator Smith read to you, having given consideration to this question, expressed himself in such language as announced principles, the application of which would prevent the modification of this decree.

Mr. Secretary Hoover was specially appointed to make this investigation. He pointed out in his report to the President the numerous times that these defendants here had been convicted under the antitrust law, and he pointed out the futility of these convictions. They had not done any good. And then he goes into a discussion, as Senator Smith read to you, of the particular specifications that shows the unfairness of methods previously adopted by these defendants. And he practically reaches the same conclusion that the Attorney General reaches when he took this consent decree.

You have, in addition to that, a most thorough investigation by the Federal Trade Commission, a disinterested party, having no interest but to serve the public; they have no interest in it whatever, and their findings fully support what had been said before; and then you have the findings of the Department of Justice, demanding that the decree be placed in the form in which it is, after it had made a full investigation along its own lines; and you will remember, I think, that Attorney General Palmer told the Senate committee that he did not make any agreement not to enter prosecutions, but there was a tacit understanding that this would end it.

The wholesale grocers, as Mr. Justice Stafford found, have been deprived of rights because of this decree. They can not get those rights back. They ought to have the position that they were placed in before and ought to be held there, because by not doing that you will deprive them of the rights they had before—the right to sue in the courts under the antitrust laws, and their rights before the Interstate Commerce Commission.

Gentlemen, the decree in this case is, so far as my investigation goes, the only antitrust decree ever entered in the United States that was effective. You have dissolved the Standard Oil Co., and you have increased the total value of its stock by 100 per cent. You have dissolved the American Tobacco Co., and the public got no benefit of it. But here is the best thing that the department ever did under the antitrust laws, and to take from the public the benefits that it has derived from this decree would, in my opinion, be absolutely wrong.

I shall not discuss it any further.

The CHAIRMAN. Mr. Stevens, do you wish to be heard?

Mr. STEVENS. Yes, sir.

The CHAIRMAN. You may proceed.

ARGUMENT OF MR. ROLAND E. STEVENS, ATTORNEY FOR THE VERMONT WHOLESALE GROCERS' ASSOCIATION.

Mr. STEVENS. Mr. Chairman and gentlemen, one who has been born in New England, of New England parents, sometimes, even in these days when conscience does not always rule, occasionally feels a twinge of what we used to know as the New England conscience.

Now, I want to set myself right with this committee for the sake of that remnant of the New England conscience which remains in me for any statements made before this committee not strictly in accordance with the facts, but which I thought were in accordance with the facts at the time. What I refer to is this: I think I stated that there was no other packer in the State of Vermont doing business there but Swift & Co., and I think the chairman rather challenged that statement.

The CHAIRMAN. I had information gained from this case in some way that one other packing company did about \$400,000 worth of business there in recent years, and that is the reason I was so interested in it.

Mr. STEVENS. Now, I have discovered that while you can get their products in some of the small towns—and they are all small towns—you will not find a branch house of Armour & Co. or Wilson & Co., except in the city of Burlington. Now, I made a special effort to find out about that when I went back, and I did find this, that Wilson & Co. have one branch house in the city of Burlington, and that Armour & Co. have one in the town of Woodville, N. H., which is across from Wells River, and that they occasionally send, by express, meats to various dealers in Vermont. So I hope you will accept that explanation.

It does not really affect the principle of the thing, but it is the fact, as I understand it.

Now, I want to make another statement before I proceed with the argument, and that is to the effect that while the small butcher and farmer seller of meat has practically disappeared in Vermont in the larger cities, and the larger cities are Burlington, Montpelier, and Rutland, they do still sell meat, but not to any particular extent.

Judge HAINER. Mostly fish, isn't it?

Mr. STEVENS. Not salt-water fish. Although we gave Admiral Dewey to the Nation, we do not have any port there.

Now, the shortness of time which was allotted to us, has prevented me from preparing as concise and as clear an argument for this committee as I otherwise would like to have done, but I have prepared a brief, but I must say that I have not gone over it carefully. I did not have time. I had to leave my office to come to Washington before I had time to look it over, and I find there are some typographical errors, and I will have copies made for the committee to-day or to-morrow, if that is satisfactory.

The CHAIRMAN. All right.

Mr. STEVENS. Now, I shall follow the example of Senator Smith and Mr. Watkins and will read chiefly what I shall have to put before you, with a few running comments.

The wholesale grocers of Vermont join all other opponents to modification of the packers' consent decree who have been represented before this committee, and who have been heard in opposition.

I think I stated that there was no wholesale grocers' association in the State of Vermont, but the wholesale grocers there are unanimous in opposing the modification of this decree, and speaking through me as their attorney, they base their opposition on economic and legal grounds. Now, as to the economic grounds, first: The economists, not only of this country, but of the world, are, as I understand, practically agreed and unanimous in the support of the economic doctrine which they call the law of "diminishing returns."

They have found that up to a certain point of bigness a business concern or combination is able to eliminate a certain amount of overhead expense, and consequently to produce and distribute merchandise and commodities for public consumption at a less price than a smaller competitor can. Now, this is an economic benefit to the consuming public, and other things being equal, much to be desired, especially when it affects the necessities of life, such as we have been discussing at this hearing.

When that certain point of bigness is reached, however, the returns on the capital invested begins to diminish, and increasingly so to a considerable extent as the bigness increases and the zone of distribution enlarges, until the commodity price to the consumer becomes more and more burdensome, thus lowering his standard of living. The control and management of a great business must of necessity be lodged in the hands of some central business executive, or board of executives, far removed from intimate contact with the details of the business and the personal elements thereof. When a business concern reaches such a point, it ceases desirable economically to the consuming public as the concern which is in closer contact with the public and is only of such size and financial strength as to enable it to serve the public with the highest degree of economy and efficiency.

It was shown during the hearing before this committee by two able economists, Dr. Duncan and Mr. Durand, that the great meat packers, the Big Five, so called, practically constitute one enormous and over-shadowing business entity and have reached and passed the point of diminishing returns, and are no longer able to compete in a fair field and on equal terms with certain of the independent packers. This is a matter of almost universal belief and is no evidence in the economic world as to be a proper fact for judicial notice by this committee. Statistics read into the record by Mr. Durand, of the Federal Trade Commission, show that the gross and net profits earned by certain independent packers in active competition with the Big Five are larger than that of the Big Five for the same period of time, thus warranting the deduction that they are more efficient and more economical as purveyors of meats and meat products than the Big Five.

This illustrates what I understand to be, from the economists' standpoint, the law of diminishing returns. There are economists present here, and if I am wrong I wish to be corrected.

Now, as to the monopolistic tendencies of the big meat packers. Monopolies, particularly of articles of merchandise necessary to sustain life, have never been regarded as economically beneficial to the consumer. In the very early times the Roman senate turned over to officials appointed for the purpose the control of the sale of salt, a common commodity even in those days. From this developed the custom of granting monopolies of various kinds to the highest bidder.

During the reign of Queen Elizabeth many of the commonest necessities of life were controlled by monopolies granted freely by her. She attempted to justify the granting of these monopolies on the ground that some public benefit would ensue therefrom. For instance, in granting a monopoly to sell playing cards, she said that, because so many able-bodied men who might follow the plow were engaged in the art of making cards, it would be for the public good to place this business in the hands of a monopoly. So that from very early times, long before the history of American monopolies, at least, it became customary to excuse monopolies on the ground that they are beneficial to the public. But these early monopolies were hateful to the consumers and caused angry debates and much misery. Finally, during the reign of James I, the Statute of Monopolies was passed, making all monopolies illegal, except new manufactures or inventions. This act was strictly enforced, and the evils arising from monopolies were finally stamped out, in England.

In this country the history of monopolies is not a long one. Previous to 1890 the growth of large corporations with monopolistic tendencies had caused some of the States to pass antitrust laws.

In 1890, after it was found that the States were not succeeding very well in dealing with the so-called trusts, public sentiment forced the enactment by Congress of the Sherman Antitrust Act, which made every contract in restraint of trade or commerce among the several States, or with foreign nations, illegal and criminal.

In the Addyston Pipe Trust case (175 U. S. 211) this act was construed to apply to unlawful combinations of manufacturers to divide the territory and regulate prices. In 1903 the Bureau of Corporations was established. Then followed the Clayton Act. Finally the Federal Trade Commission was created to displace the Bureau of Corporations.

The Federal Trade Commission, at the request, and direction of the President, made an investigation of the meat-packing industry, and filed its report thereon, as has already been stated by Senator Smith and Mr. Watkins, and as this committee well knows. Part 2 of their report contains an abundance of convincing evidence of combination among the packers. I shall not refer to it any more, as it has been already referred to in this discussion.

In part 3 they discuss and show not only the monopolistic tendencies of the Big Five, but that they actually control the meat-packing industry in this country. And I can say to you gentlemen from my own knowledge, they do control the meat distribution in the State of Vermont.

They also show that their methods of control are unfair.

The testimony of Mr. Durand, representing the Federal Trade Commission, was so clear and so convincing it hardly seems necessary to do more than to refer generally to his testimony. The same may be said of the testimony of Dr. Duncan, testifying for the Southern Wholesale Grocers' Association.

Now, the testimony of these gentlemen, together with that of the many others who appeared here, points to the very definite and reasonable conclusion that on economic grounds alone the consent decree ought not, in the public interest, to be modified as requested.

If the rules of procedure usual and common in court and in all legal hearings and proceedings were to be followed in this hearing, then a motion to dismiss the proponents' request or petition would lie and would most certainly be granted.

So far as the record shows, the proponents are Mr. Vernon Campbell, Mr. Dallas H. Gray, his business associate, and 10 others representing small interests, "other than the packers." Mr. Roland Morrill, of Michigan, appeared also as a proponent, to be sure, but he said he was an accident. So, barring accidents, Mr. Campbell and his associates are the only proponents.

As a matter of psychological interest it may be noted that eight of those associated with Mr. Campbell are from near-by points in Virginia and Maryland, within easy reaching distance from Washington by telephone and by rail or automobile. The two kraut packers were from a distance, but one of them had admittedly been 51 per cent meat packer, or, as he expressed it,

he woke up one morning and found that Armour owned 51 per cent of the stock in his concern.

So that, by what seem to be a rather legitimate and warranted process of elimination, Mr. Campbell looms large as the proponent of records.

The testimony of lesser proponents, as I designate them, is, in essence, that there had been a slump in their business and they thought it might be due to the consent decree. They appeared to think that if the packers again entered the field of unrelated products, they, the packers, would somehow create a greater demand for their goods. They were willing to concede that general business conditions had something to do with the falling off of their business. The canners of tomatoes acknowledged that the Government had absorbed large quantities of canned tomatoes during the war and had been putting them on the market for resale at a lower price than the canners could produce them for. Still they appeared to think that the meat packers could somehow change market conditions and give them a good business at satisfactory profits.

They charged up the lack of business to the wholesale grocers. The jobbers, they said, had conspired against them and refused to buy from them. These statements are so out of keeping with sound common sense, so contrary to human experience, and so economically impossible as to cause one to search diligently for an explanation.

Two explanations suggest themselves. One is that these gentlemen so closely connect the short period of their feverish prosperity, due to the war, to the great meat packers as to cause them sincerely to believe that by virtue of gigantic size of the "big five" and of their enormous financial strength, they actually can create a market for foodstuffs when the jobbers are powerless to do so.

The other is that for some personal reason, some real or fancied grievance long nurtured and cherished against the jobbers, it was a real satisfaction to relieve their dissatisfied minds.

Neither suggested explanation furnishes an economic reason why the decree should be modified to favor the packers. If it were true that the "big five," by reason of their size and strength, could create a market for foodstuffs, it would be equally true that they could also destroy the market they had created, or manipulate it at will to their own advantage and to the disadvantage of the producer and the consumer. For the power to create includes the power to destroy. This state of things would furnish a very compelling economic reason why the decree should not be modified, as suggested.

Now, as to Mr. Morrill's testimony. His appearance being accidental, his testimony was more or less incidental. He was an interesting man. He spoke zealously and distinctly. His enunciation was excellent. His loyalty to his neighbors and fellow horticulturists in Michigan was commendable. The heart and substance of his statement was that the fruit growers of Michigan were unable to get their fruit to market because, owing to the consent decree, they were deprived of the use of Armour & Co.'s ventilated fruit cars.

Mr. Morrill apparently assumed and believed that Armour & Co. owned and operated most of the ventilated fruit cars engaged in transportation, and that as a consequence of their withdrawing these cars the fruit growers were left helpless.

But, after Mr. Morrill had testified and toward the end of the hearing, it developed from the testimony of Mr. Durand of the Federal Trade Commission, if my memory is correct, that Armour & Co. only owned seven per cent of the ventilated fruit cars available in the country. The railroads owned the rest.

But assuming that Armour & Co. owned all of the cars before the consent decree was signed, it is not to be supposed that these cars were destroyed by the decree. They still exist and are capable of being used for the purpose they were intended for.

This morning Senator Smith showed very definitely that Mr. Morrill's contention was absolutely without foundation.

It may be that Armour & Co., for some reason convenient to themselves, concentrated the 7 per cent of these cars which they owned to the Michigan fruit growers, and that after the decree was issued this concentration ceased and the cars were more widely distributed to the advantage of some other fruit growing sections of the country and the consequent disadvantage of Mr. Morrill's neighborhood and that of his fellow horticulturists.

And, by the way, Mr. Morrill told me that he was a descendant of ex-Senator Morrill, of Vermont. If he is, he should have more common sense.

Judge HAINER. That is good stock?

Mr. STEVENS. Oh, yes; Senator Morrill would know better than to take such a position as this. This, I believe you will agree, gentlemen, does not furnish any economic reason why the decree should be modified as suggested.

It is a reasonable presumption that all of the cars available and adapted to fruit transportation have been and are being used as needed and demanded by the fruit growers of the country, the packers' consent decree to the contrary notwithstanding. And this is presumed. No one has claimed or shown the contrary. No one has denied it.

It seems needless to argue the duty of the railroads to furnish all the fruit transportation service in their power to furnish. And it is equally needless to discuss further Mr. Morrill's complaint about lack of fruit cars in Michigan. He has not claimed and has not shown that the fruit growers of the country at large have not had the full benefit of all the fruit transporting cars the country affords. As this is his chief contention, as a proponent of modification of the consent decree he has failed utterly to furnish a valid economic reason for modification.

He did not assume to present any reason other than economic why the decree should be modified.

We come now to the contentions of Mr. Campbell and Mr. Gray, as proponents. Mr. Campbell is a real proponent. Mr. Gray is not so much a proponent of modification of the decree as he is an exponent, or rather an ex-exponent of the theory and practice of direct marketing of raisins.

He must have impressed this committee, as he evidently did all of his hearers, with the fact that he is a man of great energy.

For many hours he drew heavily upon his reservoir of energy without the least indication of fatigue.

His powers of endurance are quite to be admired. His pertinacity in selling his product to the consumer and in meeting and overcoming his chief adversaries, the minions of the law, was interesting.

He was a vigorous and earnest advocate of his cause, whatever that was, and, according to his story, carried off the honors.

And that reminds me of a story that I recently heard at a banquet of the Vermont Bar Association, to this effect: It seems that an Irishman was once being ridden on a rail by a howling mob, and while he was passing through the streets one of his friends called out and said, "How do you like it, Pat?" And he said, "Well, if it wasn't for the honor I am enjoying, I would rather walk."

Now, that was the impression that Mr. Gray left on me—that if it was not for the honor that he gathered in it, he would rather not have had his experience.

He did not, however, present a single economic or any other valid reason why the consent decree should be modified. I fail to recognize or discover in Mr. Gray's long address anything helpful to any judicial body sitting for the purpose for which this committee is avowedly sitting. If he had been a witness in court and subject to the rules of evidence, an early objection and ruling would either have assisted him in starting right and keeping to the issue or have saved him much time and effort.

Mr. Gray really eliminates himself as a proponent herein worthy of serious consideration as a helpful agency in determining the point at issue.

MR. CAMPBELL AS A PROPONENT.

We come finally, gentlemen, to Mr. Campbell as a proponent. I am sorry he is not here. He is, we feel, the proponent and a vigorous one. He is also the chief witness in favor of modification. In fact, he says he is the original advocate of modification and the one most interested. On page 69 of the transcript he says: "We call to your attention the fact that we have been continuously and vigorously protesting since May, 1920, against the operation of this decree." He represents the California Cooperative Canneries as vice president and general manager. (Transcript, page 67.) The products of his company was handled on a cooperative basis. The volume of the company's business in 1920 was approximately \$4,000,000. (Transcript, p. 68.) The first plant was built in San Jose at the close of 1918. (Transcript, p. 103.) From Mr. Campbell's opening statement, on November 28 last, it is plain to see that he has a vital interest in having the decree modified. And no one can blame him. I think it is a rare thing if any man placed in his position would not feel very

largely as he does; that he would want to do something to reinstate his concern in the position of advantage which it originally had.

He states that in May, 1919, his company entered into a contract with Armour & Co., whereby they agreed to purchase from them all of the California canned fruits they required as far as the canning company were able to furnish the desired quantity and grades. The terms of the contract was 10 years. Under this contract Armour & Co., handled about 50 per cent of their output during 1920. (Transcript, p. 68.)

This contract was of great value to the company he represents. It gave them a ready market for a large portion of their output. By it time and money was saved in sales effort and expense. The contract was also valuable to his company as a means of obtaining loans from banks. (Transcript, p. 68.)

It was also beneficial to the fruit and vegetable growers who were members of his company. They knew their products were already marketed and so were able to plan their work and conduct their business with a feeling of security as to the future. The company was able to operate their plants at full capacity and consequently at a minimum of cost. (Transcript, pp. 68-69.)

After the entry of the consent decree Armour & Co. notified Mr. Campbell's company that the contract must be canceled because they were compelled to discontinue handling products such as theirs. (Transcript, p. 69.)

No investigation was made by the Department of Justice as to the rights of Mr. Campbell's company under the proposed decree. His company was not notified or heard in the matter. (Transcript, p. 69.)

The full extent of the damages sustained by Mr. Campbell's company is difficult to determine, he says.

If the Government had set fire to the company's canneries and burned them to the ground, the damages would not have been as great as the company has already sustained.

The company's rights and their property have been invaded and destroyed without due process of law. (Transcript, p. 69.)

Mr. Campbell says that his company's actual and potential damages will amount to several millions of dollars. That the destruction of such channels of distribution adversely affects every fruit producer in California. (Transcript, pp. 69-70.)

The foregoing extracts from Mr. Campbell's statement tell why he and his company are interested in the decree. Because of these damages sustained by his company, he says, he protested to the Department of Justice in May, 1920, and has asked that the decree be set aside or at least amended, so as to allow the packers to handle food other than meat products. (Transcript, p. 70, bottom.)

These being confessedly the reasons that have prompted Mr. Campbell to seek a modification of the decree or, as he says, to have it set aside, it is fair to discuss these reasons with a view of ascertaining if they can properly and logically be assigned as a basis for recommendation by this Committee, or by the Attorney General, that the packers' consent decree be modified, or set aside, as Mr. Campbell has requested.

The fact that Mr. Campbell says the California Cooperative Canneries entered into a sales contract with Armour & Co., one of the packers affected by the consent decree, which was advantageous to the canneries and which was subsequently canceled or repudiated by Armour & Co. because of the consent decree, can not possibly be accepted by the Department of Justice as a valid reason why it should advise a modification of the decree and be defended as a valid reason. It is not presumable, however, that the Department of Justice is seeking an excuse for so advising. What it desires is, we assume, that the proponents of modification show cause why the decree should be modified and not that the opponents show cause why it should not be unless, or until, it be fairly shown by the proponents that there is reasonable doubt as to whether or not the decree should be disturbed. Mr. Campbell's verbal statement about the contract should be utterly disregarded. It is one of the elementary rules of evidence that where a written instrument is pleaded or relied upon it must be produced when it is in existence and in the possession or control of the party relying upon it.

It appeared from Mr. Campbell's testimony that the contract referred to is in writing and under his control. He was asked to produce it but declined to do so. This committee was powerless to compel him to produce it and did not feel that it should even request him to produce it. Under such circumstances the oral testimony concerning it would have been inadmissible in

a court of law. Of course we realize that in an informal hearing like this legal rules of evidence are not and can not be strictly followed. We admit too, that we on our part, were not held to formal procedure and that a great deal that was offered by us and admitted to the record was legally inadmissible. On the other hand, none of the opponents of modification offered to submit anything to the committee in confidence, nor did they offer parol evidence of any written instrument in their possession or control and decline to produce the written instrument.

It is quite possible that the Armour contract if examined would disclose strong reasons why the decree should not be modified. It might show that Armour & Co. had the California Cooperative Canneries completely in its power. Refusal to produce the contract tends to create a suspicion in this direction.

It might transpire that the contract was of such a nature as to make it void under the antitrust laws.

From the history of the Big Five it is a fair presumption that Armour & Co.'s interests were well protected, to say the least, by the contract.

If there is nothing in this contract that will not bear inspection, why should Mr. Campbell not produce it and read it into the record after having referred to it as a reason why he is interested in the consent decree?

If the contract is not in restraint of trade, or if it is in no way contrary to public policy; if it properly and adequately protected the rights of the California Cooperative Canneries, why should not Mr. Campbell seek to recover damages in an action on the contract against Armour & Co.?

Refusal to produce this contract naturally raises these questions.

But let us assume, for the sake of argument, that the contract is perfectly valid and proper in every particular. Why then should its existence furnish any reason why a decree resulting from an equity suit in which the United States is the complainant and Armour & Co. is one of many defendants and to which the California Cooperative Canneries is in no sense a party?

Mr. Campbell represents no one besides the California Cooperative Canneries.

Judge HAINER. Don't you think that they have as much interest as the wholesale grocers to intervene, if they have any rights?

Mr. STEVENS. No; I do not, legally speaking.

Judge HAINER. What would be the difference between his status and the status of the Southern Wholesale Grocers' Association?

Mr. STEVENS. There would be this difference, in my view: So far as I have been able to discover the courts have never favored intervention for the purpose of attacking the decree. They do favor the intervention of people whose rights have been affected by the decree, if some one is trying to upset the decree for the purpose of affecting their interests.

Judge HAINER. Take that St. Louis Terminal case, where they sought to intervene in the lower court on the ground that they were affected, and it was refused, and they made up a case to the Supreme Court of the United States and they were allowed to intervene. I take it that is the principle upon which the Southern Wholesale Grocers were allowed to intervene in this case. That is, where the interested party has some interest that is not common to everybody; some special interest, as suggested by Senator Smith.

Mr. STEVENS. Judge, I think you can see this, however: That if the California Cooperative Canneries were allowed to intervene and attack the decree, not to protect any interest that is to be affected by a modification of the decree, why couldn't there be hundreds of others who are affected allowed to come in?

Judge HAINER. There is a property right, he says, involving \$4,000,000 a year; and he has never had his day in court.

Mr. STEVENS. Why should he come in more than hundreds of others?

Judge HAINER. The question is: Why should he be deprived of having his rights heard in a court of law and having his rights adjudicated?

Mr. STEVENS. Because he has no standing in the courts. He has a remedy against Armour & Co., undoubtedly, unless he has made a foolish contract. Armour & Co. are responsible; they have canceled the contract, and he has his remedy.

Mr. Campbell represents no one besides the California Cooperative Canneries, he says (transcript, p. 70), which, he again says, has a membership of 700 or 1,000 fruit and vegetable growers (transcript, p. 103), a very small per cent of the fruit and vegetable growers of California who have been represented at this hearing.

Notwithstanding the fact that he represents the California Cooperative Canneries only, he closes his opening statement in these words: "I respectfully request a recommendation by your committee to the effect that the decree should be set aside because it is operating to the economic disadvantage of the people of this country, and is not sustained by either fact or law." (Transcript, p. 101.) He requests that the decree be set aside, not modified.

Judge HAINER. I don't think that is seriously considered by the committee.

Mr. STEVENS. And he also requests that not in the name of the canneries but in the name of the people of the United States of America.

DECREE OF CONFISCATING PROPERTY.

Mr. Campbell complains that no investigation was made by the Department of Justice as to the rights of his company under the proposed decree, and that "we were not notified or heard in the matter," (Transcript, p. 69.)

Why should the Department of Justice make an investigation of the rights of Mr. Campbell's company under a decree to which his company was an utter stranger? Is it possible that Mr. Campbell thinks the Department of Justice even knew of the existence of a private contract between his company and Armour & Co., much less of its contents and import? Is it probable that the Department of Justice even knew of the existence of Mr. Campbell or his company?

Does Mr. Campbell think that the contract he mentions was the only one Armour & Co. had entered into and that it was of such national importance and so universally known about that the Department of Justice was bound to take judicial notice of it?

Does he really believe that, if the Department of Justice had known of the contract he mentions, it could or would have paid the slightest attention to it in connection with the consent decree?

Can he not see that if his company were entitled to notice and hearing an absurdity beyond imagination in the matter of the consent decree, that every one else having a contract or business arrangement with Armour & Co. and with all of the other numerous defendants in that matter would also be so entitled?

These complaints that the Government in consenting to the decree as consented to by the Big Five, without consulting Mr. Campbell, or his company, had confiscated his company's property, had committed "an act of gravest injustice" was an invasion of his company's rights and a destruction of its property without due process of law, are rather astonishing. Particularly so when given as reasons why the consent decree should be modified.

A study of the transcript will show that these complaints about the contract with Armour & Co. seem to constitute, in Mr. Campbell's mind, the main reasons why the decree should be modified. The Armour mortgage of \$250,000 appears to be intimately connected with the contract. It, like the contract, was to run for a period of 10 years. (Transcript, p. 102.)

Mr. Campbell attempts to show that the Big Five have been and are in active competition with each other and are not monopolistic in tendency (transcript, pp. 79-94). His effort, however, is weak and superficial. This is also true of his attempt to present economic argument in favor of modification. (Transcript, pp. 74-99.)

The testimony of Doctor Duncan, a trained economist, was to the effect that if the Big Five did actually and actively compete they would destroy each other. He stated that active competition would force them either to combine or that the fittest to survive would survive and the others perish.

The testimony of Mr. Durand, economist of the Federal Trade Commission, to the effect that the Big Five did have distinct monopolistic tendencies, completely refutes Mr. Campbell's feeble assertion to the contrary. And I mean no disrespect to Mr. Campbell.

The Federal Trade Commission, being an important department of the Government, clothed with authority that gives it very special opportunities to obtain first-hand evidence, and whose business it is to obtain such evidence, is entitled to credence much superior to that of an interested party like Mr. Campbell, whose opportunity to get evidence is necessarily so limited.

Mr. Durand's testimony was based on the best possible foundation of facts gathered from the archives and files of the packers themselves. He read into the record many copies of letters and other documents from the packers' files. He possessed a great deal of first-hand knowledge. He spoke as one having authority.

If Mr. Campbell and the others who appeared at the hearing in support of modification are the real proponents and the only ones recommending modification of the consent decree can not be justified for the following reasons:

First. They are not parties to the consent decree and can not be made parties even by right of intervention.

Second. They represent a very small per cent of the business interests in any way affected by the decree. As compared with the interests represented by those opposing modification, they are negligible.

Third. They have not shown a valid economic reason why the decree should be modified.

Fourth. They have shown absolutely no legal or other valid reason why the decree should be modified.

Fifth. As proponents the burden to show cause rested on them, but the preponderance is overwhelmingly against them.

Mr. Campbell's opinion as to the legality of the consent decree is fully as illuminating as his economic opinion. It is his opinion, he says, that the consent decree "is not based upon law" (Transcript, p. 101). That is his legal opinion. His reason for so holding is because some Congressman from the Middle West says so. (Transcript, pp. 99-100.) He does not give the name of his authority. He cites him by title but not by volume and page.

There is something rather mystical about this movement Mr. Campbell has started. At first it was rather puzzling. But now that there has been a full hearing matters have cleared up somewhat.

I think we all want to give full credence to Mr. Campbell's reiterated assertion that he alone is the moving party in the attempt to have the packers' consent decree modified. He is entitled to all possible credence. But in giving him this credence, the most generous acknowledgment we can offer is that he only thinks he is the really independent originator of the movement.

Having in mind what has developed at this hearing we are compelled to believe that Armour & Co. is the originator of this movement and chiefly interested in it.

Mr. Campbell himself says that Armour & Co. and Wilson & Co. told him that they were willing to distribute food products on a commission basis. (Transcript, p. 97.) And he tells us that he did have conversations with both Armour & Co. and Wilson & Co. about the modification of this decree.

Now, we can not help feeling that Armour & Co.'s mortgage on the plant of the California Cooperative Canneries was a powerful influence in starting this movement.

The existence of this mortgage coupled with the contract which Mr. Campbell declines to produce, and also with the fact that an attorney for Armour & Co. went with Mr. Campbell to Vermont last summer to talk with Mr. Justice Stafford about modifying the decree; also with the fact that another attorney for the meat packers has been in Washington during the hearing and in close touch with Mr. Campbell, all of which was brought out at the hearing, actually compels the conclusion that the real parties in interest are the packers, or some of them.

But whether the real parties in interest are Mr. Campbell and his associates, or the packers or any one of them, the request for modification of the consent decree should be dismissed.

Treating Mr. Campbell as the petitioner, as he virtually is, and this committee as a court, I would move that the petition to modify the consent decree be dismissed on the ground that there is lack of jurisdiction over the parties petitioning. The parties to the consent decree are the United States and Swift & Co. and other defendants in which the parties petitioning for modification are not included. It has not appeared that the United States has asked for modification during this hearing. Quite the contrary. The Federal Trade Commission representing the United States has been heard here in opposition to modification.

Furthermore, it does not appear of record that Swift & Co. or Armour & Co. or any one of the packer defendants in the decree matter has appeared here or has been represented here.

After Mr. Campbell had finished his opening statement the chairman asked him this question, "Have any of the packers requested you to make an effort to procure this modification?" To this question Mr. Campbell replied, "No, sir, they have not; in fact, they have resisted my efforts; some of them resisted my efforts." (Transcript, pp. 103-104.)

So, although we may rightly believe that Armour & Co. are interested to have the decree modified, it is clear that they are not parties of record in this hearing.

Suppose, however, that Armour & Co. and Wilson & Co. were parties of record in this hearing. In that case the petition for modification should be dismissed on motion, on the ground that a consent decree can not be modified or amended or set aside unless by agreement of all the parties to the decree. This brings us to the discussion of the legal aspect of the situation.

AS TO THE LEGALITY OF THE CONSENT DECREE.

A consent decree is "an agreement of the parties under the sanction of the court, interpreted as an agreement." (12 C. J. 520; *Allen v. Richardson*, 9 Richardson Eq. (S. C.) 53.) The question here was as to the extinguishment of the debt or lien of a distributee when he afterwards purchased the land in question at sheriff's sale or rather the equity thereon. At page 56 of the report Chancellor Wardlaw gave the above definition of a consent decree.

"A consent decree is not, in a strictly legal sense, a judicial sentence; but is in the nature of a solemn contract, and is in effect an admission by the parties that the decree is a just determination of their rights upon the real facts of the case, had such been proved." (12 C. J. 520; *Schmidt v. Oregon Gold Mining Co.*, 28 Oregon 9, 28, 40, p. 406; *Gibson Suits Chancery*, sec. 558.)

"Such a decree is so binding as to be absolutely conclusive upon the consenting parties, and it can neither be amended or in any way varied without a like consent, nor can it be re-heard, appealed from or reviewed upon a writ of error, and the one only way in which it can be attacked, or impeached, is by an original bill alleging fraud in securing the consent." (12 C. J. 520; *Gibson Suits Ch.*, sec. 558; *Schmidt v. Oregon Gold Mining Co.*, 28 Oregon 9, 28.

"Parties not laboring under any disability may by their express consent authorize the rendition of a decree which will bind them and which can not be questioned." (16 Cyc. 473; *Frank v. Bruck*, 4 Ill. App. 627; *Harrison v. Rumsey*, 2 Ves. 488.)

"In such decrees the parties acting for themselves may provide as to them seems best concerning the subject matter of the litigation." (12 C. J. 520; *Edney v. Edney*, N. C., 1, 3.)

"The parties to a suit can adjust the matters in controversy and their rights between themselves, and have a judgment or decree entered by consent of all parties, without regard to the state of the pleadings or evidence in the case." (23 Cyc. 728; and authorities cited in footnote.)

"A consent judgment may be entered in open court by the judge on the consent of the parties or their attorneys, orally expressed, or may be entered on the record without the express sanction of the court from a written agreement between counsel duly filed, in which latter case the court's consent is presumed." (23 Cyc. 728; *Beliveau v. Amoskeag Mfg. Co.*, 68 N. H. 225, 40 Atl. 734, 73 Am. St. Rep. 577, 44 L. R. A. 167; *Dawson v. Babin*, 9 La. Am. 357; *Morrison v. Underwood*, 5 Cush. (Mass.) 52 (all cited in footnote.)

"Where a decree drawn up by counsel for one of the parties is submitted to the attorney of record for the other, and the latter endorses on it the letters "O. K." with his signature, and it is placed in the hands of the court and ordered to be recorded, it makes a binding and effective decree by consent." (23 Cyc. 728; footnote No. 70.)

"A judgment by consent of the parties is more than a mere contract in pais; having the sanction of the court, and entered as its determination of the controversy, it has all the force and effect of any other judgment, being conclusive as an estoppel upon the parties and their privies, and not invalidated by subsequent failure to perform a condition on which the consent was based." (23 Cyc. 729 and footnotes.)

In *Kelly v. Town of Milan* (21 Fed. Rep. 842, at p. 865) the court said: "Individuals sui juris may agree to almost anything and bind themselves, but corporation must act within their delegated powers. It is undoubtedly within their power to compromise litigation, and they may, when sued, consent to orders and decrees, and if the subject matter of the suit be within their authority will bind as it will individuals." In this same case Mr. Justice Hammond said: "In a court of equity it was always the rule that parties by themselves, or counsel, might agree upon a decree, and it was irreversible, and could not be appealed." (Ibid, p. 862; see also authorities there cited.) In this case (*Kelly v. Milan*, supra) Justice Hammond points out a distinction and a consent as

to what the decision shall be. Also the distinction between the estoppel which the parties bring upon themselves by their agreement which may be pleaded and bind them as an estoppel in pais, and that which arises out of the adjudication as an estoppel of record.

In this same case it is further held that the agreement is none the less an estoppel because it takes the form of a judicial decree, although it does not necessarily operate as an estoppel of record. While the respective pleas setting up these two kinds of estoppel would be essentially different, the record would be used as evidence in both cases.

Under the English law a consent decree can not be pleaded successfully as *res adjudicata* although it may be pleaded effectively as an estoppel arising out of the agreement itself.

In the United States, however, authorities and decisions, although a little conflicting, are generally favorable to the plea of *res adjudicata*, where a judgment or decree has been entered into by consent, if there be no fraud. (*Wharton's Evidence*, sec. 783, citing *Chamberlain v. Preble*, 11 Allen 370; *Brown v. Sprague*, 5 Denio 545; *Fletcher v. Holmes*, 25 Ind. 458; *Bank v. Hopkins*, 2 Dana 395; *Dunn v. Pipes*, 20 La. Am. 276.)

Bigelow on Estoppel, sixth edition, at page 80, says: "Indeed, it is commonly held in this country that where the agreement, confession, or consent is certain, the judgment will be conclusive."

In Nashville, etc., Ky., *v. United States* (133 U. S. 261), it was held that the effect of a consent decree extends to all matters within the consent, whether litigated or not.

In this case the court said: "But the insurmountable difficulty is, that the former decree appears upon its face to have been rendered by consent of the parties, and could not therefore be reversed, even on appeal. Courts of chancery generally hold that from a decree by consent no appeal lies—a decree, which appears by the record to have been rendered by consent, is always affirmed, without considering the merits of the cause." (*Ibid*, at p. 266.)

In Bigelow on Estoppel, sixth edition, in the foot note on page 80, will be found a long list of authorities in support of the validity and binding effect of a consent decree.

It has been held in the English court that a consent order made while a party was under a mistaken belief as to a basic fact involving jurisdiction, estops such party in subsequent proceedings from contending that the order was not within the jurisdiction of the court. (*Joint Committee v. Craston Council* (1897), 1 Q. B. 251.)

In *Kreiger v. Kreiger* (120 Ill. Ap. St. at p. 646) it is held that a consent decree "is in the nature of a solemn contract and it is an elementary principle that it can not be amended or in any way varied, without like consent, nor can it be reheard in the court that rendered it, appealed from, nor reversed upon a writ of error or bill of review."

A holding to the same effect is found in *McEachern et al. v. Kerchner*, administrator (90 N. C. 177; see also 21 C. J. 815, 816, 817.)

As a matter of law therefore there seems to be no doubt about the binding effect and validity of the packers' consent decree.

There surely can be no doubt that it is a consent decree. At the foot of the decree itself each group of defendants have indorsed by their attorney their consent in the following words: "And do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice." (*Transcript*, p. 61, 62, 63, 64, and 65.) One hundred and thirty defendants have thus consented.

If my opinion as to the law is sound, it will require the consent of the hundred and thirty defendants, together with that of the United States and those who have recently been made parties with the United States by process of intervention to modify or set aside this decree.

It has been held in *Franceschi v. Jones* (8 Porto Rico Fed. 472) that interveners consenting to a decree are as truly bound as any other parties. It is a logical conclusion from this holding that interveners became parties, with all their privileges and obligations.

The CHAIRMAN. Mr. Stevens, a thing that has been on my mind to some extent is this: If this decree is a contract, and the contract was made with the United States Government, with the injection of new parties to that contract, are the defendants to be justified in saying, "The contract has been violated, and therefore we are relieved from our agreement?"

Mr. STEVENS. That is, in this consent decree?

The CHAIRMAN. Yes.

Mr. STEVENS. My opinion is absolutely not; why should they?

The CHAIRMAN. The opening of the door, so to speak, has changed the contract they agreed to.

Mr. STEVENS. The interveners?

The CHAIRMAN. They agreed with the United States Government.

Mr. STEVENS. Yes.

The CHAIRMAN. Now they are made to agree not only with the United States Government, but with other interests.

Mr. STEVENS. I do not see that.

Judge HAINER. The Southern Wholesale Grocers have been made parties to the action?

Mr. STEVENS. Yes; that is true.

Judge HAINER. They have intervened, and the court permitted the intervention?

Mr. STEVENS. Yes.

The CHAIRMAN. And your contention is that they would have to consent to anything in the decree the same as the original parties with whom the defendants agreed?

Mr. STEVENS. That is my contention.

The CHAIRMAN. Now, is that not a material change in the agreement into which the defendants entered?

Mr. STEVENS. Not at all. The substance remains the same as it was.

The CHAIRMAN. They can not be said to have agreed with anybody except the Government. Now you say they may not have to agree only with the Government, but with the interveners.

Mr. STEVENS. I think that is sound.

The CHAIRMAN. Is that not a change of contract?

Mr. STEVENS. I think not; the contract remains as it was.

Mr. BREED. Might I interject here to call the attention of the chairman to the fact that the Government is to represent the people of the United States, and among the people of the United States are the representatives of the Southern Wholesale Grocers' Association and the National Wholesale Grocers' Association, the interveners?

The CHAIRMAN. I think the Senator will recall that that is a question we discussed when we argued the motion for intervention.

Mr. SMITH. Yes.

Judge HAINER. And the Government did resist the application for intervention?

The CHAIRMAN. Yes, sir.

Judge HAINER. Was the National Wholesale Grocers' Association made a party also?

Mr. BREED. Yes, sir.

Judge HAINER. The application was allowed?

The CHAIRMAN. Yes; in both cases.

Judge HAINER. The application was filed and allowed by the court?

The CHAIRMAN. Yes, sir.

Mr. SMITH. Upon the theory that the Government had represented them before and they were parties with special interest in that decree and had the right to resist a modification of it; that while not nominally parties, they were actually parties at interest.

Judge HAINER. Were one of the moving parties?

Mr. SMITH. So far as the Southern Wholesale Grocers' Association were concerned, we insisted that we participated in the conferences with the Attorney General, and we participated in the decree, although not nominally or actually parties; and we were admitted as parties on the ground that our special interests were involved and we had a right to preserve that decree, the Government having acted for us before as a beneficiary; so that I would insist that there is no modification of the agreement at all, but that certain beneficiaries for whom the trustee had acted had been allowed to maintain the benefits of the decree for themselves.

Judge HAINER. What do you say, Senator, to the fact that you were allowed to intervene; does that open the doors of the court, so to speak, for anybody else that may be interested to come in and intervene?

Mr. SMITH. Only if they show a specific interest.

Mr. WATKINS. The court so stated in his opinion.

Mr. SMITH. Yes; the court stated that it does not mean that they are pulling open the doors, so to speak, but only for those who have a specific interest in this decree.

Judge HAINER. What do you say about the California Cooperative Canneries coming in; it appears to have an interest?

Mr. SMITH. Well, I would say if they want to present a petition to intervene it would be for the court to determine. And, certainly, the Department of Justice would not be interested in that, except to resist it.

The CHAIRMAN. We would have had the same objection to it that we had to your petition for intervention, exactly.

Mr. SMITH. Yes; but if they want to be heard the regular road for them is to apply to the court to make them parties, not to apply to the Department of Justice, but go and make their application to the main parties, and then show that contract that we have not seen, and show whether under that contract they are not themselves violating the law.

Mr. BREED. I should like to have the record also show that one of the grounds upon which the National Wholesale Grocers' Association petitioned to intervene in the action of the United States against the packers was that they had been definitely informed that an application was to be made to modify the decree, and that therefore they had an interest to see that the decree was not modified without their having at least some notice of the grounds upon which such modification should be sought.

Judge HAINER. To forestall a modification without an opportunity to be heard?

Mr. BREED. Yes, sir.

Mr. SMITH. And that also was contended on the application of the Southern Wholesalers Grocers' Association.

The CHAIRMAN. Pardon us for interrupting you, Mr. Stevens.

Judge HAINER. I hope we have not interrupted the continuity of your thought.

Mr. STEVENS. No, sir; that is all right. I was about to call attention to a case with reference to the right of a party to intervene on behalf of the public:

An intervenor is defined in Bouvier's Law Dictionary as follows: "One not originally a party who, by leave of the court, interposes in a suit and become a party thereto to protect a right or interest in the subject matter. A person who intervenes in a suit, either on his own behalf or on the behalf of others."

That is the case here; these intervenors have intervened not only on their own behalf, but on behalf of the public.

Judge HAINER. And those similarly situated?

Mr. STEVENS. Yes; whose interests are similar.

By virtue of the consent decree, the United States and the packers entered into a solemn contract. There can be no doubt about the power of the United States to enter into any contract through its authorized agents in furtherance of the objects of government and not prohibited by Constitutional limitations. This was settled in *U. S. v. Tingey* (5 Pet. 115), where it was held that such capacity to enter into contracts is an incident to the general right of sovereignty.

Having entered into this contract it is binding upon the parties and their privies. (23 Cyc. 729; *Driver v. Wood*, 114 Ga. 296; *Edgerton v. Muse*, 11 S. C. Eq. 51.) It cannot be amended or in any way varied without the consent of the parties. (*Kreiger v. Kreiger*, 120 Ill. Ap. Ct. 646.)

The Southern Wholesale Grocers' Association and the National Wholesale Grocers' Association together with certain individual wholesale grocers have become parties by intervention. Their consent is therefore necessary in order that the decree may be modified.

Judge HAINER. Are they parties defendant, or parties plaintiff?

Mr. SMITH. Parties plaintiff.

Mr. STEVENS. Parties plaintiff, yes sir.

The CHAIRMAN. I would like to ask you another question, if I may.

Mr. STEVENS. All right.

The CHAIRMAN. You cited an English case there with reference to the jurisdiction of the court, to the effect that defendants who consent to a decree, who are parties, cannot afterwards raise the question of jurisdiction. Do you think the rule in the United States is the same? For instance, if there is a question of the jurisdiction of the court over the subject matter:

that the same could not be called to the attention of the court at any time during any stage of the proceedings by any party, and if it found it had no jurisdiction it would immediately dismiss the case?

Mr. STEVENS. No; I didn't mean that. I think it means this: I don't know whether you refer to any stage of the proceedings before the decree is signed—

Judge HAINER (interposing). Well, if the decree is rendered beyond the issues of the case, would not that decree be void as to so much of the decree as is beyond the issues of the case, and that could be set aside at any time on motion by any of the parties, or anybody interested or affected thereby?

Mr. STEVENS. No; not so far as any court decision I have found.

The CHAIRMAN. The parties cannot give the court jurisdiction of subject matter, can they?

Mr. STEVENS. That is a very different thing from a consent decree. The parties can not give jurisdiction where the court originally had no jurisdiction.

Judge HAINER. But suppose the decree is broader than the issues upon any hypothesis or theory, would you say that such a decree would be valid in all respects?

Mr. STEVENS. I would say it would not be valid if pronounced by the court on hearing and not consented to.

Judge HAINER. Well, by consent; could you consent to an unlawful agreement?

Mr. STEVENS. No; I didn't hold —

Judge HAINER (interposing). Could a consent or agreement, if it be in restraint of trade—suppose adverse parties should enter into an agreement that would be, in effect, in restraint of trade and you get the decree of the court on that matter, would that be binding on the Government?

Mr. STEVENS. That would be a great question. But a consent decree is strengthened by the element of consent. Now, if parties in court showed, by proof or otherwise, that there was a contract in restraint of trade, the court would not sanction it, and could not sanction it.

Judge HAINER. Yes; it is an estoppel against private litigants, but no decree is an estoppel against the United States, is it?

Mr. STEVENS. I don't know what value the decree would be if it was not so; if the United States could upset any decree.

Judge HAINER. A decree that would be against public policy, would that be binding against the United States? Or a decree that was not founded upon law?

Mr. STEVENS. Well, I apprehend if the decree were absolutely contrary to all known ideas of public policy, that it might be attacked. But that is not the case in this consent decree.

Judge HAINER. I did not mean to infer that in this. But I say you can easily conceive of such a state of facts that a decree, simply because it was entered into by consent of parties, and the court approved the decree, that it could not be modified.

Mr. STEVENS. Oh, no.

Judge HAINER. For instance, I had a case like this in Oklahoma when I was on the Federal court: We have a Federal law that prohibits grazing of cattle on Indian lands. And a suit was brought for damages for permitting thousands of heads of cattle to graze upon lands without consent of the Indians, or paying anything for it, and a suit was brought for the recovery of penalties. The Federal law provides a penalty, and a suit was brought for several thousands of dollars, in my court. The counsel got together and they entered into an agreement that one steer had grazed upon these lands in violation of law. They entered into a stipulation for a penalty of \$1, and that decree was entered by consent. It was afterwards called to my attention—after term time, too—and that decree was promptly set aside.

Mr. STEVENS. You were judge?

Judge HAINER. Yes, sir. Now, was the court without jurisdiction to set aside such a decree as that after term time, although consented to by the Government's counsel, as well as private parties? Is such a decree as that binding on the court?

Mr. STEVENS. I think it was binding upon the court. Unless a time had gone by—that is, if a reasonable time had expired; that is, if it was reopened.

Judge HAINER. Well, it was after term time.

Mr. STEVENS. But I think you will agree, Judge, that a matter of that kind, of so little importance financially, could not be reopened under the general principle that a bill of—

Judge HAINER (interposing). It was not a penalty. It amounted to really \$100,000, and they agreed to technically the sum of \$1 that they settle all the differences.

Mr. STEVENS. So as to settle the principles?

Judge HAINER. Not the principle.

Mr. BREED. I think you will find, Judge, that the case that Mr. Stevens cites provides that any of those decrees may be upset where any element of fraud or collusion has entered into the question of obtaining such a decree. The citation itself uses those words.

Judge HAINER. That it was a fraud upon the court; upon that theory.

Mr. BREED. Yes; jurisdiction obtained by collusion and fraud.

Mr. STEVENS. And furthermore it could be attacked if the court had exceeded its constitutional limitations. Any decree which is not based upon fraud in procuring the decree, or any decree in which the court has not gone beyond its constitutional powers, will stand.

Judge HAINER. Mr. Stevens, do not the courts go still further than that? Jurisdiction consists of three things: The jurisdiction of the parties; second, the subject matter; and then, third, jurisdiction to render judgment within the issues of the case. If a decree is beyond the issues in the case would that be binding?

Mr. STEVENS. No; I do not think it would. But how does that apply to the consent decree?

Mr. WATKINS. If you will pardon me, Judge Hainer, you will find that matter very ably discussed in the case of the United States Construction Co. v. Armour Packing Co., in 35 Okla. 179. I don't know whether you are the author of that opinion. That is a very fine opinion.

Judge HAINER. I am author of one, but that is a little bit earlier.

Mr. STEVENS. Also in the case I cited, *United States v. Tingley*, this principle was accepted, that the Government in the exercise of sovereign power may enter into any agreement in furtherance of government, and as far as this consent decree was concerned it was nothing else than furtherance of government under the antitrust laws, the Clayton Act.

Judge HAINER. Well, do you think if this decree as it was entered, Mr. Stevens, had been appealed to the Supreme Court of the United States, admitting all the facts that have been introduced and all the reports of the Federal Trade Commission and all the testimony here, that the Supreme Court of the United States, based upon its decisions, would uphold the decree and absolutely restrain any person from conducting a lawful business in transporting what you might call unrelated commodities? That is, that the court would say that the monopolistic features and the unlawful features, of course, must be and will be restrained, but the parties affected may conduct their business, which is per se not unlawful, in a lawful manner; that is, it would not extend to absolute prohibition of handling these unrelated commodities, but would restrain them from monopolizing them, or attempting to monopolize any commodity, or do any unlawful act?

Mr. STEVENS. I think that such a case as the consent decree we are discussing—

Judge HAINER (interposing). Do you know of any adjudicated case where a business was lawful in itself and which may be used in an unlawful manner, that there was ever a decree entering an injunction perpetually restraining the party from engaging in that business which could be conducted in a lawful manner under the restraining power or influence of any State or Government? Do you know of any such a decision as that, Mr. Stevens?

Mr. STEVENS. Well, the only decisions that I think of at the present time are the decrees rendered by courts of equity in States where the prohibition law as to liquors, intoxicating liquors, are concerned.

Judge HAINER. That is unlawful in itself.

Mr. STEVENS. Well, it is unlawful in itself in certain respects. But where the person has been licensed, for instance, to sell intoxicating liquor, and in a building over which the licensee has no control, and something transpires at the farther end of the building entirely out of his jurisdiction and control, courts have perpetually enjoined the selling of liquor in that building.

Mr. BREED. I should be very glad to go into that question, Judge Hainer.

Judge HAINER. Well, I want you to discuss that feature of it, Mr. Breed.

Mr. BREED. And I do go into it in the brief that I will present.

Judge HAINER. Yes. I just suggest that to the counsel.

Mr. STEVENS. I am going to make this suggestion there, judge, in view of your query, which is a very natural one. Take any case. Now, suppose the packers had asked for an appeal to the Supreme Court. They could not have gotten an appeal; they would have to go and apply for a writ of mandamus, and that would be refused after a hearing, because it was not appealable. It was entered into by consent, and all the authorities hold that it can not be appealed from, and can not be reviewed by a higher court.

Judge HAINER. What if the decree affects the public interest.

Mr. STEVENS. Adversely?

Judge HAINER. Adversely.

Mr. STEVENS. Well, in that case it must be affirmatively shown at the time, and would be shown. It could not get by the court.

Judge HAINER. Aren't there decisions to that effect by the Supreme Court of the United States, that where it was conclusively shown that there was a violation of sections 1 and 2, for instance, of the Sherman antitrust law, and the decree was entered that absolutely restrained and prohibited the parties from engaging in that business, that the Supreme Court of the United States laid down the rule that the decree was broader than the issues permitted; that the unlawful part should be restrained, but the parties should be permitted to continue under the supervision of the court if they conduct a lawful business? In other words, the purpose of the antitrust law was not to destroy property, but was to protect property and leave the channels of commerce free. That there could not be an absolute cessation of interstate commerce in any particular commodity, and if it affected the public interest, or inflicted an injury, that that commerce should be allowed to flow in a lawful manner under the supervisory power of the Government.

Mr. STEVENS. Well, I think there is no doubt but what such a case as that would be upset, but not by modifying the decree. I think you can recall that I have cited here one or two cases which hold that the consent decree can not be modified, amended or reviewed, and the only possible way to attack it is by an independent bill in equity, which could be done.

Judge HAINER. Well, do you think that this particular decree is a final decree, or is it what we call an interlocutory decree?

Mr. STEVENS. Why, so far as the subject matter is concerned, it is final.

Judge HAINER. Where does it say the subject matter in that decree?

Mr. STEVENS. Well, I don't know that it mentions it.

Judge HAINER. That has been suggested.

Mr. STEVENS. Yes, but the decree is a final decree as affecting the subject matter agreed upon. It can not be otherwise. There could be no interlocutory decree in a case that has had no hearing.

Judge HAINER. Well, a final decree, as I understand it, is a decree in which there is nothing that can be entered—neither party can move to vacate or set aside or anything be done, and when the decree becomes final—of course if the court has jurisdiction of the parties and the subject matter, that decree then becomes final, provided the decree is rendered within the issues in the case.

Mr. STEVENS. Yes, sir, and is not appealable or reviewable.

Judge HAINER. Yes.

Mr. STEVENS. That is true, but is that the case?

Judge HAINER. Doesn't paragraph 18 put in a reservation there that either party can move to modify the decree, either to strengthen it or to change any of its provisions?

Mr. STEVENS. No, sir, I should not want to be retained on that side of the case. I should prefer the other side, because that section eighteenth, Judge, as has been so clearly stated by Mr. Watkins and Senator Smith, is purely, without a doubt, for the purpose of enforcing the decree, because the decree itself contains subject matter that makes it imperative that at some time in the future an application may be made to enforce the decree, not to modify it. It is a contract entered into by the sanction of the court, and held under the decisions to be a very solemn contract which can not be amended. I think that is sound.

It hardly seems worth while to go any further into the legal aspect of it, unless you wish it.

Judge HAINER. Well, we would like to have you finish, Mr. Stevens.

Mr. STEVENS. Well, I think that I have said all that I really ought to say as to the legality of the decree.

I have not analyzed or discussed, except incidentally, the so-called testimony of the opponents of the modification. It did not seem to be necessary or desirable in view of the testimony itself; the nature of it, and in view of what Senator Smith and Mr. Watkins have said, and what I apprehended they would do, and I think I guessed pretty near right. I left that out thinking that they would take that up, and I say here that so far as I know there has been no agreement among counsel to cover any particular phase of this situation, and it is interesting to me to see how the various minds apparently come together, and I believe it is a fair indication that it is pretty sound. We have come to these conclusions independently. Now, there has been no agreement or contract in restraint of brief writing among the counsel.

I have been arguing mainly in support of a hypothetical motion to dismiss the petition, assuming this committee to be a court and Mr. Campbell and the others to be the petitioners. Now, I have tried to convince this committee—and I hope I have—that, were they sitting as a court, it would become their judicial duty to dismiss the petition to modify the decree—

First. For lack of jurisdiction of the persons petitioning, no one of whom is a party to the action from which the decree resulted.

Second. Because the decree was not a decree by the court alone but is in effect an admission by the parties that the decree is a just determination of their rights upon the real facts in the case had they been legally proved.

Third. Because under the law the decree is binding and absolutely conclusive upon the parties consenting and can not be amended or in any way varied without consent of the parties.

Fourth. Because, being a decree by consent of the parties with the sanction of the court, under the law it has all the force and effect of any other judgment and is an estoppel upon the parties and their privies.

Fifth. Because the record shows that while one or two of the packers are willing to have the decree modified, and are assisting Mr. Campbell in his efforts to obtain modifications, some of the packers, the defendants themselves, are resisting modification.

Sixth. Because the record shows that the United States Government, through one of its departments which ought to know and does know more about the packer activities than any other department of the Government, has appeared before this committee in earnest and dignified protest against the modification of the decree.

The CHAIRMAN. Mr. Stevens, right there, in that connection, what would be the situation if this decree was entered upon a theory, and after the entry the Supreme Court of the United States should declare that that theory was wrong? For instance, the Federal Trade Commission says that this decree should be sustained because of the menace of the potential power of the meat packers to acquire a monopoly in unrelated lines, and the Supreme Court of the United States has expressed somewhat different views in the steel case, which was rendered subsequent to the consent decree in this case. In that situation, what would be the duty of the court and the Department of Justice?

Mr. STEVENS. Well, I think we are getting away in these inquiries; we are drifting away from the additional effect of consent. It is to be presumed that the packers are of age; they are 21; they know what they are doing, and it would be so presumed that they knew what they were entering into and they consented to it, and they must be bound by it.

The CHAIRMAN. And your view would be, then, that the decree should stand, even though the Supreme Court had decided that in a litigated case such a decree should not be entered because of the fact that the packers did consent to it, and it was an agreement?

Mr. STEVENS. Yes; I think the element of consent has a very powerful effect.

Judge HAINER. Regardless of whether the decree was right or not, so far as it relates to the unrelated commodities; that is the only issue here.

Mr. STEVENS. So far as there was no fraud in obtaining the consent, and so far as the court acted within its constitutional powers, I think it is absolutely conclusive, and can be attacked only by an independent bill in equity, which can be done now. I think that is the proper way—is to bring an independent bill in equity and find out where they are at. But they can not, under the law, attack this decree or ask to have it amended.

Judge HAINER. But the Government itself could not move, no matter how unlawful, or whether it has exceeded its power or not?

Mr. STEVENS. No; I don't see how it could, because here are interveners now that come into it. I think that if the Government and the packers, all of the parties to this decree, had agreed that it might be modified, it possibly could not be attacked.

Judge HAINER. But don't you make a distinction, Mr. Stevens? You are assuming now that if we should make the recommendation, that that in effect is a modification of the decree. It doesn't mean that?

Mr. STEVENS. Not at all.

Judge HAINER. It simply means that these matters should be presented to the court that originally heard the matter, and permit the court to pass upon the matter in the light of the decisions of the Supreme Court of the United States and the law of the land, and whether or not it does injuriously affect any of the public, that is for the court to determine. And the question before the committee here is whether there is such a showing that they should present their rights to a competent court, and hear it upon the evidence and upon the law. It doesn't mean that even if the committee should recommend this, that their opinion is that it should be necessarily modified. It was suggested by Senator Smith that in some respects the decree would be strengthened. In other words, it occurs to me it is a very serious question when you file a written stipulation signed by the Government counsel, as well as the parties, that there should be no findings of fact, and that the decree is not an adjudication of the rights, and that the parties who are charged with the violation of the antitrust laws were innocent of the violation of any law, that such a decree could stand. Have you ever found any decree where there was a written stipulation filed, or any decision of any court, English or American court, where a decree was based upon such a stipulation as in this case?

Mr. STEVENS. No; I don't think there ever was.

Judge HAINER. No.

The CHAIRMAN. There is no such.

Judge HAINER. I have entered numerous consent decrees—

Mr. SMITH (interposing). Mr. Chairman, I would like to suggest that there has never been in any such a case such a combination invading the entire foodstuffs over the entire land. You can not find another such case. The court could have dissolved these corporations. If it could have dissolved the corporations and stopped them from doing business, it could stop them from extending their business, and the decree follows the allegations in the bill. I just want to throw that out.

Judge HAINER. Senator, now if you were sitting as a judge you might have found on the evidence that they were violating the Sherman antitrust law and the Clayton antitrust law as to the meat business. Or perhaps it is the cheese business, or other business. But as a court would you then have entered the decree restraining and prohibiting them from doing a business that has not reached the state of monopoly, and was not in violation of any law of the United States?

Mr. SMITH. I would without hesitation if they had consented to it. I think I, on this record, would have enjoined them from doing business altogether. I think I, under this record, would have dissolved the corporations, and put them entirely out of business everywhere if it had gone to a final hearing. I think the record justified it.

Judge HAINER. Do you think such a decree would have withstood the attack of an appeal to the Supreme Court of the United States?

Mr. SMITH. I do. I think this record makes a case in which the corporations could properly have been dissolved. I think probably in the interest of the public it was better to have stopped them and restrained them, as this did. But I haven't any doubt about the legality, under their consent, of stopping them from extending their business further, because the extension of their business would have been an extension of monopoly.

Judge HAINER. But the decree permits them to engage in what is the monopolistic feature of it, and the unlawful part permits them to engage in that business, and then absolutely restrains them in the handling of the unrelated commodities that were not unlawful.

Mr. SMITH. But the extension of that business would simply have extended the monopoly in the domination of the food supply of the country.

Judge HAINER. That is, as a future menace?

Mr. SMITH. Yes, it stopped them from going on with their monopoly in the balance of the food, and undertook to control them in what they had already grasped as a monopoly.

Mr. STEVENS. And furthermore, Judge Hainer, since the entry of this decree the defendants in that decree have taken advantage of the benefits of the decree in going before committees in Congress and before the Interstate Commerce Commission, and setting it up as a sort of a plea in bar against anything more against them. They have accepted the benefits of it, and now they must be bound by it.

I was about to state my seventh ground, Mr. Chairman.

The CHAIRMAN. Proceed, Mr. Stevens.

Judge HAINER. It wouldn't do to pass this up without asking a few questions.

Mr. STEVENS. No.

Judge HAINER. You would not think we were interested.

Mr. STEVENS. The seventh ground would be because not only the United States but one of the great States therein, the State of Michigan, has also appeared here in protest, through its department of justice, and this is Proponent Morrill's own State.

Eighth. Because even a recommendation that the decree be modified will, when its significance is understood by the people of this country, divide them into hostile camps, stir them into righteous indignation, and drive them to act unwisely.

Ninth. Because, as we see it, recommendation for modification, in the light of what has transpired in this hearing, would be ethically questionable, morally wrong, and politically a serious blunder.

I hope the committee will accept my statement of the best of intentions.

Judge HAINER. We will do that.

Mr. STEVENS. I do not want this committee to place itself in the position it would find itself as to the law, I am very sure, by taking upon themselves the burden of even recommending that the Government try to do something it can not do.

Judge HAINER. Now, Mr. Galloway, it is 20 minutes of 4. Mr. Breed, could not you argue this case in the morning just as well as to-night? I have got an engagement at the department, where there are some Chicago people who are attempting to make an application in the packers case.

Mr. BREED. I was rather hoping to get through to-night. I don't know that my argument would be so important but that we can perhaps go on.

Judge HAINER. Well, I would like to hear your argument.

Mr. BREED. I am going to present a brief in printed form. And the record will disclose the argument. I would like very much if we could close to-day.

Judge HAINER. Well, perhaps if you will take a recess for half an hour or so I can be back.

The CHAIRMAN. Will that be all right for you gentlemen?

Mr. BREED. It is all right with me.

The CHAIRMAN. Very well, we will then take a recess until 4.30, say, and we hope to be back then.

(Thereupon, at 3.45 o'clock p. m., a recess was taken.)

AFTER AFTERNOON RECESS.

At 5.20 o'clock p. m. the committee reconvened, and the arguments were resumed.

Mr. CAMPBELL. Mr. Chairman, might I submit my brief now? I want to submit this brief, and I have one copy here, Mr. Chairman, for the attorneys on the other side, and you can hand that to any one of them you want.

The CHAIRMAN. Very well.

Mr. CAMPBELL. I suppose that I will be entitled to copies of the briefs of the other side, will I?

The CHAIRMAN. Well, I understand Mr. Breed's brief will be printed, but I don't know as to the others.

Judge HAINER. Why not put those that are typewritten and will not be printed into the record, and then we will have them?

The CHAIRMAN. It would make the record rather large.

Judge HAINER. Well, if those briefs that are not to be printed were put in the record we would have them there, and you could have them in that way. Mr. Campbell.

The CHAIRMAN. Very well; if there is no objection Mr. Campbell's brief may be put in the record.

Judge HAINER. I think it would be a good idea for the Senator's brief, and Mr. Stevens's to be put in also.

Mr. BREED. Yes.

Mr. CAMPBELL. Well, I would like to have a copy of the briefs.

Mr. BREED. Well, you will get them in the record.

Mr. CAMPBELL. Well, I wasn't getting the record.

Mr. BREED. Oh, take a copy of it, and then you will have them.

Mr. CAMPBELL. All right; I will do that.

Judge HAINER. I think it would be proper to put these briefs in that are not printed.

The CHAIRMAN. If you gentlemen will leave a copy of your briefs.

Mr. BREED. Mine won't really be down here to-morrow. I have got one that was partially printed, but there was some more to go in, and the balance will come along day after to-morrow.

Mr. STEVENS. Now, may I have some copies made and correct the errors that I find?

The CHAIRMAN. When could you get it down?

Mr. STEVENS. Within a week.

Judge HAINER. Well, put those that are not printed in the record.

The CHAIRMAN. Mr. Breed's will be printed, and it will not be necessary to put that in the record.

(The brief presented by Mr. Vernon C. Campbell to the committee for the record is as follows:)

BRIEF IN RE MODIFICATION, WITH REFERENCE TO GROCERY ITEMS, OF CONSENT DECREE IN THE CASE OF UNITED STATES *v.* SWIFT & Co. ET AL.

STATEMENT OF FACTS.

It appears necessary to review at length the facts leading up to the hearing held by the interdepartmental committee for the purpose of determining upon the report and recommendations which should be made as to modification of the consent decree. However, in order that the committee may have before it the views of the California Cooperative Canneries in this matter, which, we submit, is the position of others who appeared in behalf of the modification, as well as the position of a great number of growers, canners, and citizens who were unable, unwilling, or reluctant for business reasons to appear at the hearing, we would respectfully call attention to the following:

By the provisions of the consent decree, it is provided, briefly, as follows:

"First. That the corporation defendants, and each of them, are enjoined from in any manner maintaining or entering into any contract, combination, or conspiracy in restraint of trade, or from monopolizing or attempting to monopolize any part of trade or commerce.

"Second. The defendants, and each of them, are perpetually enjoined from owning any interest in stockyards, stockyard terminal railroads, or stockyard market newspapers in the United States, except in so far as the court may permit individuals to retain such interests upon certain conditions.

"Third. The corporation defendants are perpetually enjoined and restrained from either directly or indirectly, through any device or arrangement whatsoever, from using or permitting any other person, firm, or corporation to use their distributive system and facilities, including their branch houses, route cars, and autotricks, or any of them, in any manner for the purchase, sale, handling, transportation, or distributing, or otherwise dealing in, any of those commodities named in the decree.

"Fourth. The corporation defendants are perpetually enjoined and restrained from either directly or indirectly engaging in or carrying on, either for domestic trade or for export trade, manufacturing, jobbing, selling, transporting (except as common carriers), distributing or otherwise dealing in certain commodities named in the decree. The corporation defendants are further enjoined from owning, either directly or indirectly, any capital stock or any other interest whatsoever in any other corporation, firm, or association, except common carriers, which is in the business of manufacturing, jobbing, selling, transporting (except as common carriers), distributing, or otherwise dealing in any of the commodities named in the decree.

"Fifth. The individual defendants are perpetually enjoined and restrained from either directly or indirectly owning voting stock which in the aggregate amounts to 50 per cent or more of the voting stock of any corporation, firm, or association which may be in the business of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of the commodities named in the decree.

"Sixth. The defendants and each of them are perpetually enjoined, in the United States, from owning or operating retail meat markets.

"Seventh. The defendants and each of them are perpetually enjoined, in the United States, from owning any interest in public cold storage warehouses, except under certain conditions.

"Eighth. The corporation defendants and each of them are enjoined, in the United States, from dealing in fresh milk and cream, except for their own use in manufacturing butter or butter substitutes, or cheese.

"Ninth. The corporation defendants and each of them are perpetually enjoined from engaging in, carrying on, or using any illegal trade practices of any nature whatsoever in relation to the conduct of any business in which they, or any of them, may be engaged."

The remaining paragraphs of the decree are intended to render effective the injunction orders above enumerated, to wit, second to eighth, inclusive.

It is the third, fourth, and fifth provisions of this decree, effectually destroying highly valuable and extensive facilities for domestic and export food distribution, with which we are most concerned. Attention is called to the fact that the economic value and efficiency of the distributive system of the packers was not denied by those opposed to modification of the decree. Such efficiency was questioned by Economist Durand when the distributive system grew beyond certain proportions, but the testimony of Mr. Clifford Thorne, based on actual facts as to the operation of such system, proved the efficiency and economy thereof beyond question.

We willingly admit the special interest of the California Cooperative Canneries in the continuance of this distributive system, resulting from our contract with Armour & Co. But our direct injury, under the terms of the decree, serves to make more evident the indirect injury which the producers and manufacturers of food products must, of necessity, sustain if their marketing field and channels of distribution are to be forever restricted thereby. As previously stated, the California Cooperative Canneries entered into a contract with Armour & Co. in May, 1919, whereby the latter agreed to purchase from us all of the California canned fruits required by them, in so far as we were able to furnish the desired quantity and grades. The term of this contract was for a period of ten years, and under it Armour & Co. handled about 50 per cent of the output of the California Cooperative Canneries during the year 1920. The great value of this contract to us is apparent, in that it afforded a ready market for a large portion of our output, thus effecting a great saving of time and money in sales effort and expense. Such contract was valuable also in obtaining loans from banks, in that the banks were willing to loan to us because they were satisfied that a considerable portion of our pack was sold to a reliable buyer and we would be able to pay them the money borrowed to cover the expenses of canning. Our growers of fruits and vegetables felt secure through having such a considerable portion of our pack sold for a term of years. They knew that their products were already marketed, and accordingly were able to plan the care of their orchards and conduct of their business with a feeling of security as to the future. The contract gave to the California Cooperative Canneries assurance of a wide distribution of its products and we were able to operate our plants at full capacity, thus reducing the cost of operation to the minimum.

After the entry of the consent decree, Armour & Co., notified us that they were compelled to discontinue the handling of products such as ours and that the contract must be canceled. No investigation was made by the Department of Justice as to our rights under the proposed decree and we were not notified or heard in the matter. It is extremely difficult to determine the full extent of the damages sustained by our organization through the taking away of our principal market outlet, both foreign and domestic. We insist that our rights and our property have been invaded and destroyed without due process of law and so believing, we have since May, 1920, protested to the Department of Justice against the operation of the consent decree, pointing out the great damage which the operation of this decree does not only to our business, but indirectly to every fruit producer and canner in California and elsewhere.

In this connection, I wish to quote from the December Trade Letter issued by R. H. Bennett, of the California Wholesale Grocers' Association, as follows:

"Distribution is the foremost problem for the commercial world. It is inadequate, and the world calls aloud and insistently for increased efficiency and more economy in transferring commodities from the producer to the consumer, and the revolution has started—chain store systems are growing, combinative buying is increasing, giant combines are pending, direct selling is wabbling in decision, and the established system of distribution is trembling in the balance, so—where do we go from here?"

It is evident that the contract which we had with Armour & Co. enabled growers operating individually, to market their produce direct to the retailer, without intervention of the usual brokers and others interested in taking toll en route. Aside, however, from our own interest in the matter, we are of the opinion that the extensive and efficient distributive facilities of the packers should be utilized to their fullest capacity with resultant benefit to the farmers, growers and food producers generally, as well as to the consumers. Believing this, we made such effort as we could to inform, and advise with, growers, canners and others interested. The committee will appreciate the great difficulty encountered in carrying on an unorganized effort in opposition to the two powerful trade organizations of the wholesale grocers. We understand the Southern Wholesale Grocers' Association has membership of approximately two thousand wholesale grocers and the National Wholesale Grocers' Association a membership of approximately sixteen hundred. Both of these organizations have been in existence for years, are well financed and well advised as to the best method of bringing their influence to bear against any proposition in anywise conflicting with their interests. These two associations actively opposed modification of the decree and they or their members brought pressure to bear against those favoring modification and by divers means a full, true and complete expression of opinion from canners and others was prevented. A number of those, upon whom we had depended, failed to appear at the hearings, although, up until the time the list of witnesses was made known publicly, they had assured us they would do so. We feel confident that the committee will bear in mind and give due weight to the handicaps under which we were working in attempting to focus the views of those favoring modification and secure their attendance at the hearings.

THE ISSUE.

The greater portion of the testimony seems directed toward the question whether it is to the interest of the wholesale grocers that additional competitors be permitted to enter their field of business. We submit, however, as previously stated, that the real issue here involved is whether the public interest, i. e., whether the interests of the one hundred and ten millions of American people do not require that all facilities for the sale and distribution of foods be used, and all channels of trade be opened, to the fullest extent for both domestic and export business. And we believe it is in the light of this issue that the committee will wish to weigh and consider this question, and not upon the narrow ground as to what may be best in the selfish interests of the National and Southern Wholesale Grocers Associations.

THE HEARING.

In attendance throughout the hearing, we find the National Wholesale Grocers Association represented by their chief counsel, William C. Breed, and a corps of assistant attorneys; the Southern Wholesale Grocers' Association represented by the Hon. Hoke Smith; the Vermont Wholesale Grocers' Association represented by Attorney Roland Stevens; the National Food Brokers' Association represented by H. A. N. Dally, a former attorney, all of whom were present during the entire proceedings. Attorney Clifford Thorne, who represented the National Wholesale Grocers' Association as chief counsel in their case before the Interstate Commerce Commission involving the peddler car question, was also in attendance during the greater portion of the hearing.

All of these gentlemen participated not only in aggressively cross-examining witnesses who favored modification, but each of them in addition thought it necessary to take the witness stand and make statements in opposition to modification of the decree. To say that this group of attorneys represented the public interests as distinguished from the interests of their clients is

absurd. The attorneys sought to dominate and direct the course of the hearings along lines which would be most beneficial to the wholesale grocers' interests, and we submit the record shows that such was their course of action throughout the proceeding.

Those favoring modification of the decree were not represented at the hearing by any attorney or attorneys; they did not enter upon the hearing with the idea that this was a contest between the wholesale grocers of the country and certain companies engaged in the meat packing industry. It was our idea throughout that the Interdepartmental Committee wished to receive full information as to the economic effect of this decree upon the public interests. We well knew that the wholesale grocers associations could bring to the hearing not only an array of eminent counsel but practically every one of their 3,600 members if they so desired. The president of the National Wholesale Grocers' Association since the close of the hearing has seen fit to call attention to the large number of witnesses who appeared in opposition to modification and the small number who appeared in favor of modification of the decree.

I contend that the wholesale grocers and their witnesses appearing in their behalf were testifying entirely for their own selfish interests and represented only one group or class and were not in any way representing the interests of the general public or expressing the public view. It must also be borne in mind by the committee that this hearing was asked for by the Wholesale Grocers' Associations and held in response to their request, that neither myself nor other proponents of modification did at any time ask for a public hearing or was it the intention of myself or any other of the proponents to try to overawe or influence the committee through weight of numbers. Our sole and only intention was to bring before the committee various viewpoints held by the proponents of modification and to answer such arguments and statements as might be made by witnesses and attorneys for the wholesale grocers. However, although we had no intention or design of impressing or influencing the committee on account of or by weight of numbers, I find that whereas the wholesale grocers and their witnesses who testified for them represent possibly a few thousand individuals and corporations, practically all of whom were wholesale grocers or those representing interests closely allied; those who witnessed either in person or by letters in favor of modification, represented hundreds of thousands of individuals, principally producers or producers organizations.

The Michigan Farm Bureau Federation alone (a resolution from which I introduced into the records) represents 100,000 producers and Mr. J. R. Howard who is the representative of over a million producers of the United States, is on record, through a letter written to me, favoring the meat packers entering distribution as soon as the Secretary of Agriculture is prepared to administer the packer control act.

It is, moreover, my understanding that even cases in court are not decided according to the volume of testimony adduced—the interests of the parties appearing must be taken into consideration in weighing the value of their statements.

With this thought in mind, we do not believe it would be helpful to prepare an abstract or outline of the testimony presented. In the testimony given by me in rebuttal under date of December 10, beginning at page 1989, will be found a review of a portion of the testimony of certain wholesale grocers and others who were witnesses at the hearing. At other points in the testimony of myself, upon rebuttal, will be found statements reviewing and answering the testimony of other witnesses opposed to modification particularly the testimony of Messrs. Chase and McKinney. We shall, therefore, content ourselves with submitting merely a résumé or outline of points established by the testimony of various witnesses in attendance at the hearings.

Witness Gray, a prominent fruit grower, has expressed the views of the California fruit producers and reviewed the history of fruit production on the Pacific coast. He has had actual experience in producing and marketing farm products over a long period of years. He has clearly pointed out the growers' difficulties in marketing through the wholesalers. He warns the Government against the operation of this consent decree which narrows and restricts the producers' marketing channels and facilities.

Mr. Morrill, a large producer of Michigan, representing the views of 100,000 members of the Michigan Farm Bureau Federation, in his testimony before your committee most earnestly protested against the operation of the decree,

setting forth concisely and clearly how and why this decree caused great financial loss to the producers of Michigan.

The opposition of canners and many business men throughout the States of Virginia, Tennessee, North Carolina, and parts of Georgia, to the consent decree, was voiced by witnesses Gillespie, Gillian, Craig, and Gill who are practical men variously engaged in canning, can manufacturing, fruit growing, farming, and banking, and are familiar with the injurious effects of the operation of the decree in their districts.

Witnesses Sterling, Milbourne, and Handy, oyster, fish, and vegetable packers of Maryland, together with letters received from sardine packers on the coast of Maine, and introduced in evidence, made clear the damage sustained through the operation of the decree and set forth the views of those engaged in the packing and preserving of these kinds of foods, as to the necessity for the immediate modification or the setting aside of the decree.

The testimony of the committee representing the National Kraut Packers' Association conclusively showed that the packers of sauerkraut and the farmers growing the produce throughout the United States had suffered great financial losses directly through the operation of this decree which prevents the meat packers from distributing to the retail meat dealers an article of food largely handled by such trade.

At the request of Mr. A. I. Judge, the editor of the Canning Trade of Baltimore, I introduced in evidence a letter addressed to your committee by Mr. Judge. The Canning Trade is the oldest and the first journal in the United States devoted exclusively to the canning business and it will be admitted that Mr. Judge, by his many years of close personal contact with the canners of the United States, is in a better position to learn and to know the views of the great body of canners on this decree matter than is any other man in this country.

His journal is supported by, and is conducted in the interest of the canners only and therefore his views would naturally reflect those of the great majority of the canners themselves. He says, after carefully reviewing the whole matter: "What I have said, was and is, wholly with the interest of the canners at heart and because I believe that a return of the big meat packers as distributors will not only restore fair conditions to the canners but that the consumer will be best served. I pray you therefore to restore the big meat packers to their rightful position as distributors of canned food and other lines and by this action wipe out the blot that has been put upon the name of fair trading and real Americanism when the Packers Consent Decree was enacted."

I quoted from the annual address of President Virden, of the Western Canners Association, before that organization last spring, in which he laid stress upon the necessity for the meat packers to be again allowed to distribute canned goods. Communications from many other proponents for modification were introduced by me and other witnesses, and I have no doubt that many farm organizations have communicated directly with this committee or the Department of Justice urging modification.

POINTS BROUGHT OUT AT HEARING.

1. The most vital problem to-day to the average American is the question of the prices of food.

2. All investigators of such problem state unqualifiedly that food distribution between the farmer, grower or producer, and the consumer must be made more efficient and direct if such problem is to be solved. The Joint Commission of Agricultural Inquiry found that 37 cents of the consumer's dollar represents the cost of producing the article and the cost of material that went into it, 14 cents represents all the profit, 49 cents the cost of service of distribution.

3. The defendants under the consent decree have approximately 1,200 branch houses throughout the entire country located principally in the large consuming centers, all of which have an organization, an equipment of dry and cold storage space, and other facilities suitable to the handling of canned and dried fruits, vegetables, and other food products.

4. The defendants under the consent decree have a great number of cars and car routes over which they operate so-called "peddler cars," thus reaching directly and economically thousands of towns with food products.

5. The defendants under the consent decree have organizations and connections in foreign countries which are located and equipped so as to handle export trade in food products.

6. Proper distribution of food between the growers and the consumers, both domestic and foreign, is requisite to an increased production of foods.

7. All of these facilities and equipment for food distribution are destroyed, and market channels of trade heretofore open to growers and canners are closed by the provisions of the consent decree.

8. Those opposed to modification of the decree base their opposition in reality upon their desire to prevent competition in their field of business.

9. Those opposed to modification of the decree base their opposition ostensibly upon (1) the possibility of the defendants monopolizing the production and distribution of foods, and (2) alleged unfair transportation advantages enjoyed by the defendants.

10. The petition of the Government leading up to the consent decree does not allege monopoly or attempt to monopolize through concerted effort or any agreement or understanding or joint action of defendants.

11. Economist Durand, of the Federal Trade Commission, admitted without equivocation that the commission was without any evidence whatever to show, or even tending to show, any monopoly or attempt to monopolize "unrelated lines" by defendants acting together.

12. As bearing upon the possibility of monopoly, each defendant's business, therefore, must be separately considered as must the business of each wholesale grocer.

13. There are individual wholesale grocery companies transacting business in volume equal to or greater than the combined total volume of business in "unrelated" lines handled by at least three of the defendant companies.

14. Sales of wholesale grocery items by the defendants were greatest in volume during the period 1916-1920. During such period, according to the bureau of business research of Harvard University, complete reports from 45 wholesale grocery firms showed a progressive increase in volume of average net sales per firm as follows: 1916, \$1,380,000; 1917, 1,690,000; 1918, \$1,907,000; 1919, \$2,340,000; 1920, \$2,606,000. Further, that net sales of individual firms ranged from \$176,000 to \$28,400,000. Further, that sales of the Western Grocer Co., of Des Moines, Iowa, located where defendants' competition would be strongest, showed increases in gross sales as follows:

1914 -----	\$8,496,552	1918 -----	\$18,306,615
1915 -----	9,376,587	1919 -----	22,028,927
1916 -----	10,833,352	1920 -----	26,668,215
1917 -----	15,172,552		

The above are undisputed and indisputable facts, not economist's theories as to future possibilities.

15. The number of wholesale grocery concerns increased steadily during the period 1914-1920.

16. No showing was made by those opposed of any wholesale grocery concern being driven out of business or even volume of business decreased by defendants' operations.

17. The Interstate Commerce Commission on July 31, 1918, rendered its decision in the matter of private cars (50 I. C. C. 652), after an inquiry extending over six years into the practices relating to the operation of private cars on the railroads of the country. The commission approved such private ownership and operation. It is reasonable to suppose the commission would have condemned the so-called "peddler car system" if such system were, in fact, injurious to the best interest of the public.

18. By the act of May 29, 1917 (40 Stat. 101), Congress expressly recognized the use of privately owned cars in transporting the commerce of the country and provided for their control by the Interstate Commerce Commission through promulgation of rules and regulations applicable to carriers hauling them. Such act provides, in part, as follows:

"The term 'car service' as used in this act shall include the movement, distribution, exchange, interchange, and return of cars used in the transportation of property by any carrier subject to the provisions of this act. * * * The commission shall, after hearing, upon the complaint or upon its own initiative, without complaint, establish reasonable rules, regulations, and practices with respect to car service, including the classification of cars, compensation to be paid for the use of any car not owned by any such common carriers and the penalties or other sanctions for nonobservance of such rules."

19. The National Wholesale Grocers' Association and the Southern Wholesale Grocers' Association filed complaint with the Interstate Commerce Com-

mission (I. C. C. Docket No. 10745) against Walker D. Hines, Director General of Railroads, claiming that those who are defendants under this consent decree enjoyed unfair rates and transportation advantages in the handling of refrigerator cars. The trial of this case extended over a long period of time and the wholesale grocers of the country brought out every possible point tending to substantiate their claims against the packers in this regard. Practically all of the testimony of Mr. Breed and Mr. Thorne, as well as the testimony of others, was presented to and thoroughly considered by the Interstate Commerce Commission in connection with such case.

20. Under date of June 22, 1921, the Interstate Commerce Commission rendered its decision (62 I. C. C. Decisions, p. 275), reading as follows:

"1. Practice of defendants in permitting the meat packers to load certain articles of groceries in their peddler and branch-house cars not shown to result in undue prejudice to complainants or unduly to prefer the packers.

"2. The various peddler-car rates and rules are not shown to be unreasonable or unduly prejudicial, except that the mileage scale of rates applicable on packing-house products in peddler cars in southwestern territory found to be unduly prejudicial to complainants and unduly preferential of the meat packers in so far as said scale of rates applies on lard substitutes, cottonseed cooking oil, peanut cooking oil, corn cooking oil, soya bean cooking oil, canned meats, canned soups, chicken tamale, chili con carne, spaghetti-meat chili, and canned meats with vegetable ingredients.

"3. Various rules applicable on mixed carloads of fresh meats and packing-house products, found unjust, unreasonable, and unduly prejudicial. Reasonable and uniform mixing rules prescribed for the future."

21. Some of the witnesses for the wholesale grocers contended that the decree should not be amended to allow the meat packers to reengage in the handling of the so-called "unrelated lines" until after Congress has passed additional legislation to cover these items. The present packer control act was intended to regulate all regular commercial transactions covering any article whatsoever handled by the meat packers. In my opinion, all statements to the contrary made by the opposition are simply intended to confuse the issue and delay action looking toward modification.

That the House Committee on Agriculture, which framed the bill, intended it to fully provide control of the meat-packing industry in all lines of commerce; and that the committee did not consider the decree as a permanent matter, and, further, that it did not meet with their approval is clearly and emphatically shown in the action taken by this committee during the course of the hearings on this bill during the month of May last.

I appeared before the committee and pointed out that the bill H. R. 14, then being considered, under section 403, provided as follows: "Nothing contained in this act except as otherwise provided herein, shall be construed"—(subdivision D)—"to relieve any person from obedience to any consent or other decree heretofore entered against him by a court of competent jurisdiction."

I objected to this provision, stating that it would in effect amount to an indorsement of the so-called packers' consent decree by Congress. The members of the committee expressed their agreement with me and their opposition to the decree, and following my presentation of the matter the committee removed the objectionable clause from the bill, thus officially voicing its opposition to the consent decree and making it plain that the committee did not expect or intend that this decree should or would be considered by them in formulating the provisions of the act or that they were depending upon the consent decree for any part of the supervision or control of the meat packers in any of their activities whatsoever.

It is inconceivable that Congress would enact a law intended to control the meat-packing industry of the United States and deliberately restrict the scope of the bill by designating only these few and very general items mentioned in subdivision (b), section 2, leaving them free to engage in unfair practices in handling any other lines which might not come under such general definition. To attempt any such interpretation of this act is to question the honesty of intention of the authors and framers of this bill, and is a reflection upon the intelligence and integrity of the whole Congress of the United States. No intelligent person can, after carefully reading the bill, honestly accept any such interpretation.

We respectfully submit that consideration of the above points shows conclusively the necessity for and economic value of continuance of the defendants

named on the consent decree in the purchase, distribution, and marketing of wholesale grocery items; further, that the opposition of the wholesale grocers, ostensibly based upon the fear of monopoly and alleged unfair transportation advantages enjoyed by the defendants, are wholly unfounded; and, further, that the record conclusively shows that the real objection of those appearing in opposition to modification of the decree is based upon a desire to further their own selfish interests through elimination of competitors, and in no wise based upon consideration of what may be best in the future for the public interests.

Believing that economic reasons requiring modification of the decree have been completely established, we wish to submit for the consideration of the committee some further reasons based upon the legal phase of this question.

DECREE IS ILLEGAL.

I quote from a letter received from a Middle West Congressman, who in a few words has covered the question of the legality of the decree as thoroughly as might be done in a most exhaustive brief:

"Since the packers have been put under the supervision of the Secretary of Agriculture, the alleged necessity for this decree disappears. The entry of the decree, to my way of thinking, was not justified under any circumstances. When the packer legislation was before the House I stated my position in regard to the decree at some length. It is my opinion as a lawyer that the decree is void, because it was beyond the jurisdiction of the judgment forbidding anyone from engaging in a certain line of business. If there is no law pursuant to which a court can make such a judgment, then the consent of the parties can not confer the jurisdiction. If it should be deemed necessary for the common good that persons in one line of business should be prohibited from engaging in other lines of business—a very delicate question—it should be so declared by the legislative branch of the Government.

"I can not be accused of being friendly to the packers, but I take the liberty of urging that for the reasons stated the decree should be set aside, or at least that part of it which prohibits them from carrying certain commodities in their refrigerator or other cars."

A perfect analogy to the present situation was presented in the claims made by retail grocers and others during the decade 1890-1900, when department stores were growing rapidly, and retailers claimed they were being driven out of business. Retail grocers and others maintained that these great department stores should not handle both dry goods and groceries; retail butchers, druggists, retail jewelers, and liquor dealers added their complaints that these large department stores were monopolizing the retail business, just as the wholesale grocers at present attempt to conceal their own selfish interests in the matter and claim that defendants may monopolize their business if permitted to handle so-called "unrelated lines." The retailers sought to eliminate their new competitor—the department store—from their particular field of business under the guise of saving the public from a monopoly.

In the State of Missouri a statute was passed, known as the "Antidepartment act," approved May 16, 1899 (acts of 1899, p. 72). By section 1 of such act all goods, wares, and merchandise in the cities to which the act applied (cities having a population of 50,000 inhabitants or over) were divided into 73 classes, and these classes then rearranged into 28 groups or departments. By section 2 of the act it was made unlawful, after 120 days from the date of its passage, for any person or persons, firms, corporations, or associations, to have on hand for sale, or sell any goods, wares, and merchandise of more than one of these several classes or groups, without first having obtained a license therefor. By section 4 of the act the applicant for a license was required to state the class or group in which he proposed to conduct his business, etc. In brief, the statute imposed a heavy license tax on the privilege of selling goods from one of numerous groups or classes of merchandise, and permitted sales to be made without license from only one of such classes or groups.

In the State of Illinois the city of Chicago, at about the same time (1899), passed an ordinance attempting to regulate department stores by arbitrarily prohibiting the sale of provisions in any store where dry goods, clothing, jewelry, and drugs were sold.

In commenting upon this legislation in the annual review of the legislation of the country before the American Bar Association in 1899, President Charles F. Manderson said:

"Department stores are receiving attention, and a disposition is evidenced to interfere with their spreading tendencies in the State of Missouri.

"Did the lawmakers desire precedent for the attempted destruction of department stores, they could have found absolute prohibition of the carrying on of more than one business, under heavy penalties, among the discarded rubbish of the English law, in the statutes of the olden time, when the might of kings controlled the right of subjects. In the act of 37 Edward III, passed 1350, we read:

"Item, for the great mischiefs which have happened as well to the King as to the great men and commons, of that, that the merchants, called grocers, do ingross all manner of merchandise vendible; and do suddenly enhance the price of such merchandise within the realm—hath ordained such merchandise within the realm that no English merchants shall use nor ware nor merchandise, by him nor by other, nor by no manner of covin, one only one, which he shall choose betwixt this and the feast of Candlemas next coming. And such as have other wares or merchandise in their hands than those that they have chosen, may set them to sale before the feast of the Nativity of St. John next ensuing. And if any do to the contrary of this ordinance in any point, and be therefore attainted, in the manner as hereafter followeth, he shall forfeit against the King the merchandise which he hath so used against the ordinance; and, moreover, shall make a fine to the King—and whosoever will sue for the King in such case, shall be thereto received, and shall have the fourth penny of the forfeiture of him that so shall be attainted at his suit.' But five hundred and fifty years ago, when this law came into being, there were no invidious distinctions. The artisan or skilled laborer has no superior right to the tradesman, for we read in the same act of 37 Edward III, 'Item, it is ordained, that artificers, handicraft people, hold them every one to one mystery which he shall choose betwixt this and the said feast of Candlemas,' and those who did not so choose and work at the 'one mystery' were punished by imprisonment for half a year and fine and ransom. It is unnecessary to state in this presence that long ages ago these impositions upon personal liberty were consigned, with many others of like import, to the dust heap."

Likewise, the impositions on personal liberty by the legislature of the State of Missouri, and the city council of Chicago, were consigned to the dust heap by the Supreme Court of the State of Missouri and of the State of Illinois, respectively.

In the State of Missouri, the Supreme Court held in reference to the "Anti-department store act" supra:

"Due process of law is denied when any particular person of a class or a community is singled out for the imposition of restraints or burdens so imposed upon, or to be borne by all the class or of the community at large, unless the imposition or restraint be based upon existing distinctions that differentiate the particular individuals of the class to be affected, from the body of the community." State of Missouri, ex rel, Wyatt, v. Ashbrooke et al., 154, Mo.

The Supreme Court of Illinois, likewise, held the ordinance of the city of Chicago was unconstitutional. Such ordinance was held not to be a regulation but a prohibition, and a purely arbitrary one which attempted to deprive certain persons of exercising a right which had always been lawful and had been exercised throughout the State and the country without question. It was nothing other than an attempted interference by the city with rights guaranteed by the Constitutions of the United States and of the State of Illinois. The court said:

"These constitutions insure to every person liberty, and the protection of his property rights, and provide that he shall not be deprived of life, liberty, or property without due process of law. The liberty of the citizen includes the right to acquire property, to own and use it, to buy and sell it. It is a necessary incident to the ownership of property that the owner shall have a right to sell or barter it, and this right is protected by the constitution as such an incident of ownership. When an owner is deprived of the rights to expose for sale and sell his property he is deprived of property within the meaning of the constitution, by taking away one of the incidents of ownership. Liberty includes the right to pursue such honest calling or avocation as the citizen may choose, subject only to such restrictions as may be necessary for the protection of the public health, morals, safety, and welfare. The State, for the purpose of public protection, may in the proper exercise of the police power, impose restrictions and regulations; but the right to acquire and dispose of property is

subject only to that power. The individual may pursue, without let or hindrance from any one, all such callings or pursuits as are innocent in themselves, and not injurious to the public. These are fundamental rights of every person living under this Government. The legislature can neither, by an enactment of its own, interfere with such rights, nor authorize a municipal corporation to do so." *City of Chicago v. Netcher*, 183 Ill. 104.

This analogy of the department-store situation 20 or 25 years ago to the present situation is particularly interesting in that subsequent developments have shown that the large department stores, while doing a tremendous business, have not monopolized the retail trade to the detriment of the public, or, indeed, at all. In every city where department stores are located scores and even hundreds of small retail establishments exist and do a flourishing business. Moreover, the department stores are the concerns to which the people in the great cities look for the lowest prices on commodities. They operate as a stabilizer of markets and were they not in existence the small retail stores undoubtedly could charge such prices as they might see fit. The saving in overhead expense and general economies effected by the great department stores, together with centralized buying and other methods of modern business efficiency, have made the department stores of greatest possible service to the public, and there is absolutely no disposition on the part of the public to-day to eliminate them from the field of business, although 20 or 25 years ago retailers and small traders no doubt raised the same hue and cry in regard to their future monopolization of business as that now raised by the wholesale grocers.

In this connection, an article from the *Wall Street Journal*, of New York City, under date of Monday, November 28, 1921, is of interest.

"BOSTON.—The modern department store is the growth of only half a hundred years. History records names of money lenders and some amazing accumulators of wealth, but there are no names in history to rank in volume of service with those retailers of merchandise whose names are household words from Chicago to London and Paris.

"Inventors and students of finance may like to compare the gross business of well-known retail establishments with aggregate gross business of large manufacturing establishments and transportation companies.

"The astonishing thing about the department-store business is not size but the large expense in service. Formerly department stores did business with expense of 10 per cent and 12 per cent for rent, salaries, delivery, management, and all overhead. To-day the public is served by the big department stores at an expense exceeding 30 per cent of the gross sales.

"The largest retail store in the world is Marshall Field, of Chicago, whose business runs from \$65,000,000 to \$75,000,000 a year in normal times. If the business of Selfridge, of London, who came out from the Marshall Field concern, be added, the aggregate business would total \$100,000,000.

"Wanamaker in Philadelphia and New York does a business normally just under \$60,000,000 per annum; Carson, Pirie, Scott & Co., of Chicago, about \$50,000,000.

"Abroad, the famous Bon Marché fails to reach \$50,000,000 per annum in gross business by from \$5,000,000 to \$10,000,000. Probably the biggest retail business ever reached, figured in dollars and cents, was that of the mail-order house of Sears, Roebuck & Co., which, for the first three months of 1920, did a business of \$90,000,000 gross, or over \$1,000,000 per day.

"From trade sources we get the following estimate of business in the leading department stores of the world for 1920. For the most part, these are slightly below record figures. The business of 1920 as a whole is roughly estimated at 5 per cent below that of normal, or, for 1913:

Selfridge & Co., London	\$30,000,000
Bon Marché, Paris	40,000,000
Marshall Field & Co., Chicago	65,000,000
Carson, Pirie, Scott, Chicago	50,000,000
R. H. Macy & Co., New York	25,000,000
Franklin Simmons Co., New York	21,000,000
Lord & Taylor, New York	20,000,000
Gimbel Bros., New York	20,000,000
Altman & Co., New York	18,000,000
John Wanamaker, New York	28,000,000
John Wanamaker, Philadelphia	27,000,000
N. Snellenburg, Philadelphia	40,000,000
Lit Bros., Philadelphia	33,000,000

"The above figures are for individual stores. Of course, there are aggregations of stores or chain stores under a single management that top the above figures, notably, Woolworth, with 1,111 stores and \$140,000,000 of gross business; United Cigar's 1,400 stores and a gross business of between \$50,000,000 and \$60,000,000."

If the theory of those opposed to modification of this decree, including the Federal Trade Commission, is sound, why should not the Government proceed to enjoin the five largest department store concerns in New York from doing business in anything except dry-goods lines? The combined sales of the five largest amount to well over \$100,000,000 per annum; these concerns are undoubtedly growing and increasing their volume of business each year; they handle unrelated lines, since they undoubtedly handle nearly every product which is sold at retail; they have immense capital; some of them engage in the manufacture of their own products just as some of the packers own a few canning establishments here and there. In fact, every reason which has been urged in the present proceeding to continue in force and effect the consent decree as regards wholesale grocery items might just as well be urged against department store owners. Such position would be altogether absurd and would make no appeal whatever to the public who appreciate the service and efficiency of the department stores and look toward them to keep down the prices of the small retailers.

CONCLUSIONS.

We submit that careful review of the testimony taken at the hearing in this matter shows beyond question the immediate necessity of opening to the food producers of the country all possible markets, both domestic and foreign, in order to stimulate and increase food production; that improvement, extension, and increase of such markets is required in the interest of both the food producers and the consumers as well; that the greatest food problem to-day is proper distribution between the producer and the consumer and that only through complete utilization of all marketing channels and distributive facilities and machinery can this urgent problem be solved.

These propositions are so fundamentally sound and so apparent that no person, unless ignorant of conditions or moved by wholly selfish motives, can deny them or will deny them. The consent decree, unless modified, undeniably narrows domestic and foreign marketing facilities for food producers; blocks channels of food distribution and destroys efficient and economical facilities now used for such distribution.

The only argument against modification of the decree, in any wise based upon economic grounds, is the fear of the possibility of monopoly advanced by theoretical economists and seized upon and enlarged upon by those who would bar competition in the wholesale grocery field. This fear of monopoly, since admittedly not based upon facts showing any unlawful agreements or combinations of joint action of those barred from the competitive field by the consent decree, is, of necessity, based upon the proposition that the defendant competitors through more efficient and economic means and methods of serving the public may destroy their competitors in the wholesale grocery field. All of our anti-trust statutes are based upon the theory that competition is the life of trade; that competition is to be encouraged and not discouraged or prevented in any manner; that through those who are the most able and efficient can the public be most economically and best served. Such being the economic theory on which antitrust laws are founded, it is wholly inconsistent therewith to bar from competition those who are best equipped, and to make idle and make useless facilities and machinery upon the ground that such action is based upon the antitrust laws. By so doing, an anomalous situation is created which is not only inconsistent with sound economic principles which have always heretofore prevailed in this country, but equally inconsistent with the lawful rights heretofore enjoyed and guaranteed by the Constitution. From an economic standpoint, competition can not be increased by destroying successful competitors and from a legal standpoint, citizens of this country can not under the Constitution be denied the right to engage in any line of business which may be pursued by other citizens without restraint or hindrance. All of which we submit not merely justifies, but requires recommendations by this committee that the consent decree be modified so as to restore to the public, as well as to the defendants, the food markets and food distributive facilities absolutely

requisite to the marketing by the grower of his products and the solution of the ever-pressing food problem of the consumer.

Respectfully submitted,

VERNON CAMPBELL,
*Vice President-General Manager,
California Cooperative Canneries.*

(Mr. Hoke Smith's and Mr. Stevens's briefs are covered in full in their oral arguments, heretofore recorded, and are therefore not copied into the record.)
The CHAIRMAN. Proceed, Mr. Breed.

ORAL ARGUMENT OF MR. WILLIAM C. BREED, ATTORNEY FOR NATIONAL WHOLESALE GROCERS' ASSOCIATION OF THE UNITED STATES.

Mr. BREED. Mr. Chairman, in behalf of the National Wholesale Grocers' Association we will file with you a printed brief, and my remarks this afternoon will be limited to a running commentary on what has been developed by the arguments of other counsel.

Senator Smith and Mr. Watkins and Mr. Stevens have very fully and clearly, I think, covered the facts as brought out in the testimony.

The salient point which I would like to call to your attention is that only about 12 witnesses appeared here in favor of the modification of the decree. And in my brief I classify them just about as the other counsel have and, I think, appropriately classify them into five classes.

First. Two representatives of the California Cooperative Canneries—that is, Mr. Campbell and Mr. Gray.

Second. Two representatives of the National Kraut Packers' Association.

Third. Two Virginia tomato canners—a tin-can manufacturer and a banker.

Fourth. Two Maryland oyster canners and a tomato canner.

Fifth. Mr. Rolland Morrill, a Michigan farmer.

I don't think it is necessary to comment on the various positions brought out by the testimony of those gentlemen, as it has been fully covered.

On the other side, we point out in our brief the very large number of trade organizations and individuals who appear and who really in almost every instance represent other groups of individuals. A short summary was made for me which would indicate that those various groups, consisting of canners, manufacturers, brokers, wholesale grocers, wholesale-retail grocers, retailers, chain stores, etc., may be said to represent, number of plants or persons engaged, 391,700.

Taking the average number of men employed in those respective industries, according to the figures which I have here, it would show that the total number of individuals employed by these different groups would be 2,377,400.

One of the features involved in any conclusion this committee makes is certainly the public effect, or at least the number of people who would be affected by an act of modification, and who, in their judgment, would be affected adversely.

Now, these people who have appeared in opposition have all given very specific testimony to the effect that they believe that a modification of this decree would affect them and those they employ adversely.

As I see it, the problem or subject which was turned over to this committee, representing three of the most important branches of the Government, to decide is probably as vital a subject as ever came before the Supreme Court of the United States. It involves not only questions of law and the construction of statutes with respect to conspiracy and monopoly, but it also involves a reasonable consideration of economic questions which are necessarily involved in any decision under an enforcement of antitrust laws. It also involves the welfare of the common man, the people of the United States. Now, that is a pretty broad order to have handed to you three gentlemen to recommend to the Attorney General a course of conduct. I should hate to have to pass upon it even if I were on the Supreme Court.

Now, our Constitution, which is the basis of all legislative action and court decision, when adopted in 1789, guaranteed certain rights of life, liberty, property, and pursuit of happiness. It is very general in many of its terms. But I firmly believe that if the framers of the Constitution in 1789 had any conception that there was to grow up in this country huge aggregations of capital which would and have obtained control over basic industries, some of the

terms of that Constitution would have been much more specific than they are now found to be in connection with this subject.

It happens, however, that just about 100 years from the time that the Constitution was adopted the Congress determined that it was absolutely necessary to take action on this subject of monopoly, restraint of trade, conspiracy, etc. And Congress passed our really first and foremost Sherman antitrust law.

Judge HAINER. One hundred years afterwards.

Mr. BREED. Now it is also interesting to note, and it has been asserted by many historians that the occasion for the passage of that Sherman law was an investigation that was undertaken by Congress into the growing power of the monopoly known as the Beef Trust. That investigation is the first investigation that was made of the meat packers, and that was in 1890 and, I believe, is the first report in which Congress felt called upon to determine that the growing power of this monopoly must be curbed in some fashion.

It is also interesting to note—and I must say that I never appreciated it until just a short time ago—that this monopoly of the packers could never have arisen or been brought about except for the invention of the refrigerator car. I hope that this committee, if they do not do anything else, and just as a matter of real interest, will read the report of the Federal Trade Commission on private car lines, dated June 27, 1919, because it gives you the first insight into the only opportunity for a meat packer to do any business outside of the locality in which he is located. He could not ship fresh meats, unless they could be preserved, beyond the confines of his small locality or town. That report makes the specific statement at many points that except for this refrigerator car the large packer would never have come into being.

I only mention this as a matter of historical interest, and because the possession of this very special facility by the packers, according to that report and according to their own statements and admissions, furnishes the opportunity for them to embark in any line of business and have just a shade of advantage over their competitors existing in those lines of business.

Judge HAINER. Has anyone else the opportunity to use those refrigerator cars?

Mr. BREED. Anyone has an opportunity to buy and acquire car lines, but a reading of that report will show you the difficulties involved in it. The answer to your question is thus shown in that report when it explains why the other independent packers existing in the older days do not now exist, and why it happens that only five men of vision became packers of not only national but international operations. They seem to be the only ones that had the original courage to see the value of the refrigerator car and to go ahead and invest their money in those cars and to develop car lines, whereas the other independent packers, either from lack of money or lack of vision did not, and as soon as the packers, these five, had obtained the advantage through this ownership and expenditure of money, the others never seemed to be able to get the money or to work the problem out in the same lines, and most of them went by the board.

Now, as to the subject matter of this hearing. I understand from the letter which the Department of Justice sent out under date of October 12, 1921, that requests had been made to the Attorney General—I am now reading from the letter—"by interests other than the packers, the more important of such interests being growers and canners of fruits and vegetables, that would favor and urge a modification of this decree so as to permit the packers to handle unrelated lines, especially wholesale grocery lines. The Attorney General in considering this request, and in order to enable him to come to a proper conclusion upon the same, has arranged for a committee consisting of Hon. B. T. Hainer, selected by the Department of Agriculture, F. C. Hall, selected by the Secretary of Commerce, and the writer, selected by the Attorney General, to hear the contentions of both those in favor of and those opposing such a modification. After the hearing this committee will render a report, accompanied by the record of such hearing, to the Attorney General, who will then decide what his position will be upon this request."

Now what is the request? As we understand it from the statements by the Chairman, it is a request for the striking out from the decree of paragraphs 3, 4, 5, and 12 and parts of paragraphs 8, 14, 16, and 17, referring to unrelated commodities mentioned in paragraphs 4 and 5. This, of course, strikes from the decree a fundamental part of the decree.

As we understand from Mr. Campbell, who, we believe, made the original request upon the Attorney General's office for action, he solicits a complete wiping out of the entire decree. In his testimony he says that directly. He believes that the entire decree should be set aside.

Mr. Campbell further states that he believes in monopoly of a certain kind. Apparently Mr. Campbell also therefore can not believe in the Sherman anti-trust law or in any antitrust laws.

Mr. Campbell also apparently, according to his testimony, believes that the entire economic situation, as it now exists, should be changed. He is satisfied with the distribution furnished by the railroads from California to the branch houses of the packers, but he wants them to have the branch houses of the packers open up and sell direct to the consumer. That is as I recall his economic position. He also thinks the wholesale grocer should completely change his method, and instead of selling to the retailer, should open up his wholesale grocery house and sell direct to the consumer and to the retailer.

Of course, one possessing such economic ideas, it would seem to me, if they were stated to the Department of Justice at the time the request was made for a modification of the decree, would not seem to warrant the consideration which his request seems to have received.

Now let us assume, however, that the Department finally, considering the matter, limited the proposal to unrelated lines.

The CHAIRMAN. Mr. Breed, we have never considered in this hearing the entire wiping out of the decree. We have confined it entirely to the modification with respect to unrelated lines.

Mr. BREED. First I would like to ask the committee to consider just what it is that confronts the Attorney General.

Judge HAINER. And further, no weakening as to the monopoly or monopolization even of the unrelated lines.

Mr. BREED. Yes. I would like to consider with you, first, just what is the situation that confronts the Department of Justice and the Attorney General, and which in a way he has turned over to this committee in connection with this request for a modification of this decree. Now, what do you find, and what must you first consider? I would put the items in this order:

First. You find he must consider that there is on the statute books to-day the Sherman antitrust law and the Clayton Act, both laws designed to prevent conspiracies and restrain monopolies.

Second. You also find under both of the acts—section 4 of the Sherman law and section 15 of the Clayton Act—that there is a direct duty placed upon the Attorney General to institute "proceedings to prevent and restrain violations of these acts." The section further provides that "such proceedings may be by way of petition setting forth the case and praying that such violations shall be enjoined or otherwise prohibited."

Now, both of those acts select the Attorney General and the district attorneys of the United States as the officers who must see to it that those laws are not violated.

Third. What did the Attorney General do in this particular instance? He brought an action against the packers alleging in the petition violations of the Sherman law and the Clayton Antitrust Act, setting forth specific violations.

Fourth. What preceded his action? Why, we find that there was about one year and one-half of investigation by a department of the Government, the Federal Trade Commission, of all of the activities of the meat packers. We also find that the Bureau of Investigation of the Department of Justice made investigations. Two grand jury proceedings were started, one in New York and one in Chicago. In fact, never before in the history of the enforcement of antitrust legislation has there been such a thorough, complete, scientific investigation as to the activities of a group of individuals alleged to be a monopoly, and who it was claimed were conspiring to restrain trade and to create a greater monopoly. So that when the Attorney General acted in this matter he was possessed of an amount of information never before possessed by any other district attorney or Attorney General that I know of.

Fifth. Now, next what happened? The court acted. The court received the petition of the Attorney General, and it received from the defendants a consent that a decree should be formulated and be entered against them. The fact that this decree was upon consent only strengthens the terms of this decree, because it shows that neither the Attorney General nor the court acted in connection with the matter without consideration of the economic features involved in any decree in an antitrust proceeding.

The fact that the defendants consented also shows that they themselves felt that the terms of that decree were satisfactory to them, and that they were willing to abide by it.

Now, your committee and the Attorney General also find that there is no request from any of the defendants who consented to that decree made to the Attorney General or made to you to have it modified. I believe that statement was made by the chairman in the record. Therefore any action that is to be taken must be taken in the first instance by the Attorney General upon his own initiative, and upon your advice.

Now, my imagination can picture the defendants in any action coming into court and asking for relief, but my wildest fancy can not picture the United States Government and the Department of Justice going into court and asking that a decree which it obtained should be modified in the interests of the defendants.

Let us assume for just a moment that this committee should recommend to the Attorney General that for one reason or another an application should be made to modify the decree. What position would the Department of Justice find itself in?

First. It would be obliged to petition the court for a modification, and to admit in its petition that the Department of Justice when it made the previous petition was wrong both in law and in fact, because the facts alleged in the petition are a sufficient warrant for the terms of the decree.

Second. It would have to allege that the court went too far in connection with the terms of the decree, which was prepared by the Department of Justice and consented to by the defendants.

Now, under this head, just where would the Department of Justice draw the line in setting up to the court the fact that it had gone too far? This decree covers a variety of prohibitions. Prohibition against the ownership of the stockyards, stock-market papers, retail meat markets, cold-storage warehouses, and various other things. Will it say that the court should only have gone as far as the prohibition against their owning stockyards and retail meat markets and cold-storage warehouses, but it could not go beyond that into any other fields? Could not the argument be made very easily that there is no authority for the prohibition with respect to the packers going out of the retail meat business or the cold storage warehouse business?

Mr. SMITH. Or the stockyards.

Mr. BREED. Or even the stockyards. In other words, I want to call your attention to this, that when any one goes before a court and asks that court to reverse itself, he must show good cause and a clear reason why the court should act, especially when the plaintiff has itself solicited the judgment, and has alleged in a petition every fact necessary to sustain the judgment, and then the defendants have consented.

Third. It has been suggested here that the defendants are not seeking this modification. Therefore the Department of Justice upon its application to the court might find itself in the position of applying for a modification which would be objected to by some or all of the parties to the action. It seems to me, gentlemen, that that would be a ridiculous position for the Attorney General of the United States to be in before a court, because the court would be unable to grant the application of the Attorney General over the opposition of the defendants.

Fourth. Again, there have been two interventions allowed by the court basically upon the statement reported publicly that an application to modify was about to be made. These hearings have been held here lasting over three weeks. Whatever one may think about the position of the chief proponent, Mr. Campbell, and his full and complete honesty of intention, he can not get away from the fact of his connection with one of the defendants to this court proceeding.

Now, if some of these interveners, or even some one of the original parties to the action, who might not be desirous of having the decree modified, should call to the attention of the court that the real request to the Department of Justice, and the man who bore the brunt of the proposal for modification, was not in reality acting wholly for himself, but was acting in the interest of one of the defendants—I can not conceive, gentlemen, that a court upon proof of those facts would do otherwise than resent a situation in which one of the defendants who consented to a decree did not have the courage to come into court and ask for its modification, but instead of that, in a roundabout way, by subterfuge, persuaded somebody else to come in and ask the court to undo what

the court had done at the request of the Department of Justice and with the consent of that defendant. I should consider that if those facts appeared before the court, the court might very properly say that the court was being played fast and loose with by the defendants. I can also conceive of the court calling to the attention of the Attorney General that perhaps the Department of Justice, whose duty it is to enforce these laws, and who obtained the decree, was being played fast and loose with by one of the defendants.

Under such a circumstance I can not conceive of the court acting favorably under any circumstances on an application for modification.

Fifth. The Attorney General must also consider, and this committee as well, what would be the effect of an application for a modification of this decree upon any future proceeding against the packers under the Sherman law or the Clayton Act. Now we know that it is the duty of the Department of Justice under both of those acts, to prosecute and to see that they are enforced. What will be the effect of a modification, assuming it is obtained, but an open invitation to the packers to come back into unrelated lines—an admission that the Government was wrong; an admission that the Government cannot obtain an injunction against a monopoly to prevent that monopoly from becoming a greater monopoly until after it had become a complete monopoly of everything? That would be the logical conclusion to such an application if it were granted as to these unrelated lines. It would have to be based, in my judgment, upon the proposition that a court of equity in enforcing an antitrust statute, could not grant an injunction or prohibition against the doing of something until after the act had carried itself into a complete monopoly.

Seventh. Now, again, what would be the precedent established by the Department of Justice making such an application in connection with all of the other decrees that have been obtained, by consent or otherwise, by the Department of Justice in Washington, and all the various district attorneys throughout the United States? I venture to say that such a procedure would start a storm at the doors of the district attorneys' offices throughout the United States by monopolies and others against whom decrees have been granted, or who have consented to decrees, that would never be stopped. Everyone would want a modification, and would be carefully investigating the basis upon which this modification was sought by the Government to obtain it.

Eighth. Again, suppose it appeared to the court, as it does appear to you from the testimony, that the facts which were relied upon in the petition upon which the decree was founded, took place prior to 1918, as many of them did, and that the statute of limitations had now run against those acts as violations of these laws. It is a fact that the investigations of the Federal Trade Commission, many of them, were made in years prior to 1919, and if the three-year statute applied, the statute of limitations may run against some of those specific acts.

Ninth. Again, suppose it was called to the attention of the court, as it is before this committee, that immediately after the decree was consented to by the defendants and entered by the court, the defendants had called this decree to the attention of Congress. You gentlemen know that for two years prior to the passage of the packers' control bill on August 15, 1921, innumerable bills had been introduced in Congress, the early ones being bills for licensing of the packers, but all of them being bills which had behind them the desire on the part of Congress to do something to curb this growing monopoly and its power over the necessities of life.

Now as a matter of fact many of the provisions contained in the consent decree were also contained in some or other of these various bills. One of them, with respect to the stockyards, was actually thrown out only as late as the conference committee report on the packers' control bill, and, quoting from page 4897 of the Congressional Record of 1921, the report of the conference committee reads as follows:

"On amendment No. 8: This amendment adds to the bill a provision that after two years from the passage of the act no packer engaged in interstate or foreign commerce shall own or control or have any interest in any stockyards unless the Secretary of Agriculture determines that such ownership or control of interest 'is not in violation of the purposes of this act,' or that the packer has been unable, 'despite due diligence,' to dispose thereof, in which case the Secretary may by order extend the period during which such ownership, control, or interest may continue. The matter is now dealt with more effectively in the consent decree as it relates to the large packing concerns; and the Senate recedes."

Now, as Senator Smith called to your attention to-day, Congress acted with full knowledge of the fact that a court of equity in a prosecution under a statute passed by Congress, had obtained a final judgment and decree by consent of the packers covering certain specific subjects, and that those subjects were left out entirely of the bill which was then passed. This fact would appear before the court upon any application for modification.

Tenth. It would also appear before the court, as it appears to your committee, that the packers themselves called the decree to the attention of the Interstate Commerce Commission, before whom a proceeding was pending alleging that their ownership and operation of these refrigerator cars gave them a special privilege, both as to rates and expedited service, which was alleged to be unfair competition and injurious to the wholesale grocers. The packers went so far in this proceeding as not only to call the decree to the attention of the Interstate Commerce Commission, but to state in specific language in their brief something that seems to me ought to be taken at its face value.

The brief filed by the attorneys for Armour & Co., Morris & Co., Swift & Co., Wilson & Co., and Cudahy Packing Co. in the Interstate Commerce Commission proceeding shows their position clearly, as follows:

"It is in order to make publicly of record such an absolute and qualified denial of any effort to monopolize the food products of the country as could not be disputed by any intelligent mind that the packer defendants in the equity proceeding consented to the entry of the decree in that case."

That is record, page 751.

Now, gentlemen, it certainly will appear to the court that when the decree was entered that the packers had a full and complete understanding of that decree, and of each and every term therein, and this citation from their own counsel shows, in part, why they signed the decree, but it also shows that they wished to be in a position before the public of disclaiming any intention to go further and to monopolize the food products of the country, because they knew that the country would not stand for it.

And, gentlemen, I say to you that if this modification were ever attempted the country's attitude would be no different to-day from what it was when the matter was brought before the court, and I only lament that the time which has passed has caused the packers perhaps to change their minds as to the proper policy which they should pursue toward the public and in their own interest and the interests of the people.

The court can not fail, and neither can you, to accept at its face value statements such as this by counsel for the packers when you are considering a question of modifying the decree.

Eleventh. Let us look at another phase of this subject that must appear to the court upon any application, and also appears to you. When the packers, with full knowledge of what was in that decree, signed it, executed it, and determined what their future policy was going to be as a monopoly, do you realize that they also knew that if the facts which had been accumulated by the Federal Trade Commission were correct that they were guilty under the penal and criminal side of the Sherman antitrust law?

They also knew, as you know, and must consider, and the court, too, that in the year 1903 the District Court of the United States, in an exactly similar action against the packers, rendered a decree and judgment containing injunctions prohibiting them from violating the terms of the Sherman antitrust law, and that that judgment was affirmed in 1905 by the United States Supreme Court.

They also knew, however, that the terms of that injunction which they were under were general, and the court knows, and you know, that it had not prohibited them from going straight ahead in their march to acquire a greater and greater monopoly over the manufacture and distribution of food products of this country.

They also knew that other prosecutions in 1910 had been started against them in Chicago which were based upon alleged violations of the same act—the Sherman antitrust law—and in which the packers escaped from any penalty whatever by reason of pleas of immunity.

They also knew that another action had been brought against the packers and various of their attorneys, and so on, at about the same time, alleging the same violations.

And it was reasonable to assume, in the state of public mind in 1920, when the Federal Trade Commission completed its report, the most scientific inves-

tigation of the packers ever made, and the Attorney General decided that there was necessity for future and further action, that the packers should stop, look and listen, and consider whether they were going to attempt to continue to grow larger and larger, create a greater and greater monopoly, until they had, as was charged they would have, in the Federal Trade Commission report, a complete control over the food of the country—necessities of life—or not, and they did stop. And they concluded that they would agree with the Government, and would determine their policy, and would enter into this consent decree.

They, therefore, got rid of all criminal prosecutions, at least, with respect to the acts then under contemplation, because the Attorney General had full power to proceed either criminally or in equity, and he did proceed in equity, and he accomplished what had never been accomplished before by any proceeding of the Department of Justice.

The original injunction of 1903 was proven to be absolutely ineffective. It was shown that there was a necessity of being more specific, and you will find in one of the cases that I cite in my brief that the court says—I think it is the Standard Oil case—that the defendant is entitled to have the terms of the decree be reasonably specific so that it may know what it can do and what it can not do under this antitrust act.

Now, all of these facts that I have enumerated in this rough way very pertinently must be considered and entered into in any recommendation that you make to the Attorney General. Every one of them bears directly upon the question as to whether the Government should make an application itself to modify a decree it has obtained with the consent of the defendants themselves. They also enter into the questions of law involved in the enforcement of anti-trust acts, and to the question of public policy and the interests of the people to be conserved, and whose interests really are in the hands of the Attorney General, who represents the United States, and, therefore, I think, the people.

Suppose we turn now to a brief consideration of the reasons that I have heard given why this decree should be modified.

The first one that I have heard is the allegation that the Supreme Court of the District of Columbia did not have any jurisdiction to make and enter any such decree. Now, as stated by Judge Hainer in a question he asked of Mr. Stevens, it is perfectly clear the jurisdiction that is involved in such a situation is, first, jurisdiction over the person; second, jurisdiction over the subject matter.

Judge HAINER. No question as to those two propositions.

Mr. BREED. No, there is no question that the appearance of the defendants and their consent to the decree gave the Supreme Court of the District of Columbia jurisdiction over their persons. That is elementary law.

Now, second, that the court had jurisdiction over the subject matter is also equally clear, because Section 61 of the District of Columbia Code provides that the Supreme Court of the District shall have the same powers and exercise the same jurisdiction as the circuit and district courts of the United States, and shall be deemed a court of the United States. The case of *Hine v. Morse* (218 U. S. 493), specifically passes on this subject.

Of course, it is not necessary to argue or cite any authorities that the district or circuit courts of the United States have jurisdiction over the subject matter involved in the petition. Section 4 of the Sherman Antitrust Act expressly vested the circuit courts with jurisdiction to prevent and restrain violations of this act. And by section 24 of the Judicial Code, District of Columbia, district courts are given original jurisdiction of all suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies.

The third point that you mentioned, Judge Hainer, when you said jurisdiction over the remedy—I would like to ask if you did not mean that where a court has jurisdiction over the person and over the subject matter of the action, the only other question that would be left for consideration would be whether having such jurisdiction the court exercised that jurisdiction too broadly or not? And that, I conceive, is what was in your mind, and what is a legal proposition. Did the court exercise its jurisdiction too broadly?

Judge HAINER. Under the allegations of the bill, and the prayer of the bill.

Mr. BREED. Yes.

Judge HAINER. As to the unrelated commodities. I concede that they could enter a decree, that they could restrain them from monopolizing or attempting

to monopolize those products, but the question, I would like to hear argument on, which you are doing, is whether or not it exceeded its jurisdiction when it entered a decree to absolutely prohibit the transportation of these unrelated commodities.

Mr. BREED. That is what I wish to go into. You will find an extensive argument on it in the brief.

Judge HAINER. Yes, that is the point I wanted.

Mr. BREED. I would merely here like to refer generally to the line of thought. I believe that you will agree with me generally that all textbooks and all decisions construing antitrust acts start with the proposition that an act which may be lawful in itself by an individual may be absolutely unlawful in combination with a group of individuals. That is a basic fact which is at the bottom of antitrust legislation itself.

Judge HAINER. Mr. Breed, suppose we would apply a proposition of law that may cut two ways. Not intimating that any wholesale grocer is engaged in any monopoly. Of course I have very high regard, as I have stated here, frequently, for the business as a business, but suppose some wholesale grocer should engage in some practice that would be unfair and in violation of some antitrust law. Now suppose an action should be instituted in the Federal court to enjoin them from engaging in that unlawful practice or monopoly. And that be alleged in the bill. And of course the prayer of the bill would be in harmony with the allegations in the bill. They shall be restrained from further engaging in the unlawful monopoly or practice. And a decree should be entered, not enjoining merely the unlawful feature or practice, but absolutely enjoining them from transacting any business—in other words, absolutely destroying their business and prohibiting them from engaging in that business. Would that stand the test of any court?

Mr. BREED. Well, now, that is just the point which I wish to argue. First I would call your attention to a statement in *United States v. Union Pacific Railroad Company* (226 U. S., 470), in which the United States Supreme Court said:

"Each case under the Sherman Act must stand upon its own facts * * * the main purpose of the act is to forbid combinations and conspiracies in undue restraint of trade or tending to monopolize it, and the object of proceedings of this character is to decree, by as effectual means as a court may, the end of such unlawful combinations and conspiracies. So far as is consistent with this purpose a court of equity dealing with such combinations should conserve the property interests involved, but never in such wise as to sacrifice the object and purpose of the statute. The decree of the court must be faithfully executed and no form of dissolution be permitted that in substance or effect amounts to restoring the combination which it was the purpose of the decree to terminate."

The first answer to your proposition goes back to the fact that in the enforcement of any antitrust act you must realize that a whole series of acts may be legal in themselves, when taken individually, but when taken in pursuance of a conspiracy or an intent to monopolize—all of those acts taken together may be unlawful under the antitrust act. And the courts, as you will see by decisions I recite, repeatedly hold, as in this case, that in the enforcement of antitrust laws dealing with restraint of trade or intentions to monopolize, they can enjoin anything that will accomplish the object of the act.

Now as a first illustration, you of course know that in all of these cases—the *Standard Oil* case, the *Tobacco* case, and so on—the courts have held in each decision that they had the right to absolutely dissolve, to prohibit them from doing any business whatever.

Now if the court has uniformly acted under the recognized authority to dissolve, to prohibit the combination from any business whatever, it certainly can prohibit the combination from some specific line or operation or act which in its judgment would tend to create the very conditions which the prosecution is brought to end.

Now, I feel, as I started to say at the beginning, that all of this consideration of this unrelated line prohibition—we have thought of it and talked about it so much as an individual thing that we have forgotten that we can not look upon the question as to whether that prohibition in itself is unlawful, or whether it as a prohibition was proper or improper, unless we take into consideration: First, the object sought by the prosecution, and all the series of acts, course of conduct, course of business, violations of law, the monopoly that had been created, the monopoly that their acts show they were trying to create, the special privileges that they had, and how had they exercised them in the past to ob-

tain the monopoly which they did in meat, and then how had they exercised them in the past to obtain the monopoly which they did in cheese and in butter and in oleomargarine and those substitute products, and how they were beginning to utilize the same special advantages and do the same things in these other unrelated lines, and then only can we give a moment's consideration to the question of the legality of the decree as a whole, including the prohibition against their doing business in unrelated lines.

In other words, not for a moment would the court listen to an argument on that one subject alone. The court, if the Attorney General went before it, would require him to go into all the facts alleged in the petition, and upon which the proceeding was based, and then the only question that I can conceive of that the court would listen to argument on was: Did I exercise that authority a little too far? Did I go a little farther than was necessary to accomplish the object of the statute and the object of the proceeding?

Now, then, if you think of it in that light it takes on a different aspect, and that is the only light the court will ever listen to argument upon. And I don't think that there is anyone here that, after listening to the testimony that you have heard, after reading these reports of the Federal Trade Commission, and so forth, who would say that the court went too far in the prohibition with respect to unrelated lines. Why, if you do not stand for that prohibition, Mr. Chairman, it simply means that you believe that the law to be applied to the case is that the court should not exercise its jurisdiction with respect to any act or thing or prohibition until after the event, until after the packers had become a monopoly in these unrelated lines.

Now, that is the very thing which repeatedly the courts have held is not the object of the statute. They hold repeatedly that the court has power to prescribe anything that will accomplish the object of the statute. And, for example, let me cite a few references under my contention that the court in the exercise of the power granted is not limited to restraining the doing of acts in the future which have already resulted in a violation of law, but actually may prohibit the doing of any act or series of acts not in and of themselves illegal, but which the court in the exercise of any reasonable foresight or intelligence, or as the result of experience can foresee, if not enjoined, will continue and perpetuate the illegal condition already found to exist, and which it is the plain duty of the court to completely and effectively enjoin and stamp out.

Now, first, in the Standard Oil case, 4 F. A. T. D., 145 (Federal antitrust decision cases), at page 78 they say:

"As penalties which are not authorized by law may not be inflicted by judicial authority, it follows that to meet the situation with which we are confronted the application of remedies twofold in character becomes essential: First. To forbid the doing in the future of acts like those"—mark you—"like those which we have found to have been done in the past which would be violative of the statutes."

Again, in the Tobacco case—

Judge HAINER. Well, what is the second proposition? Have you got that, Mr. Breed?

Mr. BREED. Well, I am just citing little extracts from decisions to show—

Judge HAINER. Well, that is cited from the Standard Oil case (221 U. S.), is it?

Mr. BREED. Yes.

In the case of United States v. American Tobacco Co. (221 U. S., 106), page 238, they say:

"In considering the subject from both of these aspects three dominant influences must guide our action: (1) The duty of giving complete and efficacious effect to the prohibitions of the statute."

Now it follows that you can not give full and complete and efficacious effect to the statute in this case if you are going to allow this monopoly to go on and extend and become a monopoly in these unrelated products based upon the history of what they have done from their very beginning. Otherwise you hold that you can give no effect to the statute at this moment, but you must sit down and wait until after they become a monopoly in the unrelated lines.

Now, again, at page 241 in this American Tobacco Company case, they say:

"Pending the bringing about of the result just stated, each and all of the defendants, individuals as well as corporations, should be restrained from doing any act which might further extend or enlarge the power of the combination, by any means or device whatsoever."

Now, that is a very broad, clear statement which bears directly upon the question.

Again, in the case of Northern Securities Company v. U. S. (193 U. S., 197), at page 356, they say:

"No valid objection can be made to the decree below, in form or in substance. If there was a combination or conspiracy in violation of the act of Congress, between the stockholders of the Great Northern and the Northern Pacific Railway Cos., whereby the Northern Securities Co. was formed as a holding corporation, and whereby interstate commerce over the lines of the constituent companies was restrained, it must follow that the court, in execution of that act, and to defeat the efforts to evade it, could prohibit the parties to the combination from doing the specific things which being done would effect the result denounced by the act. To say that the court could not go so far is to say that it is powerless to enforce the act or to suppress the illegal combination and powerless to protect the rights of the public as against that combination."

Again, in the same case, at page 360 the court says:

"This, it must be remembered, is a suit in equity, instituted by authority of Congress 'to prevent and restrain violations of the act,' section 4; and the court, in virtue of a well settled rule governing proceedings in equity, may mold its decree so as to accomplish practical results—such results as law and justice demand. The defendants have no just cause to complain of the decree, in the matter of law, and it should be affirmed."

Again, in the case of U. S. v. Patten (226 U. S. 525), which involved a conspiracy to corner cotton, the court said:

"It hardly needs statement that the character and effect of a conspiracy is not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole."

Citing *Montague & Co. v. Lowry* (193 U. S., 38), and *Swift & Co. v. U. S.* (196 U. S., 375).

Now, in reading these few cases that I have cited, and many others, you get this principle, that in enforcing an antitrust act you can not view the individual act, you can not dismember it, but you must view all of the acts or the series of acts as a whole, and then determine whether it is necessary to prohibit all of those acts in order to accomplish the object sought by the statute—that is, to prevent a restraint of trade or monopoly, or to prevent what seems to be an intention to monopolize any portion of trade.

Now, the argument was made by Senator Smith and by Mr. Stevens that the fact that this was a consent decree gave it added force. There is not the least doubt about that as a legal proposition. And I think that you three gentlemen would feel, if you sat as judges in a court and signed a decree, and the plaintiff and defendant had come into court and had signed up and agreed upon the form of decree that was satisfactory to you, that you have got a stronger instrument than you would have if you as judges just settled the question yourselves and entered a decree.

Now, in the first place, a decree without consent, or a judgment of the court, is absolutely appealable. Some reference has been made to the fact that the defendants here in part of the decree, or their consent, protested their innocence and said, "We do not admit our liability." Why, what is the status of a court litigation in which the court enters a decree against me as a defendant? If it is against me, don't you think I am protesting my innocence when the court signs that decree and enters it against me? Certainly I am protesting my innocence. I maintain that that decree is illegal and improper, and, furthermore, I go down protesting, and I can start in and take an appeal from that judgment.

Judge HAINER. Yes; but suppose you had entered into a stipulation—a defendant being prosecuted for a crime—and you had entered into a stipulation that the defendant is innocent. Would any decree send a party to the penitentiary upon such an admission?

Mr. BREED. Well, you are talking about a criminal act which is not involved here. And I will take up that as far as the equity act is concerned, in just a moment. But I merely want to call your attention to the fact that just the mere protesting of innocence is—

Judge HAINER (interposing). No; this is not a protest. This is a solemn stipulation signed by the Attorney General that they violated no law.

Mr. BREED. Well, we will discuss that a moment later. But here the parties come in and sign a consent to the entry of the decree, and in my opinion prob-

ably rob themselves of the right to appeal from that decree. And there are numerous cases to that effect. Furthermore, Mr. Stevens has called your attention to certain authorities. And I will just cite one. In 23 Cyc. 729, it is said:

"A judgment by consent of the parties is more than a mere contract in pais; having the sanction of the court, and entered as its determination of the controversy, it has all the force and effect of any other judgment, being conclusive as an estoppel upon the parties and their privies, and not invalidated by subsequent failure to perform a condition on which the consent was based, although it may be inquired into for fraud practiced upon one of the parties, or as against other creditors of the defendant."

Now, it is not necessary for me to do more than to call your attention to the fact that you can not disregard the force that this decree has added to it by reason of it being a consent decree. Now, you noticed that my earliest argument was to the effect that this decree was sustained by the facts alleged in the petition and the facts produced here, and in all of its terms was legal and enforceable, and based upon a proper construction of the Sherman law and the Clayton Act. I believe that this decree in all respects is valid irrespective of the consent.

Now, I want merely to call to your attention that you can not disregard the fact, if you are going to make a recommendation to the Attorney General, that you have got here something additional. You have a consent for whatever value it has. Now, you have heard these gentlemen argue and cite law to the effect that it adds a great deal of value. I have just read a quotation which shows that such a decree is more than a contract in pais.

Now, in addition I would like to refer to just three other interesting cases. In *Pacific Railroad Co. v. Ketchum* (101 U. S. 289) the Supreme Court of the United States said:

"Parties to a suit have the right to agree to anything they please in reference to the subject matter of their litigation, and the court when applied to will ordinarily give effect to their agreement if it comes within the general scope of the case made by the pleadings. It was within the power of the parties to this suit to agree that a decree might be entered for a sale of the mortgaged property without any specific finding of the amount due."

Again, in 23 Cyc., at page 733, the following is stated:

"A court has power to open or vacate a judgment entered by consent or agreement of parties, on adequate grounds, but it can not alter or correct it except with the consent of all the parties affected by the judgment; nor can it set aside such a judgment after the expiration of the time allowed by statute for instituting proceedings for that purpose."

That is a special case.

Now the next case I wish to cite—and this is interesting because it is a case that had to do with the Armour Packing Co., and it is a consent decree, and it shows that Mr. Armour and the Armour Packing Co. must have been thoroughly familiar with consent decrees and their effect—is the case of the United States Construction Company *v.* Armour Packing Co. (35 Okla. 179); also in 128 Pac. 731. The court says:

"Several assignments of error are urged for reversal of the judgment, but there is one principle of law which conclusively determines this case, and that principle is that a court has no power, after stipulation for settlement, agreed to and signed by all the parties in interest, has been filed, and after judgment has been entered in accordance with such stipulation, to vacate and set aside or modify the judgment after the term at which it was rendered, in the absence of fraud between the parties agreeing to settlement by consent or stipulation, except for mistake, neglect, or omission of the clerk. In *Morris v. Peyton* (29 W. Va. 201; 11 S. E. 954) Mr. Justice Green, speaking for the court on the question of whether the court has power to vacate a decree entered by consent of the parties to the action, said: 'As such a decree is not the judgment of the court upon the merits of the case, but the act of the parties to the suit, it is obvious that it can not be modified, set aside, or annulled by any order in the cause made by the court below without the consent of all the parties to the cause. * * * Nor could it be appealed from, nor modified by this court, unless, perhaps, it should be so entirely foreign to the matters in controversy in the cause that for this or some other reason the court below had no jurisdiction or authority to enter such decree by consent or otherwise.'"

A little later in the same case:

"The judgment in this case was the final ascertainment of the rights by consent of the parties to the suit, and can not be changed by any subsequent order of the court without like consent. *Seiler v. Union Mfg. Co.* (50 W. Va. 208)."

And again:

"In the absence of fraud in its procurement, and between parties *sui juris*, who are competent to make the consent, not standing in confidential relations to each other, a judgment or decree of a court having jurisdiction of the subject matter, rendered by consent of parties, though without any ascertainment by the court of the truth of the facts averred, is, according to the great weight of American authority, as binding and conclusive between the parties and their privies as if the suit had been an adversary one; and the conclusions embodied in the decree had been rendered upon controverted issues of fact and a due consideration thereof by the court."

Now, it therefore follows that this Committee and the Attorney General, before making an application to modify this decree, must take into consideration not only what we claim, that every term of the decree is justified by the facts then existent, and by the petition, but that it is also strengthened and enforced by the consent which the defendants gave to it.

Now I pass to another subject, and perhaps the last. You have called attention, Judge, to the fact that the decree contains a recital—

Judge HAINER. I wish you would read that stipulation. What is that recital? I have not read it for some time.

Mr. BREED. You have called attention to the fact that the decree contains a recital in its first paragraph, and before any of the terms of the decree are stated, about as follows—

Judge HAINER (interposing). Well, read the language exactly as it is, Mr. Breed.

Mr. BREED. Well, it is a very long paragraph. I will begin where it is pertinent.

Judge HAINER. Very well.

Mr. BREED (reading).

"* * * they nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States."

Now the first and most natural thing is to inquire why such an unusual—perhaps—clause is contained in a decree in which the defendants consent that under the terms of the antitrust acts—of the Sherman law and the Clayton Act—they shall be prohibited and enjoined from doing certain things.

I would first call your attention to the fact that the packers very seldom do anything without some reason. You should therefore notice that under section 7 of the Sherman law itself, which is here being enforced by this petition: "Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court in the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of the suit, including a reasonable attorney's fee."

Next I would call your attention to the fact that the records show here and publicly that the packers themselves have been prosecuted in various States of the United States under State laws. There have been many, many prosecutions of public record. And in nearly all, or many of these State laws, similar provisions with respect to recovery of money as penalty are included. Under the Clayton Act it is only fair to say that it provides in section 5 that where a decree is entered by consent "that a final judgment or decree heretofore rendered in any criminal prosecution, or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws, to the effect that a defendant has violated such laws, shall be *prima facie* evidence against such defendant in any suit or proceeding brought by another party," etc.

Now, "provided"—this is the point—"that this section shall not apply to consent judgments or decrees entered before any testimony has been taken."

While we are on this subject I would call your attention to the fact that the laws of the United States recognize consent decrees and also recognize that consent decrees are frequently taken and have been taken before any testimony has been taken, according to the verbiage I have just read.

Now, notwithstanding that, it is my understanding, which I think can be borne out by the official records of the Department of Justice, that the one stipulation which the packers made when they sent their representative to the Department of Justice and said, "We are willing to enter into a decree in an equity action," was the fact that they did not propose to do anything that would subject them to liability for penalties under this Sherman law or any other law, and they wanted to have nothing against them which would indicate that they conceded the absolute violation of the law which might be used against them in many ways. Now that, if I am correct in my assumption, can be verified through the Attorney General's office, but it seems to me it is the only explanation, and it is a reasonable explanation for a cautious lawyer to insist upon when he is going to enter into a decree based upon a petition charging him with violation on so many different counts as this petition charged.

I would also urge as a lawyer, and I think the court would sustain this position, if the Attorney General attempted even to refer to this as invalidating this decree, that whatever the recitation may be, and whatever their claims, they, at the end of this decree, signed their names formally and consented in these words:

"Now, upon the petition, the answers of the defendants, and the aforementioned stipulation and consents of the parties, all on file in the office of the clerk of this court, and on motion of the petitioner, it is ordered, adjudged, and decreed as follows": and then follow the terms of this decree, and at the end of the decree appear the formal consents first of the five packers and then the other subsidiaries.

Judge HAINER. The reference there to that stipulation, does that neutralize the whole decree—and it is very doubtful whether it is an enforceable decree?

Mr. BREED. I don't think it has any effect whatever. If so, then the court was imposed upon, the Attorney General was imposed upon, and the defendants themselves would have to be the ones who, as parties to the suit, would come before the court and assert that point. I can not conceive that the Department of Justice and the Attorney General would ever go before the court and urge any such point as a reason for modification of this decree.

Judge HAINER. Perhaps it was like the case of Judge Gordon down in Oklahoma. He had an important case before a judge, and the judge constantly overruled his points, and in rendering the decision finally he did not refer to the able points that he thought he had presented, and after the court entered his decree he excepted to the rulings of the court and the ignor'ance of the court. And he got away with it all right.

Mr. BREED. Well, it is getting pretty late, and I think I shall conclude at this point just with this statement. That is the contention of the people whom I represent—the National Wholesale Grocers' Association—that this decree is valid in all of its terms and enforceable. That it is warranted by the allegations in the petition, by all the facts which have been produced here and which were present and available to the Attorney General at the time of the bringing of the petition.

We also contend that the fact that the packers consented to the decree adds materially to the force of the decree, and makes it all the more difficult to obtain a modification of it.

We would also call attention to the fact that consent decrees are, in our judgment, the most practical means of bringing about a proper judgment by the court in these antitrust prosecutions, because all of these prosecutions, based upon allegations of conspiracy—which is always indefinite and difficult to prove—are difficult; restraints of trade, monopolies and intent to monopolize, all very difficult things, in which you must take into consideration a whole series of acts, and also involve economic questions, situations that affect the defendant who is being proceeded against himself. It, therefore, follows that the only proper way of taking into consideration all these conditions and rendering a fair judgment, one which shall accomplish the object of the statute and not destroy it, is by conference and agreement embodied in the consent decree.

Furthermore, the whole history of the enforcement of antitrust laws shows that the real accomplishments have been through consent decrees.

I hope that this committee will not recommend to the Attorney General an application to modify this decree. I can see no grounds whatever for such a recommendation.

Furthermore, I would say that knowing the Attorney General, I think it would be a most unfortunate situation to put him in to have a committee that has given such long, serious, and careful consideration to this very complicated subject, make a recommendation to him which would require him to put himself before the court in such a light as the points I have brought out would seem to me to place him.

I think that for a department of Government whose business and duty it is to enforce the Sherman law and the Clayton Act—which obtained a decree that accomplishes an object, and the first time that there has been any real accomplishment in connection with curbing the activities of the meat packers—to now reverse itself, admit that it was in error, and go into court and ask a modification of a decree when the defendants themselves have not sought it, is putting that department in a perfectly ridiculous light before the public, and will seriously interfere with the future enforcement of these acts against not only the packers but against any other monopolies.

In other words, I think the saddest day in the history of government, really, in its fight against monopolies, will be the day when any Attorney General of the United States goes into court and admits that the Government was wrong, and asks that the packers be allowed to come back into the business of manufacturing and selling and distributing these substitute foods, thereby opening it up for the packers to continue their march of 30 years into real and complete monopoly of the most real necessity of life—food. And that is what is charged in the petition will happen, and it is what all the testimony here by people who have thought, who are worried about the subject, shows will happen, as they believe, if this decree is modified and the packers are invited back into the unrelated lines.

THE CHAIRMAN. I have just one question that I want to ask, Mr. Breed. Is there any conflict, do you think, between the law and the public policy as expressed in the law, and this decree in this respect: The decree prohibits certain acts with reference to export trade. Is there a conflict between that and the express policy as contained in the Webb-Pomerene Act?

MR. BREED. Well, my answer to that would be, Mr. Chairman, that we have two laws. We have a law against monopoly, restraint of trade, and that law has been enforced against the packers; and the decree, among other things, prohibits them from doing this export business. And the reason for the decree is the fact that by doing their export business they are enabled to violate the statute that is sought to be enforced.

Now, another statute, such as the Webb Act, permitting something, does not necessarily permit that to anybody who has been held to be guilty of violating the Sherman antitrust law.

Furthermore, I would say that for the committee to act on this subject, thinking of the export prohibition, they should take into consideration that, as a practical matter, the prohibition against the packers doing an export business amounts to nothing, because you have before you the long list of subsidiary companies which they have in all these other countries, and the decree does not cover any of those foreign corporations, and could not; and you have the further fact that Mr. Campbell himself, who had a contract with Armour & Co. of the United States, was enabled to sell to Armour & Co. of London and thus carry out all of the export end of the business that there was a demand for. So that, as a practical matter, there is nothing to that prohibition.

On the other hand, as an injury to the public, if that prohibition were brought to the court's attention for modification, I think investigation would disclose the fact that with the packers out of these lines in the States, and with their avowed policy always to buy up surpluses and sell them where they can—if they did this and sold them in foreign markets you would find that the result would be an injury and detriment to the people of the United States through the increase of price that would come from their operating in these foreign markets.

Judge HAINER. In other words, exports would be detrimental to public interests?

MR. BREED. No; because practical export is not prohibited.

MR. SMITH. No; exporting would be used in connection with the domestic business to make their domestic business injurious to the public interest. Now,

the Webb Act had reference solely to export, and it intended solely to allow these corporations whose sole business was exporting to have an opportunity to compete with certain combinations in England and in foreign countries, especially to enable them to do an export business. That was what we had in view in passing that act, to put them into position to meet the situation that confronted them abroad.

The CHAIRMAN. You say, Senator, that it was intended to apply to those engaged solely in export business?

Mr. SMITH. That was what we had in view. I think you will find the language restricts it, too. I think you will find that the language shows—I really think the Webb Act intended to apply only to companies engaged in an export business. It authorized the organization of special corporations, and to these special corporations engaged in an export business, organized under that act, were given these privileges. And there are terms in that act that carefully guard against their handling in a domestic way their products to lessen competition. It was framed to meet a foreign competition where our domestic exporters met combinations.

The CHAIRMAN. Is there anything further, Judge?

Judge HAINER. No, sir. I am very much pleased with your able argument.

The CHAIRMAN. That was all, was it, Mr. Breed?

Mr. BREED. Yes.

Judge HAINER. I was very much pleased by the able arguments made by counsel, and I shall be able to read your briefs. Do not think they won't be read, because we are going to read every line and every authority that you read.

Mr. SMITH. I will try to-night to correct the typographical errors of mine and give it to you.

The CHAIRMAN. Mr. Breed, when do you think your brief will be here?

Mr. BREED. Monday.

The CHAIRMAN. Very well. This closes the argument.

(Thereupon, at 7.15 o'clock p.m. January 12, 1922, the arguments of counsel before the Interdepartmental Committee were closed.)

MEMORANDUM OF NATIONAL WHOLESALE GROCERS' ASSOCIATION IN OPPOSITION TO MODIFICATION.

[Interdepartmental Committee appointed by the Department of Justice. United States of America v. Swift & Co. et al.]

In the matter of an application to the Attorney General to apply for modification of the decree entered in the above-entitled action on February 27, 1920.

This memorandum is submitted to the Interdepartmental Committee appointed by the Attorney General pursuant to the letter of the Department of Justice dated October 12, 1921, in opposition to any modification of the Consent Decree in the above-entitled action.

In this letter it is stated that a request has been made by other interests than the defendants in the action to the Attorney General urging a modification of the Consent Decree and that the Attorney General has appointed the Interdepartmental Committee in order to enable him to reach a proper conclusion upon this request.

CONSENT DECREE.

The decree here involved was entered in the Supreme Court of the District of Columbia on February 27, 1920, in an action brought by the United States of America against Swift & Co., Armour & Co., Wilson & Co., Cudahy Packing Co., and Morris & Co. There were included as defendants a number of their subsidiary companies and the principal individuals connected with their companies. The decree was entered by the court upon the written consent of all the defendants. It generally enjoined the defendants from entering into any contract, combination, or conspiracy in restraint of trade and from jointly or severally monopolizing or attempting to monopolize trade or commerce. The same parties had been under practically this same injunction since 1905.

It further specifically provided as follows:

1. The defendants were prohibited from owning any interest in any public stockyard company or stockyard terminal or in any stockyard market newspaper or journal.

2. The defendants were prohibited from permitting any other person, firm, or corporation to use their distributive system, except that they were permitted to lease their refrigerator cars to common carriers for public use.

3. The defendants were prohibited from engaging in any way in the manufacturing, selling, and distributing, except as common carriers, of a large number of specified food products commonly known as "unrelated lines" and being the class of food products generally handled by wholesale and retail grocers; and the individual defendants were enjoined from owning voting stock in excess of 50 per cent in any corporation, except common carriers handling a certain limited number of such unrelated lines, there being no limit as to the stock ownership of the individual defendants in corporations doing business in the other unrelated lines.

4. The defendants were prohibited from owning, operating, or conducting retail meat markets.

5. The defendants were enjoined from owning any capital stock in public cold-storage warehouses.

6. The defendants were prohibited from handling fresh milk or cream, except as common carriers, and except as same was used in the manufacture of products which they were permitted to sell.

The decree directed the defendants to file within 90 days plans for divesting themselves of the stockyards, stockyard market newspapers, and to dispose of such interests and also their ownership in public cold-storage warehouses and retail meat markets within nine months, and to discontinue the handling of unrelated products within two years. All such sales, transfers, and other disposition made of defendants' interests were to be submitted to the court for approval. The court records do not disclose that any plans for the disposal of defendants' interests in the unrelated lines have been submitted as yet to the court.

The decree was entered upon petition of the United States of America by the Attorney General and the answers of the defendants. In the petition it was charged that by unlawful means the defendants "have attempted to dominate, control, and monopolize a very great proportion of the food supply of the nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities herein referred to and which are necessary to the life, health and welfare of the people of the United States."

The defendants in their answers denied that they had been guilty of violating the law as charged in the petition, but they all consented in writing to the entry of the decree in the exact form in which it was entered.

ENFORCEMENT OF DECREE.

The prohibitions contained in the consent decree with regard to the handling of unrelated lines do not take effect until February 27, 1922. Although it was undoubtedly intended that immediately after the entry of the decree the Big Five Packers should commence to discontinue the handling of these lines and should as rapidly as possible give them up, the record contains no evidence as to what progress has been made. It does appear that they are still handling some of these lines. (Rec., p. 1172.) Furthermore, the defendants in the court proceeding have not submitted for the approval of the Supreme Court of the District of Columbia any plans for the disposition of their interests in corporations handling the unrelated items.

EXTENT OF PROPOSED MODIFICATION.

There is no statement in the record as to the extent of the modification originally under consideration, but a letter of the Department of Justice, dated August 30, 1921, states as follows:

"The proposed modification would entirely eliminate paragraphs third, fourth, fifth, and twelfth of such decree and the parts of paragraphs eighth, fourteenth, sixteenth, and seventeenth of such decree referring to the unrelated commodities mentioned in paragraphs fourth and fifth and would set aside and annul the orders, injunctions, and prohibitions contained in the parts so eliminated."

This modification would entirely strike out from the decree all of the restrictions therein contained with regard to the handling of unrelated lines by the defendants and the ownership by the defendants of stock in companies handling

same. It would also eliminate the restriction upon permitting others to use their distributive system.

PACKERS DO NOT ASK MODIFICATION.

The chairman of the Interdepartmental Committee stated at the opening of this proceeding (page 7) :

"I will state, gentlemen, that the request for a modification of this decree originated about May, 1920. No one claiming or pretending to represent any of the defendant packing companies made any such request for modification."

Hence, if action is taken toward modification of the decree it must be at the instance of the Government itself through the Department of Justice, which filed the petition originally upon which the decree is based and which is the party plaintiff.

It is submitted that this would be a most unusual proceeding and might develop a situation in which the defendant meat packers who, according to the representation of the Attorney General, have not sought a modification of the decree, would themselves oppose modification or refuse to consent, in which case the Court would be powerless to act.

Certainly there is no power in the Government to compel the meat packers to expand their business into new fields if they do not elect to do so.

It should be noted that Vernon Campbell, the one person responsible for the agitation in favor of modification of this decree, believes (Rec., pp. 2622, 2676) that the entire decree should be wiped out.

GOVERNMENT'S REASON FOR INCLUDING PROHIBITION WITH REGARD TO THE UNRELATED LINES IN DECREE.

In view of the proposed elimination of the prohibition with regard to the unrelated lines, it might be well to note the basis as laid in the petition of the Attorney General for that part of the decree, as it sets forth the general situation with regard to the packers' invasion of these lines and the result of such invasion. The petition in this respect charged:

Control of substitute foods.—Having eliminated competition in the meat products, the defendants next took cognizance of the competition which might be expected from what we here refer to as substitute foods. Their experience had taught them that if meat prices advanced out of proportion to that of other substitute foods, the consuming public manifested a tendency to turn to such substitutes. To prevent this, the defendants set about controlling the Nation's supplies of fish, vegetables (either fresh or canned), fruits, cereals, milk, poultry, butter, eggs, cheese, and other substitute foods ordinarily handled by wholesale grocers or produce dealers. To accomplish this purpose the defendants availed themselves of the advantages afforded by the refrigerator cars, route cars, auto trucks, branch houses, and storage warehouses owned or controlled by them. These facilities intended primarily for the sale of meats were employed with comparatively no increase of overhead in the distribution of the substitute foods and unrelated commodities. The defendants were enabled thereby to reach remote spots. This advantage was also employed temporarily to fix prices so low as to gradually eliminate competition.

"These attempts to monopolize have resulted in complete control in many of the substitute food lines. They have made substantial headway in others. The control is extensively and rapidly increasing. New fields are gradually being invaded, and unless prevented by a decree of this court the defendants will within the compass of a few years control the quantity and price of each article of food found on the American table."

EVENTS LEADING UP TO ACTION BY DEPARTMENT OF JUSTICE AND ENTRY OF CONSENT DECREE BY THE COURT.

Since the enactment of the Sherman Act in 1890 the leading members of the meat-packing industry have been the subject of repeated investigations on the ground that they were violating the statute and were engaging in combinations and conspiracies in restraint of trade and in the furtherance of the establishment of monopolies.

The first public investigation of this character was made by the committee known as the Vest Committee of the Senate in 1890, which after an investiga-

tion of two years reported that the large packers were combining in restraint of trade. As is well known, this was but the first of many investigations of the National Government carried on by congressional committees, by agencies of Federal, State, and municipal governments, and by the Department of Justice.

In 1903 an injunction was issued against the defendants by the United States Circuit Court and affirmed by the United States Supreme Court in 1905 with provisions enjoining the continuance of defendants' combinations and conspiracies in restraint of trade and monopolistic tendencies, but notwithstanding such injunction the monopolistic growth with control of prices and elimination of competition has continued until to-day the Big Five packers dominate and control the meat-packing industry, which is the largest in the United States, the 1920 census fixing the amount of its business at \$3,714,340,000. (Record, p. 799.)

For many years the large packers confined themselves to the handling of meat products and to the by-products of the industry, but shortly before, or about the time of the Great War, the Big Five meat packers commenced the handling of lines of food products which were in no way connected with the meat industry. The business of the Big Five packers in these unrelated lines increased very rapidly during the war periods and was the source of much public complaint. About this time public opinion became aroused against the Big Five packers and it was openly claimed that they were not handling the meat industry to the welfare of the public and were guilty of violations of not only the Sherman Act but also the Federal Trade Commission Act and the Clayton Act. (Report of Federal Trade Commission on Meat-Packing Industry, testimony Walter Y. Durand, pp. 2143-2556.)

FEDERAL TRADE COMMISSION INVESTIGATION, 1917-18.

The situation was brought to a head by a letter of the President of the United States, dated February 7, 1917, to the Federal Trade Commission, in which he said that it had been charged before congressional committees and elsewhere that the course of trade in food products was being restricted and controlled by artificial and illegal means, and that he therefore directed the commission "to investigate and report the facts relating to the production, ownership, manufacture, storage, and distribution of foodstuffs and the products or by-products arising from or in connection with their preparation and manufacture; to also ascertain the facts relating to any violation of the antitrust law."

In this letter particular attention was directed to the fact that in the case of meats production had not kept pace with the increasing population.

Immediately on receipt of this letter the Federal Trade Commission commenced its investigation, which continued for over a year and a half, the summary report being made July 3, 1918, and detailed reports being made later.

The following salient facts with respect to the operations of the five packers were found:

"It appears that five great packing concerns of the country—Swift, Armour, Morris, Cudahy, and Wilson—have attained such a dominant position that they control at will the market in which they buy their supplies, the market in which they sell their products, and hold the fortunes of their competitors in their hands." (Summary report, p. 3.)

"We have found that it is not so much the means of production and preparation, nor the sheer momentum of great wealth, but the advantage which is obtained through a monopolistic control of the market places and means of transportation and distribution." (Summary report, p. 4.)

"The producer of live stock is at the mercy of these five companies because they control the market and the marketing facilities and, to some extent, the rolling stock which transports the product to the market." (Summary report, p. 4.)

"The competitors of these five concerns are at their mercy because of the control of the market places, storage facilities, and the refrigerator cars for distribution." (Summary report, p. 4.)

"The consumer of meat products is at the mercy of these five because both producer and competitor are helpless to bring relief." (Summary report, p. 4.)

"Five corporations—Armour & Co., Swift & Co., Morris & Co., Wilson & Co. (Inc.), and the Cudahy Packing Co., hereafter referred to as the 'Big Five' or 'the packers,' together with their subsidiaries and affiliated companies—not only have a monopolistic control over the American meat industry but have secured control, similar in purpose if not yet in extent, over the principal substitutes for meat, such as eggs, cheese, and vegetable-oil products, and are rapidly extending their power to cover fish and nearly every kind of foodstuff." (Summary report, p. 9.)

"The monopolistic position of the Big Five is based not only upon the large proportion of the meat business which they handle, ranging from 61 to 86 per cent in the principal lines, but primarily upon their ownership, separately or jointly, of stockyards, car lines, cold-storage plants, branch houses, and the other essential facilities for the distribution of perishable foods." (Summary report, p. 9.)

"The control of these five great corporations, furthermore, rests in the hands of a small group of individuals, namely, J. Ogden Armour, the Swift brothers, the Morris brothers, Thomas E. Wilson (acting under the veto of a small group of bankers), and the Cudahys." (Summary report, p. 9.)

"The combination among the Big Five is not a casual agreement brought about by indirect and obscure methods, but a definite and positive conspiracy for the purpose of regulating purchases of live stock and controlling the price of meat, the terms of the conspiracy being found in certain documents which are in our possession." (Summary report, p. 10.)

"The power of the Big Five in the United States has been and is being unfairly and illegally used to manipulate live-stock markets, restrict interstate and international supplies of foods, control the prices of dressed meats and other foods, defraud both the producer of food and consumers, crush effective competition, secure special privileges from railroads, stockyard companies, and municipalities, and profiteer." (Summary report, p. 11.)

"The most satisfactory single index of the proportion of the meat industry controlled by the Big Five is the fact that they kill, in round figures, 70 per cent of the live stock slaughtered by all packers and butchers engaged in interstate commerce. In 1916 the Big Five's percentage of the interstate slaughter, including subsidiary and affiliated companies, was as follows: Cattle, 82.2; calves, 76.6; hogs, 61.2; sheep and lambs, 86.4." (Summary report, p. 11.)

"The business of the packing companies originally was limited to the slaughter of live stock and the distribution of meat and animal products and by-products. Now, however, they are rapidly extending their control over all possible substitutes for meat—fish, poultry, eggs, milk, butter, cheese, and all kinds of vegetable-oil products, and have secured strategic points of collection, preparation, and distribution of these products." (Summary report, p. 13.)

"These strategic positions, which serve not only to protect the controls which the big packers have already acquired, but to insure their easy conquest of new fields, are:

"Stockyards, with their collateral institutions, such as terminal roads, cattle-loan banks, and market papers.

"Private refrigerator car lines for the transportation of all kinds of perishable foods.

"Cold-storage plants for the preservation of perishable foods.

"Branch-house system of wholesale distribution.

"Banks and real estate." (Summary report, p. 15.)

"The purpose of this combination, which for more than a generation has defied the law and escaped adequate punishments, are sufficiently clear from the history of the conspiracy and from the numerous documents already presented, namely:

"To monopolize and divide among the several interests the distribution of the food supply not only of the United States, but of all countries which produce a food surplus and, as a result of this monopolistic position.

"To extort excessive profits from the people not only of the United States, but of a large part of the world." (Summary report, p. 40.)

This report and all of the evidence and documents collected by the Federal Trade Commission as a result of its long investigation were before the Department of Justice when it brought the equity action in the Supreme Court of the District of Columbia and agreed to accept the consent decree entered February 27, 1920.

CONGRESSIONAL INVESTIGATIONS, 1918-1921.

While the Federal Trade Commission was carrying on its investigation of the meat industry, there were also being conducted congressional investigations in connection with various bills which had been introduced in Congress for the regulation of the packers. These investigations developed many of the same facts which were found by the Federal Trade Commission to exist. Such investigations finally resulted in the passage of the packers' control bill, which became a law August 15, 1921.

The passage of this bill shows that the legislative branch of our Government recognized the monopoly which the Big Five packers had already obtained in live stock, meats, dairy products, and eggs and the menace of such monopoly, and determined that their operations must be regulated and controlled in those lines. It in no sense indicates that Congress approves of packer monopoly or control of other food products or had any intention of exempting the packers from the provisions of the Sherman law and Clayton Act prohibiting conspiracy, restraint of trade, monopoly, or intent to monopolize.

INVESTIGATIONS BY THE DEPARTMENT OF JUSTICE, 1919.

In March, 1919, that department commenced an exhaustive examination of the records of these other investigations and also of many facts which had been developed by its own Bureau of Investigation. After a most careful and painstaking inquiry the decision was reached that the evidence justified the Government in proceeding against the Big Five packers for violation of the Sherman Act, and it was decided to carry on the investigation before a Federal grand jury with a view to determining whether to proceed by indictment or by equity action. Accordingly, in September, 1919, hearings were commenced before a Federal grand jury in Chicago and continued until the end of October, when a similar proceeding was commenced before the grand jury in New York.

At this point it is well to call attention to the definite statements of Attorney General Palmer that while he had not determined whether to prosecute the packers criminally or civilly, he and his assistants had determined that the Big Five meat packers had violated the law, and there remained undetermined only the procedure to be adopted. We quote from the Attorney General's testimony before the Senate Committee on Agriculture and Forestry, as follows:

"I think they had violated the Sherman antitrust law; that is both a criminal and a civil statute, Senator." (Hearing on S. 2199 and S. 2202, pt. 4, p. 47.)

And before the House committee:

"Mr. VORST. General, you said that your special assistants, Morrison, Pagan, and Kresel, acting independently, had arrived at the same conclusion primarily on the evidence which was submitted. Are you at liberty to state whether these gentlemen recommended a criminal prosecution against the packers?"

"Attorney General PALMER. They recommended that action be taken under the Sherman antitrust law against the packers; leaving it to the Attorney General to decide whether it should be on the criminal or on the equity side of the court. They may possibly have advised criminal proceedings." (Hearing on Meat Packer Legislation, pt. 31, pp. 2327-2328.)

PACKERS SOLICITED DECREE.

While the hearings were being held by the Grand Jury, first in Chicago and then in New York, duly accredited representatives of the Big Five packers came to Washington and entered into an agreement whereby it was agreed that an action should be brought in equity against the packers and the consent decree entered into. (Hearings before House Committee on Agriculture, pt. 31, pp. 2311-2312; hearings before Senate committee, pt. 4, p. 37.) This agreement was publicly announced on or about December 18, 1919, and pursuant thereto the decree was entered February 27, 1920, and immediately the meat packers began to use the decree to their own advantage.

CIVIL AND CRIMINAL PROSECUTIONS ENDED BY THE CONSENT DECREE.

By this means they temporarily, at least, disposed of a determined prosecution, either criminally or civilly, based on evidence gathered by a broader, more far-reaching investigation than the Government had ever before under-

taken against the meat packers, or any other monopoly, since the passage of the Sherman Act in 1890.

The chairman of the interdepartmental committee, as above stated, has taken pains to state upon the record that no criminal prosecution was pending against the Big Five packers at the time when the consent decree was entered, although as we have shown, the Attorney General and his assistants were convinced that the meat packers had violated the law but had not yet decided as to whether this unlawful combination should be prosecuted criminally or civilly. By their agreement to the consent decree the meat packers secured the abandonment of their prosecution.

It is true that no express agreement to this effect was made. In the hearings before the congressional committees it was stated by the Attorney General that but for the possibility of prosecution no consent decree would have been possible and that in view of the meat packers having consented to the decree, he would not prosecute them criminally. Before the House Committee on Agriculture the question was asked by Mr. Voigt:

"If there had not been this grand jury investigation and the possibility of prosecution by your department in their minds, you do not think they would have consented to this decree, do you?"

"Attorney General PALMER. If they had thought I was not going to do anything about it, they would not have bothered to come and see me. They got the notion I was going through, and they were right." (Hearing before House Committee on Agriculture, pt. 31, p. 2329.)

Before the Senate committee the Attorney General was asked by Senator Norris:

"Under your settlement, while you have made no agreement, of course, you do not expect to proceed against them criminally for that violation, do you?"

"ATTORNEY GENERAL. This is the first time I have ever announced it, but I do not expect to proceed against them criminally." (Hearing before Senate Committee on Agriculture and Forestry, S. 2199 and S. 2202, pt. 4, p. 47.)

It is clear, therefore, that up to date the consent decree has secured the packers a temporary immunity from Federal prosecution for violations of law committed prior to the entry of the consent decree.

If the decree should be now modified and an attempt should be made to bring criminal prosecution for such violations, it will doubtless be found that the statute of limitations has granted permanent immunity.

PACKERS' CONTROL LEGISLATION MODIFIED BECAUSE OF DECREE.

As has already been stated, while these investigations were being carried on by the Federal Trade Commission and the Department of Justice, Congress was also considering the enactment of legislation regulating and controlling the meat packers.

A number of these bills had been introduced containing provisions regulating the handling of products other than those connected with the meat industry by the packers and also prohibiting the handling of such unrelated items to such an extent as to lessen competition or create monopoly. (See S. 2202, by Mr. Kenyon; S. 2202, substitute by Mr. Moses; S. 3944, by Mr. Gronna; S. 3944, substitute by Mr. Sterling; S. 2199, by Mr. Kendrick; S. 5288, by Mr. Smith; H. R. 6492, by Mr. Anderson; and H. R. 7001, by Mr. Jones.)

These provisions are not contained in the bill as finally enacted into law on August 15, 1921, and an examination of the records of the debates on this legislation and of the committee's reports will show that the reason for such elimination was the fact urged by the meat packers that they had, pursuant to the terms of the consent decree, agreed to abandon entirely the handling of unrelated items. (See report and statement of conference committee in Congressional Record, August 2, 1921, pp. 4896-4898; report of House Committee on Agriculture re Senate bill 3944, on February 5, 1921, and debates generally.)

Except for the existence of the consent decree it is reasonable to conclude that a provision would have been made in the control bill limiting the handling by the meat packers of unrelated products. The hearings on the bill showed an almost unanimous sentiment that the packers should not be allowed to invade the unrelated lines. For example, Mr. Atkeson, representing the National Grange testified:

"It is my judgment that the packers should be restrained from engaging in any unrelated businesses to meat production in order that other men and

other enterprises may live and flourish, even if this service costs more than the packers had a monopoly of the whole business. It is a protection to the public for it to draw its supply, whether food or otherwise, from more hands than one, or that their supply should not be controlled under one direction." (Hearings, pt. 4, p. 241.)

Also in Part 30, page 2306, the following resolution adopted by the American Federation of Labor appears:

"Resolved, That the American Federation of Labor support the Federal Trade Commission in its efforts to secure remedial legislation in the meat-packing industry. That the American Federation of Labor especially call the attention of Congress to the extension of the control of the meat packers over the preparation and sale of unrelated food products, which has proceeded so rapidly in recent years that the absolute control of food of the Nation is passing into the hands of the five packers while the legitimate manufacturers and distributors of food products other than meat are in danger of destruction. That copies of these resolutions be sent to all the members of the Senate and House Interstate and Foreign Commerce and Agricultural Committees."

Letters were written to the committees considering these bills by two present members of the Cabinet, by Secretary Hoover and Secretary Weeks, approving these limitations upon the extension of the meat packers' business. Secretary Weeks wrote in part:

"It would be unthinkable and certainly unbearable to permit a half dozen men or a half dozen firms to obtain control of the food supply of this country, even assuming that it would on the whole be efficiently managed. Undoubtedly the packers will contend—and the contention has a great deal of merit—that having such distribution facilities for their meat products, those facilities should be worked to their full capacity to get the highest efficiency and a resulting lower cost, and that for that reason they should go into the manufacture and distribution of other products than meat. But there is grave danger of trouble resulting from such a monopoly which is too great to warrant its being permitted even if there is a lessening of efficiency as a result.

"If you could work out a solution of this difficulty which would divorce the packers from handling of any food products not related to the legitimate packing industry, my impression is that you would leave that part of the high cost of living problem in the best possible shape."

The packers-control legislation was finally passed after the consent decree had been an established fact for a year and a half. It was framed upon the assumption that this court decree formally consented to by the big meat packers settled the question of the further extension of their monopoly into unrelated lines and rendered legislative action unnecessary.

The learned representative of the Department of Agriculture sitting upon this committee has intimated that it is his opinion that the terms of the packers-control legislation are sufficiently broad to permit the Department of Agriculture to regulate the handling of unrelated items by the meat packers. We believe that on mature consideration he and the other members of the committee will reach the conclusion that such is not the case. In any event, it would be most difficult to enforce any order against the meat packers covering their dealings in these outside food products under the indefinite terms of this act.

On this point it is true that section 202 of the act makes unlawful unfair practices, giving of preferential prices, creating monopolies, or conspiring in restraint of trade with regard to "any article in commerce." But paragraph (b) of section 2 specifically provides that for the purpose of the Act an article shall be considered to be an article in commerce if it is part of that current of commerce usual in the live-stock and meat-packing industries, whereby live stock, meats, meat food products, live-stock products, dairy products, poultry, poultry products, or eggs are sent from one State to another. It is quite clear that the unrelated items are not a part of the current of commerce usual in the live-stock industry, and this is recognized by the fact that it is deemed necessary to specifically mention dairy products and eggs, which have been always handled to a greater extent by the packers than have the unrelated lines which the packers have commenced handling only very recently.

Moreover, the title to the statute reads: "An act to regulate interstate and foreign commerce in live stock, live-stock products, dairy products, poultry, poultry products, and eggs, and for other purposes." As is well known, the statute is confined to matters contained in its title, and in their interpretation of the law the courts would be most reluctant to extend the scope of the act

any further. This is particularly so in the case of a criminal statute, where a strict construction would apply.

Moreover, the elimination from the proposed legislation of the provision with regard to the unrelated lines shows clearly that Congress did not intend to regulate the handling of same, but believed that the consent decree finally settled the fact that such lines would no longer be handled by the Big Five packers.

INTERSTATE COMMERCE COMMISSION DECISION AFFECTED BY DECREE.

Prior to the entry of the consent decree the National Wholesale Grocers' Association began a proceeding before the Interstate Commerce Commission against the railroads of the United States for the purpose of obtaining an order of the commission preventing the meat packers from using their brine-tank refrigerator cars for the transportation of nonperishable articles not requiring refrigeration.

The evidence in that case and also before this committee (see testimony of W. F. Bode and Clifford Thorne) shows that it has been the recent practice of the meat packers to put the unrelated food products not requiring refrigeration into their refrigerator cars with fresh meat products, with the result that the meat packers were able to obtain a considerably lower minimum car freight rate and also a much more expeditious delivery system. (Record, pp. 826, 844, 962-965.)

It needs no argument to show that the merchant who can always promise both a prompt and a certain delivery has a great advantage over his competitor. This the meat packers were and are able to do, with their privately owned refrigerator cars. It has been found in the investigations of congressional committees, the Federal Trade Commission and the Department of Justice above referred to, that it was this preferential service which largely enabled them to acquire a practical monopoly over competitors in the meat business, and they were using the same special facilities with far greater effect to increase their business in the unrelated lines at the expense of their less-favored competitors. For this reason paragraph 3 (now proposed to be eliminated by modification) was inserted in the decree, providing that the packers should not use their distributive system for the transporting of the unrelated commodities either by themselves or by their controlled companies, except in so far as they might lease their refrigerator cars for service as common carriers open to the use of the entire public.

While testimony was being taken in the Interstate Commerce Commission case the consent decree was entered, and thereupon the attorneys for the meat packers immediately introduced the decree in evidence, and urged that because of the entry of the decree there was no longer any reason for carrying on that proceeding.

The principal causes of complaint in these proceedings originally brought by the National Wholesale Grocers' Association and the Southern Wholesale Grocers' Association were settled by the packers agreeing to go out of the business of handling these unrelated food products, and the further provision of the decree preventing them from using their distributive systems and special refrigerator-car lines for the handling of unrelated products belonging to others.

The Southern Wholesale Grocers' Association regarded this condition as so thoroughly meeting its demands that after the date of the consent decree it withdrew from the Interstate Commerce Commission proceeding. The National Wholesale Grocers' Association, however, continued the proceeding, believing that the question of rates and other details was involved.

There is no doubt, however, that from the time the decree was brought to the attention of the Interstate Commerce Commission the general efforts of complainants to elaborate and produce evidence along these lines were weakened, and while the decision of the Interstate Commerce Commission, in general terms, holds that the proceeding does not warrant the full relief sought by the complainants, the Interstate Commerce Commission mentions at length the fact of the decree, and its provisions that the packers were to withdraw from the handling in their car lines of these unrelated products, and there is no doubt that the fact that the packers had agreed to go out of this line of business and not make such shipments did have a strong influence in the opinion which was rendered by the Interstate Commerce Commission.

WHO ARE ASKING MODIFICATION?—POSITION OF THE PACKERS.

It is to be noted that not one of the five defendants has publicly appeared at the hearings before this committee, or has openly authorized anyone to state its attitude as to modification of the decree, unless it be that Mr. Vernon Campbell holds such authority. Whatever part the packers have taken in regard to the modification of the decree prior to the holding of these hearings is, of course, known to the Attorney General from his conferences and correspondence with the defendants and their attorneys, but no statements of any kind by the defendants appear upon record. Whatever step is taken in this case will therefore be taken not at the request of the defendants who are assuming a position of neutrality, but of the Attorney General himself.

PROPOSENTS OF MODIFICATION.

The decree being acquiesced in by the defendants themselves, it would certainly seem that there was some presumption that the policy which had been pursued toward them during the last 30 years was a correct one, and that the decree which was entered in this case had some justification. It would further seem that some weighty reasons should be adduced for a reversal of the prior policy and for the setting aside of the decree. The testimony of the proponents of modification should be carefully analyzed for this purpose.

Presumably the reasons given in the record are the same as those presented to the Attorney General by Mr. Campbell, and perhaps others who have not publicly appeared before the Interdepartmental Committee and which evidently were considered of sufficient importance by the special Assistant Attorney General handling the matter to justify him in stating on September 9, 1921:

"* * * the Department of Justice felt that a modification would be desirable and had determined to proceed with such modification and that is the situation at the present time."

Those who testified before the committee in favor of modification were the following:

Vernon Campbell, San Jose, Calif., representing California Cooperative Canneries, 700 to 1,000 growers.

Dallas H. Gray, Armona, Calif., representing California Cooperative Canneries.

E. S. La France, Winona, Minn., representing National Kraut Packers Association, 47 to 48 members.

A. E. Slessman, Fremont, Ohio, representing National Kraut Packers Association, 47 to 48 members.

J. W. Gillespie, Bedford, Va., Canner of tomatoes.

R. A. Gillian, Montvale, Va., Cashier, Bedford County Bank, Montvale, Va.

C. W. Gill, Bedford, Va., representing Bedford Can Co.

James Craig, Waynesboro, Va., Fruit grower and canner of tomatoes.

J. H. Sterling, Crissfield, Md., Dealer in sea food.

John T. Handy, Crissfield, Md., Oyster canner.

Lewis M. Milbourne, Kingston, Md., Tomato canner.

Rolland Morrill, Benton Harbor, Mich., Fruit grower.

The proponents may readily be classified into the following groups:

- (1) Two representatives of the California Cooperative Canneries;
- (2) Two representatives of the National Kraut Packers' Association;
- (3) Two Virginia tomato canners, a tin can manufacturer and a local banker;
- (4) Two Maryland oyster canners and a tomato canner;
- (5) Rolland Morrill, a Michigan farmer.

CALIFORNIA COOPERATIVE CANNERIES.

This organization was represented by Mr. Vernon Campbell and Mr. Dallas H. Gray, both of California. Mr. Campbell is the leading proponent of modification, having first made application to have the decree set aside in May, 1920, and having been in Washington continuously since April, 1921, in behalf of a modification. (Record, p. 2598.) He not only has applied to the Attorney General, but also testified before certain congressional committees and asked that the packers' control bill contain an amendment nullifying the terms of the consent decree, a suggestion which was not adopted.

The complaint made by Mr. Campbell and Mr. Gray was based chiefly on the fact that the California Cooperative Canneries had a contract with Armour & Co., or to be more exact, Armour & Co., had an option to take so much of the output as the canneries desired for a period of ten years and that following the entry of the consent decree, Armour & Co. refused to purchase further products of the California canneries. (Record, p. 68.) Apparently this has not seriously affected the Canneries in disposing of its current production, as a large sale has been made this year to Armour & Co. (Ltd.), an English subsidiary of Armour & Co., not a party to the consent decree (record, p. 111), and the stock now on hand is not larger than is normally the case at this time of the year (record, pp. 111, 2635).

It is interesting to note as bearing both on the weight to be given to the statements of Messrs. Campbell and Gray, as alleged disinterested witnesses, and also on the real attitude of Armour & Co. in this matter, that prior to taking up this fight for modification, Mr. Campbell had a number of conferences with representatives of the packers in Chicago, and apparently it was arranged that they would "keep still" while he came to Washington and endeavored to have the consent decree set aside, in which event they were ready to take on the handling of unrelated items. (Record pp. 2594-2597; 2632, 2681-2682.)

Moreover, while Armour & Co. may have been keeping still in so far as concerned a public appearance at this hearing, the company has clearly had dealings with the Department of Justice, and certainly one of Armour & Co.'s attorneys accompanied Mr. Campbell and the special assistant Attorney General in charge of the matter, to the home of Judge Stafford in Vermont in the summer of 1921 for the purpose of conferring with regard to the possible modification of this consent decree (record, pp. 2682-5) and another one of Armour's attorneys has been in Washington during these hearings and in conference with Mr. Campbell from time to time, and according to Campbell's testimony to some extent has assisted him (record, pp. 2687-2688).

The California Cooperative Canneries was started with money advanced by Armour & Co. pursuant to a plan previously announced by Mr. Armour for the organization, with the help of Armour & Co., of the California Cooperative Canneries in California, and there is still due to Armour & Co. at least the sum of \$200,000 on a mortgage on the California plant. Mr. Armour also offered to indorse personally notes of the California Cooperative Canneries. (Record, pp. 2626-2627.)

Armour & Co. also has an option to purchase the plant of the California Cooperative Canneries at any time when it may decide to sell same. (Record, p. 2744.) The plants of the Canneries in California are marked on the map of the United States issued by Armour & Co. in 1918 as plants controlled by Armour & Co.

In view of this close connection which concededly exists between Armour & Co. and the California Cooperative Canneries, it is not surprising to find that these witnesses entertain no dread that the meat packers' monopoly is dangerous to either themselves or the public generally. In fact, Campbell and Gray both openly stated that they thoroughly believe in the existence of such monopolies and in giving them as complete a control over the food products of the country as they may care to take. (Record, pp. 2667-2668.)

They do not favor any regulation of the meat packers or restrictions upon their conduct either by court decree or by legislation. (Record, pp. 2676, 2622.) They readily concede that the meat packers have a great advantage over their competitors in the ownership of refrigerator cars, in which they are able to secure a special expedited service for nonperishable products, but do not favor limiting such special privileges to meats, for which they were originally intended (pp. 2642-2643).

Their position is that if the wholesale grocers and other food distributors believe that these special privileges are injurious to them, they should acquire and own like refrigerator cars, or go out of the business if they suffer in competition. (Record, pp. 2601-2602.) In the opinion of Mr. Campbell, the railroads of the United States are like a public highway, on which the packers are free to place their own private cars and run them as they please, regardless of the rights of anyone else who does not own cars.

Mr. Campbell would also like to see the packers go into the retail grocery and also retail meat business. (Record, p. 2655.) He does not believe in any of the provisions of the decree. (Record, p. 2622.) He does not consider the present method of doing business between the wholesalers and

retailers as being at all sound. The fact that wholesalers extend credit to retailers, is in his opinion, most uneconomical. In his opinion all transactions should be done on a cash basis. (Record, pp. 2636-2639.) Manifestly, if the meat packers are to be the growers, canners, manufacturers, jobbers, and retailers, it will not be necessary for credit of any kind to be extended except to themselves by banks in which they are interested, and all that it will be necessary for the public to do will be to step up and pay as much cash as the meat packers demand for their daily food.

NATIONAL KRAUT PACKERS ASSOCIATION.

The complaint of the representatives of the National Kraut Packers Association, an organization composed of 48 members, is based chiefly on the fact that the meat packers formerly bought kraut, and now under the decree are not permitted to purchase this product. Kraut was an article which the packers were handling in large quantities. Their business in this line was very rapidly increasing, and this fact, coupled with the business depression of the last couple of years, has made it somewhat difficult for the kraut packers to find a ready market for their entire production.

One of the witnesses, however, admitted that the elimination of the wholesale grocers and substitution of a few packers in the handling of kraut would be injurious to the general public. (Record, p. 516.) No plainer warning of what would happen could be found than was disclosed by the testimony of Mr. Slessman, a former president of the National Kraut Packers Association.

Mr. Slessman said his relations with Armour & Co. had been most pleasant and stated that he was testifying "because of my gratitude to Armour & Co." (Record, p. 529.) On the facts as disclosed by him there might be some question, however, as to his gratitude to Armour & Co. His company first sold kraut to Armour & Co in 1912 and the volume of business was very small. The next year their order was larger, and the next year it was so large that Mr. Slessman would not take it, fearing that Armour & Co. was about to start a factory of their own. (Record, p. 547.) Thereupon, Armour & Co., undaunted by this refusal, proceeded to buy out the interests of Mr. Slessman's partners and the next year found Armour & Co. owning 51 per cent of the stock of Slessman's company, and therefore having no difficulty in controlling his output. (Record, p. 548.) As a result of the consent decree, Armour & Co. sold out its interest in Slessman's company and he was able to buy back the control. He is to-day, therefore, again an independent manufacturer. (Record, p. 549.)

VIRGINIA CANNERS.

The Virginia tomato canners were represented by two canners of tomatoes, one local banker, and a local tin-can manufacturer. These gentlemen testified to a deplorable condition in the tomato industry in Virginia as compared with the conditions during the war. These conditions have existed since 1918, however, and it is evident that they were not caused by the consent decree, for they commenced long before the consent decree was even thought of.

In the first place, the tomato canners are and have suffered greatly from the business depression, rendered doubly severe in this line of food because the war stimulated the production of canned tomatoes far beyond the quantity produced in normal times. (Record, p. 1374.)

In the second place, during the war the Government purchased large quantities of canned tomatoes, as this was a product in great demand for the use of military forces. Immediately after the armistice in 1918, the Government started selling the large stocks which it had accumulated both in this country and abroad (record, p. 1232), sales being usually conducted at auction to the highest bidders at many places throughout the United States. It was coincident with the commencement of these sales that the depression in the tomato market began. (Record, p. 1372.) These Government sales, which have continued almost to date, have had a most demoralizing effect upon the tomato market. (Record, p. 1200.)

It therefore follows that the meat packers are indeed a weak reed for the tomato growers to rely upon as a help out of their present troubles, when it is borne in mind that the record shows the meat packers stopped buying canned tomatoes in 1918 (record, p. 1234), at about the same time the Government started selling them, although the consent decree was not even contemplated at that time and was not entered until over a year later. Certainly there is nothing

in the past or present history of the dealings of the packers with an allied industry, such as the live-stock producers, to justify a belief that the packers are likely to come to the assistance of a demoralized outside industry, especially at a time when such a course is not to their own financial advantage.

MARYLAND CANNERS.

Two oyster canners and one tomato canner from the State of Maryland testified in behalf of modification. The testimony of all three was to the effect that they believed they would obtain a wider distribution if the packers were permitted to distribute their products. So far as concerns the Maryland tomato canner, the same situation was disclosed as applies to the Virginia tomato canners, and it is again to be noted that the packers ceased buying canned tomatoes from this witness in 1917 (record, p. 1476), so that it is evident the consent decree was not the reason why the meat packers abandoned the purchase of canned tomatoes, but that their action was due to entirely different causes, i. e., to business depression and to the fact that the Government held large stocks of these tomatoes.

The oyster business has evidently not suffered any depression by reason of the consent decree, for one of the witnesses stated, "We may do a larger business this year than we did before" (record, p. 1429), and the other: "We have been increasing our capacity all the time" (record, p. 1445). Nor have the prices of oysters been affected by the consent decree for as testified by these witnesses conditions in the oyster business are affected by weather conditions more than anything else. (Record, p. 1457.)

It is apparent, therefore, that in this industry at least there has been no depression and no just complaint can be made of any injury due to the consent decree.

ROLLAND F. MORRILL.

Mr. Morrill was originally not sufficiently interested in the proposed modification of the consent decree to ask to have any time assigned to him at the hearings. He says that he chanced to be in Washington on his way to Florida, and learning of the hearing, appeared and testified at length in favor of modification. (Record, p. 1761.)

Morrill is engaged in farming on a large scale and in several other lines of business. His objection to the consent decree is that it will take away from the growers of fresh fruits and vegetables in Michigan the use of the private packer lines for the transportation of their products. He thinks that the packers run better refrigerator cars than the railroads and believes in these privately owned and operated lines.

Mr. Morrill is not personally affected by the decree as his farms are situated on a lake port, excepting one which is located on the New York Central Lines. (Record, p. 1763.) Curiously enough, he has no complaint to make of the transportation afforded him by that railroad. He states that his opposition is on behalf of other farmers of Michigan who are not as favorably located as himself.

It is manifest that Mr. Morrill's position is based upon a misapprehension not only of the terms of the decree, but general conditions.

In the first place, the decree does not prohibit the meat packers from using their refrigerator cars as common carriers provided they see fit to do so.

In the second place, Mr. Morrill frankly states that the brine tank meat cars or what are known as refrigerator peddler cars, of which the packers own approximately 91 per cent of all of such cars in use in the United States, are, in his opinion, unfit for use in the transportation of fresh fruits and vegetables, on the theory that they would absorb the odors of the beef and other products shipped in such cars or even which had previously been shipped in such cars. (Record, p. 1839.)

The cars to which Mr. Morrill refers as needed for the transportation of fresh fruits and vegetables are special ventilated refrigerator cars which have been used in the transportation of these products in Michigan. The record discloses that the packers do not own as large a proportion of these cars as supposed by Mr. Morrill, but that of all such cars owned and operated in the United States, the defendant packers control only 7 per cent and the railroads 86 per cent. (Report of Federal Trade Commission on private car lines, p. 83.) It, therefore, follows that if the packers should see fit to dispose of all of these ventilated refrigerator cars, it would affect only a very small

per cent of the cars of this character in use by the railroads throughout the United States. The packers have since the above report was made sold certain of these cars to the railroads, which are operating same to the satisfaction of all parties, and more of these cars have been available to Michigan since the railroads acquired same than previously. (Record, pp. 2806-2807.)

It is also clear that it is a violent assumption to make, that the railroads whose business is transportation, could not, will not, and should not be compelled to operate a proper refrigerator car for the transportation of fresh fruits and vegetables.

PARTIES APPEARING AT HEARINGS IN FAVOR OF MODIFICATION NOT REPRESENTATIVE OF PUBLIC SENTIMENT.

Although the hearings before the committee lasted nearly three weeks and were widely advertised, only 12 parties appeared and testified in favor of modification, and it will be observed that they readily classified themselves into distinct groups, the leaders of which were the two representatives of the California Cooperative Canneries, who were shown to be closely allied with Armour & Co., one of the defendants who consented to the decree.

It should also be noted that all of the 12 witnesses who appeared in favor of modification, appeared as individuals and without the authority to speak for any large groups representing the public. This statement should, of course, be qualified as to the California Cooperative Canneries, which would be assumed to represent the 700 to 1,000 members making up such co-operative organization.

It is a strain on credulity to believe that the 12 persons who have appeared and asked for modification are sufficiently representative of the public or any part thereof to justify the consideration which the request for modification has received or to warrant the holding of these hearings at such a great expense to so many persons.

The inference is irresistible that the real proponents are the defendants themselves, or at least Armour & Co., and Wilson & Co., who publicly, so far as these hearings are concerned are "keeping still" in accordance with their arrangement with Mr. Campbell, but who in reality, through their attorneys, are keeping in close touch with the situation and assisting the ostensible proponents for modification in every way possible and are using their mighty power to accomplish a result which will be beneficial only to themselves.

FORMS OF MODIFICATION OF DECREE SUGGESTED BY CAMPBELL.

It may be well at this point to speak briefly of the two forms of modification of the decree which were suggested by Mr. Campbell, and regarding which the committee itself directed a number of questions:

(a) Permitting the packers to distribute products not related to meats on a commission basis.

The limited form of this proposed amendment apparently has behind it the idea of trying to meet the objection that if the decree is set aside entirely the meat packers would enter upon the production and manufacture of food products as well as their distribution, and would also purchase large quantities for the purpose of speculation.

Mr. Campbell testified that the representatives of Armour & Co. and Wilson & Co. had advised him that they would be willing to handle food products on this basis if the decree were modified. (Record, pp. 2596-2597.) Such a modification, we believe, would not be to the general interest of the food industry as appears from the testimony of the cannery themselves.

Cannerys and manufacturers of food products generally finance themselves through the making of future sales contracts with reputable wholesalers or other large purchasers of food products against which sales contracts they are able to borrow money and in turn to put themselves in a position to advance moneys to assist the farmers to finance their crops.

One of the complaints of the cannerys who appeared in favor of modification was that the wholesale grocer during the past year had not entered into as many future contracts as heretofore, due to business depression, thus affecting their ability to pack and carry on their business.

Notwithstanding the fact that Mr. Campbell believes that all transactions should not be upon a credit basis, it is clear that this system of future sales contracts prevails throughout the various food industries and is essential to

their prosperity. This particularly applies to the small farmer, canner or producer, and any governmental move tending to destroy the future sales contract would bear most heavily upon the small farmer and producer and would tend to place the control of the production of all food products in the hands of a few. This is exactly what Mr. Campbell is seeking to accomplish and the explanation of his economic theories can only be found in the fact that the financial power of the packers would enable them to make or procure loans for the canner or packer from whom they might buy if it was to their advantage to do so.

If the meat packers entered the distribution business on a commission basis, it undoubtedly would result in the grocers abandoning the making of future contracts and going on the same basis as the packers. Grocers could hardly be expected to assume the risk imposed upon them by future contracts if any powerful monopoly such as the packers were enabled to handle these products with no risk to themselves as to price changes, short crops, etc. Consequently the cannery and manufacturers of food products would be obliged to find some entirely different method of financing themselves, and no means of doing this has been suggested.

(b) Removing the restriction against the packers selling goods for export. If the packers were permitted to buy directly and sell for export only, such purchases by them would, of course, have a marked effect upon the market prices in the United States. The tendency would be for meat packers to buy as large quantities as they could sell profitably abroad, wholly irrespective of the effect upon the American consumer. It is quite likely they would establish canneries and other manufacturing plants for the purpose of preparing goods solely for sale in other countries, and in case any large quantity of food products was manufactured or sold for this purpose, the inevitable effect would be to increase the prices of that commodity to the American public.

It is to be noted, however, that all of the large five packers have subsidiary companies formed under the laws of foreign countries and that these companies are not defendants in this case and are not restrained in any way by the decree from purchasing goods for sale outside of the United States. As a matter of fact the California Cooperative Canneries has sold most of its current products to Armour & Co. (Ltd.), of London, and there is no reason why such surplus stock as is available for export can not be sold to these subsidiary packing concerns in all other countries in the same manner.

It is therefore clearly unnecessary to remove the prohibition regarding exports in order that American goods may be sold through packer representatives in foreign countries.

THOSE APPEARING AGAINST MODIFICATION.

It is difficult to do other than summarize the testimony of those who appeared in opposition to modification of the consent decree. By every conceivable test—number of witnesses, number of persons represented by witnesses, knowledge and experience of witnesses and character of the testimony—the evidence given by those opposed to modification dwarfs the testimony of those seeking modification into utter insignificance. In almost every case those who opposed modification did not speak for themselves alone, but were the authorized representatives of many others. Those so appearing were the following:

Federal Trade Commission.

State of Michigan (by its Attorney General).

National Wholesale Grocers Association.

Southern Wholesale Grocers Association.

Grocers & Importers Exchange of Philadelphia.

St. Louis Wholesale Grocers Association.

Illinois Wholesale Grocers Association.

Boston Wholesale Grocers Association.

New England Executive Association of Wholesale Grocers.

Michigan Wholesale Grocers Association.

Arkansas Wholesale Grocers Association.

Wholesale Grocers of Vermont.

Iowa-Nebraska-Minnesota Wholesale Grocers Association.

Ohio Wholesale Grocers Association.

Canners League of California.

W. R. Roach (Michigan canner), representing growers.

Western Cannery Association.
 H. O. Cereal Co.
 Dried Fruit Association of California.
 Dried Fruit Association of New York.
 National Food Brokers Association.
 National Chain Stores Association of the United States.
 National Retail Grocers Association.
 National Coffee Roasters Association.
 National Retail Tea & Coffee Merchants Association.
 National Consumers League.
 Peoples Reconstruction League.
 Merchants Association of San Jose.
 San Jose Chamber of Commerce.
 Orchard City Grange.

These organizations are the representatives of:

Wholesale grocers-----	5,000
Retail grocers-----	350,000
Canners-----	251
Dried Fruit Associations-----	35,430
Michigan growers-----	4,000
San Jose Merchants Association-----	300
Consumers League-----	40,000
Peoples Reconstruction League-----	(¹)
Coffee roasters-----	300
National Retail Tea & Coffee Merchants Association-----	135
National Food Brokers Association-----	800

It is to be noted that among those appearing in opposition to modification of the decree were the Federal Trade Commission and the Attorney General of the State of Michigan, representing the people of that State. The thorough and careful inquiry made by the Federal Trade Commission of the meat packing industry has already been referred to. Representatives of the commission laid before this committee much valuable evidence with regard to the practices and operations of the defendants and the grave danger to the public in any modification of the decree. This important branch of the Federal Government, created to prevent unfair business practices and to check monopolies and combinations in restraint of trade, emphatically asserts by the testimony of those representatives that any modification of the decree would immediately result in a lessening of competition. The commission urges that there be no modification of the decree and solemnly warns of the disastrous results which will inevitably follow modification.

The opposition of the attorney general of the State of Michigan is also based upon an independent investigation in the nature of a grand jury proceeding conducted by the present Governor of the State when he was Attorney General, and the facts as developed by that inquiry were such as to lead the Attorney General of Michigan to believe that a modification of the consent decree is contrary to the public interest of the citizens of that State.

MODIFICATION OF DECREE CONTRARY TO LONG-ESTABLISHED GOVERNMENT POLICY.

As has been pointed out, it has been the aim of Congress and all Federal and State authorities which have investigated the meat-packing industry for the past 30 years to endeavor to check the monopolistic tendencies of the Big Five packers, to limit their control over the food products of the country, and by regulation to protect the public and their competitors from the unquestioned evils of such a monopoly dominating the food supply of the country. Outside of the agreement made by the meat packers with the Government to dissolve the National Packing Co., this court decree is the only really tangible result of Government effort to check the menacing control by the Big Five of our necessities of life.

In considering the application for a modification of the consent decree the Department of Justice is confronted with the question as to whether or not this 30-year-old policy has been sound and wise and in the best interests of our people, wholly irrespective of whether or not the public welfare will be

¹ 20 farmer-labor organizations.

promoted by a modification of the consent decree. To take such a step will be a complete reversal of everything which the Government has sought to obtain in the past. To modify the decree would not merely mean a halt in the regulation of the meat-packing industry but it would be a step backwards by removing present restrictions. The big packers would then clearly have a governmental fiat authorizing them to extend their control over the food of the country just as far as they might desire. Indeed, in view of the attitude which the packers have taken toward the present hearing, a modification of the decree would well be considered as an act of solicitation by the Attorney General to the packers to assume the handling and distribution of all the country's food products.

NO EVIDENCE THAT MODIFICATION IS IN THE PUBLIC INTEREST.

If the principles upon which the Sherman Act and other antitrust laws are based are sound and in the public interest, then this decree is in the public interest also, for it certainly has the effect of restraining monopoly by the packers and preventing the destruction of existing competition in substitute food lines.

We furthermore believe that it has been shown that the few persons who have appeared in favor of modification have failed to show not only what is of most importance—that any public interest demands the setting aside of the decree, but what is of lesser importance—that the decree has been in any way responsible for conditions such as they have complained of.

When the convulsion of all industry caused by the war and the present financial condition of the world is considered, it is ridiculous to claim that the consent decree is the responsible factor for conditions which exist in the business of producing and selling the unrelated lines. The depression in those lines has been no greater and in many instances not nearly so great as has taken place in other industries, and the claim which is made here that to set aside the consent decree will remedy the conditions in this industry is an insult to the intelligence of the Attorney General and the committee which has been appointed by him.

If the setting aside of the consent decree will result in the meat packers entering the situation as saviors for the canners, how can the present condition of the live-stock industry be accounted for? It is a well-known fact that the condition of the live-stock producers is fully as bad to-day as the condition of the canners, and if the meat packers are unable or unwilling to help their own industry, why should anyone believe they are able or willing to help any other industry?

If the Big Five packers, in the spirit of altruism, are ready to rush to the support of the canners and buy their canned goods, wholly irrespective of the consuming demand, and buy at a reasonable price, would it not be natural to first suggest that they pay to the live-stock producers for beef something more than 1½ to 3 cents per pound, when the same beef is selling at retail for 50 to 75 cents per pound? (Record, pp. 659-660, 662.)

There is moreover not the slightest evidence to show that the wholesale grocers and other distributors and purchasers of food products are not buying all of the canned foods and other commodities to meet the demands of retail merchants and to satisfy the needs of the consuming public. There is furthermore no evidence that purchases by the meat packers would increase consumption to any extent whatever. It is ridiculous to suggest that the decrease in consumption is due to the consent decree.

SUMMARY OF FACTS.

In the short time which has been allowed for the preparation of this brief, it has been manifestly impossible to prepare any abstract of the 3,000-odd pages of testimony given by those opposing modification. It is assumed that the testimony has been or will be read by the committee, and it doubtless will be sufficient to give here merely a brief summary of the facts which we believe the testimony establishes. It seems to us that the following facts are established beyond all question:

1. All branches of the food industry believe the setting aside of the consent decree will result in the Big Five meat packers extending their monopoly over the unrelated lines and obtaining control of the Nation's food.

2. For many years the packers have had a virtual monopoly or control of the production and distribution of meat products.

3. The meat packers have in recent years extended their monopoly over meat products to lines in no way related to the meat industry, including poultry, eggs, butter, and cheese.

4. The history of the Big Five meat packers has been such as to show both an ability and a desire to monopolize the food products necessary for the subsistence of the public.

5. During the comparatively few years since the packers began handling the unrelated lines which the decree prohibits them from handling in the future, the increases in their business in these lines has been exceedingly rapid and tended toward an inevitable control of those items.

6. It is perfectly clear that the Big Five meat packers are not content and never have been content with merely distributing food products, but they have always sought to obtain control of the sources of supply and of production.

7. In extending their monopoly from meats to substitute food products, the Big Five meat packers have the advantages which are inherent in all monopolies. Their branch houses, privately owned cars, banking connections, and large capital are of great assistance to them in gaining control over any line which they care to enter. To give one instance, as disclosed by the testimony, it would be a simple matter for them to finance a transaction whereby they could obtain complete control over the entire production of coffee available for the people.

8. In addition to the advantages of a monopoly, they also have special privileges, such as (a) the advantages which they have received from the railroads in rates for minimum car shipments, (b) the expedited delivery service which they are able to obtain by placing nonperishable products in their private refrigerator peddler cars, of which they own 91.6 per cent of all such cars in use in the United States, and (c) the ability to reach with their private refrigerator peddler-car service about 7,000 places in the United States not reached by like service offered by the railroads. (See map introduced in evidence as "Exhibit National Wholesale Grocers Association No. 3.")

9. During the past 30 years their record has not been free from violations of law and from unfair practices used to their advantage and to the detriment of their competitors.

10. The Big Five meat packers have already received great benefits from the consent decree; in particular—

(a) Temporary abandonment of criminal prosecution and rendering useless, through operation of the statute of limitations, of most of the evidence obtained in investigations by the Federal Trade Commission and other governmental agencies.

(b) The use made of the consent decree in limiting the provisions of the packers' control act.

(c) The use made of the consent decree in the case before the Interstate Commerce Commission relating to the use of refrigerator cars.

11. The setting aside of the consent decree would be of no advantage to the individuals who have complained before this committee (except, possibly, Campbell, who would like to do all his business with his mortgagee, Armour & Co.) and asked for relief from their present difficulties, for the testimony clearly discloses that those difficulties have not been caused by the entry of the consent decree, but are due to business depression and demoralization arising or directly due to the Great War and existing in every industry.

12. The Big Five meat packers have been utterly unable and unwilling to give any relief to the live-stock producers, whose condition is worse than that of producers of other food products; thus clearly showing that there would be no advantages resulting to such producers and manufacturers of food products from the setting aside of the consent decree.

13. The modification of the consent decree would permit the Big Five meat packers to handle the unrelated lines free from all regulation and restrictions, inasmuch as they were able to use the consent decree so as to have eliminated from the packers' control bill reference to the unrelated lines.

14. The modification or setting aside of the consent decree could properly be taken by the Big Five meat packers as an authorization from the Attorney General to proceed to gain as wide a control as they pleased over the unrelated lines.

15. The entrance of the meat packers into the broad lines of production, distribution, and sale of food products which are a substitute for meat and meat-

food products will give the meat packers a greater control over meats than ever before, for there will no longer be any fear of the substitute lines competing with the meat and meat-food products.

16. The modification of the decree would restrict and lessen competition in the substitute lines, as it would result in the rapid elimination of many of the thousands of small independent competitive merchants now handling the substitute lines and the rapid concentration of this business in the hands of the Big Five meat packers.

17. The extension of the packers' monopoly beyond its present limits would be a great detriment to the American public. If at present the public, because of high meat prices, desires to obtain substitute foods handled competitively, it can do so, but if the meat packers are permitted to gain control of all substitutes for meat, the public will no longer have this recourse.

18. To permit the food business of this country to be handled by huge monopolies, irrespective of the legality of their existence or acts, is absolutely opposed to the fundamental ideas and standards of this country, which has always stood for a competitive system of industry open to all, instead of placing our industries in the hands of regulated monopolies.

THE CONSENT DECREE IS IN ALL RESPECTS VALID AND LEGALLY BINDING ON THE DEFENDANTS.

I.

THE SUPREME COURT OF THE DISTRICT OF COLUMBIA HAD FULL AND COMPLETE JURISDICTION OVER THE PERSONS OF THE DEFENDANTS IN THE EQUITY ACTION BROUGHT BY THE GOVERNMENT AGAINST THE BIG FIVE PACKERS, AND ALSO OVER THE SUBJECT MATTER OF THE ACTION, AS ALLEGED IN THE PETITION.

1. That the general appearance by the defendants and their consent to the decree gave the court jurisdiction over their persons is elementary law. (17 Am. and Eng. Enc. of Law, 2d ed., 1064.)

2. That the court had jurisdiction of the subject matter of the suit is also equally clear.

Section 61 of the District of Columbia Code provides that the Supreme Court of the District shall have the same powers and exercise the same jurisdiction as the Circuit and District courts of the United States and shall be deemed a court of the United States.

In the case of *Hine v. Morse* (218 U. S. 493) the court said, at page 504:

"The Supreme Court of the District is one of general jurisdiction. It possesses all of the powers which by statute are conferred upon the Circuit and District courts of the United States. (Secs. 760 and 765, Rev. Stat. D. C.) It may be said, indeed, to have the usual powers incident to a court of equity at the date of the Revolution, not incompatible with the changed form and principles of government or affected by subsequent legislation." (*Clark v. Mathewson*, 7 App. D. C. 382.)

It is hardly necessary to cite authority for the proposition that the Circuit and District courts have jurisdiction of such suits as the one here involved. Section 4 of the Sherman Antitrust Act expressly invested Circuit courts with "jurisdiction to prevent and restrain violations of this act," and by section 24 of the Judicial Code District courts are given original jurisdiction of "all suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies."

Since jurisdiction is "authority to hear and determine a cause" (17 Am. and Eng. Enc. of Law, 2d ed., 1041), there can be no doubt that, the Supreme Court of the District of Columbia having such jurisdiction, its decree is valid and binding as between the parties and not open to collateral attack.

Should any of the defendants enjoined by this decree undertake to do or refuse to do any of the things which the decree forbids or orders them to do, they would very soon find that the court has ample power to enforce its decrees.

The claim so frequently heard asserted during the hearings, that the court went beyond its jurisdiction in prohibiting the packers from extending their business into unrelated lines, is clearly based upon a misuse of the term "jurisdiction."

In 17 American and English Encyclopedia of Law (2d ed.) 1042 it is pointed out that—

"The authority to decide a cause at all, and not the decision rendered therein, is what makes up jurisdiction. When there is jurisdiction of the person and

subject matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction."

In *Decatur v. Paulding* (14 Pet. (U. S.) 497, at p. 518) Mr. Justice Baldwin discussed at length this distinction between jurisdiction and exercise of jurisdiction and showed that if a court had jurisdiction of the person and the subject matter, errors, or irregularities in the proceedings did not constitute jurisdictional defects.

In the equity suit against the packers, since the court had jurisdiction, as has already been shown, it had full power to grant any relief authorized by the statutes upon which the proceeding by the Government was based, namely, the Sherman law and the Clayton Act, under which conspiracies in restraint of trade, monopolies, and attempts to monopolize are specifically prohibited.

The courts in construing these statutes have held uniformly that each case must be judged upon its own particular facts and circumstances, and that, if such action were necessary to effectuate the purposes of these statutes, the court in its decree could go so far as actually to dissolve the combination or monopoly in the form of a corporation or otherwise—as was done in the *Standard Oil* case. (21 U. S. 1.)

A decree of dissolution, amounting as it does to a complete prohibition of doing business, is manifestly a far more drastic exercise of jurisdiction by the court than the prohibitions in the packers' decree which are complained of in this proceeding.

The test applied by the courts in formulating judgments and decrees in proceedings brought under these antitrust statutes is the determination as to what terms and prohibitions are necessary to accomplish the objects of the statutes in the light of the facts, history, course of business, and conduct of the defendants disclosed in the particular case in question. We believe this to be a correct statement of the law, cases covering which will be cited under later points.

It therefore follows that a prohibition against the packers extending their business into lines not related to the business in which they already have a monopoly was not, in view of the facts, a violent exercise by the court of its jurisdiction "to prevent and restrain violations" of these antitrust statutes.

II.

THE PETITION STATES FACTS WHICH, IF PROVEN BEFORE THE COURT ON A TRIAL, WOULD HAVE JUSTIFIED THE DECREE IN ALL OF ITS TERMS.

This proceeding was brought under the provisions of the Sherman Antitrust Act.

Section 1 of the Sherman Antitrust Act provides as follows:

"Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations is hereby declared to be illegal."

Section 1 further provides:

"Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor."

Section 2 of the same act provides as follows:

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor."

Section 4 of the same act provides as follows:

"The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited."

The petition in this proceeding alleged a conspiracy in violation of the anti-trust laws of the United States and makes the following specific allegation:

"By the unlawful means and methods hereinafter set out and complained of, the parent companies and the subsidiaries, defendants, acting by and through their principal officers, who have been made defendants herein, have attempted to dominate, control, and monopolize a very great proportion of the food supply of the nation and have thereby built up an unlawful monopoly and control

over divers and sundry products and commodities herein referred to, and which are necessary to the life, health, and welfare of the people of the United States. And by the same or similar methods the said parent companies and the subsidiaries defendants are attempting to increase and extend said monopoly, and are enabled thereby and do artificially control the supply and the price of the food supplies of the Nation.

"The Government in instituting this proceeding invokes the general equity powers of this court in addition to the authority conferred upon it and contained in the Act of Congress dated July 2, 1890, and entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' said Act being commonly known as the Sherman antitrust law, and further conferred and contained in Acts amendatory thereof and supplemental or additional thereto, and particularly the Act known as the Clayton Antitrust Act, dated October 3, 1914, being entitled 'An act to supplement existing laws again unlawful restraints and monopolies and for other purposes,' which said acts by special provisions give to this court jurisdiction in all such matters as are set out in the following petition."

It is unnecessary to discuss the specific facts alleged in the petition; they speak for themselves. If these allegations had failed to state a good cause of action under the antitrust laws, it is hardly probable that the very able attorneys for the packers would have advised their clients to consent to the entry of a decree rather than demur to the bill as was done in the previous action against the packers. *Swift & Co. v. United States* (196 U. S. 375).

In that case, the Supreme Court, holding that the demurrer was properly overruled, said at page 396:

"The scheme as a whole seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it. Moreover, whatever we may think of them separately when we take them up as distinct charges, they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful."

That the Government was in possession of facts sufficient to sustain every finding in the decree, is clear from the evidence produced to this committee and found in the investigations of the packers by the various departments of the Government—Federal Trade Commission, Grand Jury, Bureau of Investigation of Department of Justice and Congressional committees.

That the packers would not have consented to the decree unless they believed that the Government would be successful in an action against them, is self-evident.

That the packers consented to the decree with clear understanding of all its terms, including the one under discussion with relation to going out of the business of handling specific food products not related to the meat business, is beyond question.

The brief filed by the attorneys for Armour & Co., Morris & Co., Swift & Co., Wilson & Co. and Cudahy Packing Co. in the Interstate Commerce Commission proceeding shortly after the decree was entered shows their position clearly as follows:

"It is in order to make publicly of record such an absolute and unqualified denial of any effort to monopolize the food products of the country as could not be disputed by any intelligent mind, that the packer defendants in the equity proceeding consented to the entry of the decree in that case." (Record, p. 751.)

It, therefore, follows that after the Statute of Limitations has run against most of the acts alleged to be in violation of law—after public opinion which unanimously applauded the Government action when the decree was entered, has quieted down, any move on the part of the packers to revoke their consent and obtain a modification of the decree, will and should meet with universal condemnation.

III.

IN CONSIDERING A MODIFICATION OF A DECREE OF THE COURT IN AN EQUITY ACTION BROUGHT TO ENFORCE THE PROVISIONS OF THE SHERMAN ANTITRUST LAW, BY STRIKING OUT CERTAIN PROVISIONS OR PROHIBITIONS, ONE MUST FIRST TAKE INTO CONSIDERATION ALL OF THE FACTS ALLEGED TO CONSTITUTE THE CONSPIRACY, COMBINATION OR RESTRAINT OF TRADE, MONOPOLY OR ATTEMPT TO MONOPOLIZE TRADE AND COMMERCE, AND THE

EFFECT OF ELIMINATING THE PROPOSED PROHIBITIONS UPON THE OBJECT SOUGHT TO BE ACCOMPLISHED BY THE STATUTE.

All authorities and courts which for the past 30 years have considered or been engaged in enforcing antitrust laws recognize that such legislation is based upon the distinct difference between individual action and the action of a group of individuals in combination. In other words, an act by an individual, acting alone and independently, may be lawful, while the same act in concert with other individuals may be unlawful. The very definition of unlawful conspiracy involves the idea of design by two or more individuals to accomplish an end through a series of acts, each of which in themselves may be lawful, but which when taken together for the purpose of accomplishing the end may be unlawful.

All of the text-writers on the subject of conspiracy, restraint of trade, combination, and attempt to monopolize dwell at length upon the necessity of taking a whole series of acts into consideration in order to arrive at a correct conclusion as to the violation of the ordinary provisions of antitrust laws. It is often impossible to determine whether there is a restraint of trade, or attempt to monopolize, or a conspiracy, unless a series of acts and course of conduct of business over a period of years are reviewed and passed upon as a whole.

It, therefore, follows that the position of the Interdepartmental Committee, to the effect that it is not going to take into consideration the question as to whether the defendants in this equity action are or are not a monopoly in the meat and meat-food business, practically renders it impossible, from our view of the subject, to determine the legal status under the antitrust laws of the prohibitions which the committee is considering asking the court to strike from the decree.

It is the claim of those who are opposed to modification that the findings of the Federal Trade Commission, based upon nearly two years of painstaking investigation, together with the investigation of the Department of Justice, which brought the equity action and accepted the consent decree, show a series of acts, methods of business, conduct, and intention on the part of the defendant meat packers which fully justify every prohibition contained in the decree, including the one sought to be stricken therefrom.

Since the decision in the well-known English case of *Quinn v. Leatham* (1901, A. C. 511), the doctrine has become firmly established that an act which when done by an individual is perfectly lawful, may, nevertheless, be enjoined by a court of equity if done in pursuance of an unlawful conspiracy.

In 12 Corpus Juris, 583, it is said:

"* * * the weight of authority is to the effect that while the act of an individual may not give rise to civil liability, yet the same act committed by several acting in concert may be unlawful and constitute an actionable wrong. The reasons for this view may be summarized as follows: 'Laws adapted to individuals not acting in concert with others require modification and extension if they are to be applied with effect to large bodies of persons acting in concert.' An organized body of men working together can produce results very different from those which can be produced by an individual without assistance, because of the greater power of coercion on the part of the combination, and may make oppressive and dangerous that which if it proceeded from a single person would be otherwise."

In *Hopkins v. Oxley Stave Co.* (83 Fed., 912, 920; C. C. A., 8th Circ.), the court said:

"* * * the law will sometimes take cognizance of acts done by a combination which would not give rise to a cause of action if committed by a single individual since there is a power in numbers * * * which does not reside in persons acting separately."

It should be noted that the petition in this proceeding alleged:

"These attempts to monopolize have resulted in complete control in many of the substitute food lines. They have made substantial headway in others. The control is extensively and rapidly increasing. New fields are gradually being invaded and unless prevented by a decree of this court the defendants will within the compass of a few years control the quantity and price of each article of food found on the American table."

The petition further pointed out the methods by which the antitrust law was being violated and an unlawful monopoly was being brought about; among them naming the engaging by the packers in certain unrelated lines of business,

and in the prayer for relief demanded an injunction broad enough in its terms to remedy the evil aimed at.

The primary purpose of the decree (paragraph "First") was to restrain the defendants from "in any manner maintaining or entering into any contract, combination or conspiracy with each other, or with any other person or persons, in restraint of trade or commerce among the several States," and from "monopolizing or attempting to monopolize or combining or conspiring with each other, or with any other person or persons, to monopolize any part of such trade or commerce."

In order to effectuate that primary purpose, the decree proceeded to enjoin the defendants from doing certain things, which, taken by themselves, might have been entirely lawful, but which, viewed in their context, formed part of an unlawful conspiracy. Can there be any doubt that this was a proper exercise of the court's power to enforce the antitrust laws?

As was said by the United States Supreme Court in *U. S. v. Patten* (226 U. S., 525, 544), which involved a conspiracy to "corner" cotton:

"It hardly needs statement that the character and effect of a conspiracy is not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole. *Montague & Co. v. Lowry* (193 U. S., 38, 45-46); *Swift & Co. v. U. S.*, (196 U. S. 375, 386-387)."

Throughout the course of the present proceeding the argument has been frequently advanced that in an equity suit to enforce the antitrust laws the court has power (or jurisdiction) to enjoin such acts only as of themselves and independently constitute violations of those laws. Where this idea had its inception we do not know, but certainly no support for it can be found in the decisions of the United States Supreme Court.

On the contrary that court has consistently held that in exercising the power given by section 4 of the Sherman Act and section 15 of the Clayton Act "to prevent and restrain violations" of those acts, the Federal courts may properly mould their decrees in accordance with the particular facts before them in such wise as to give complete and efficacious effect to the prohibitions of the statutes.

In *Northern Securities Co. v. United States* (193 U. S. 197), a decree of the Circuit Court, enjoining various specific acts on the part of the Northern Securities Company, its officers and agents, was affirmed by the Supreme Court. Defendants were enjoined from acquiring further stock or voting on it or exercising influence, direction or control over the railroad companies by virtue of their stockholdings. The railroads were enjoined from permitting their stock to be voted by the Northern Securities Company, and from paying dividends to it, and from allowing it to have any control or domination over them. In short, the lower court, without regard to whether the specific things prohibited were per se unlawful, adapted its decree to the exigencies of the situation, and the Supreme Court held it to be a proper exercise of power. At pages 356-8 the Supreme Court said:

"No valid objection can be made to the decree below, in form or in substance. If there was a combination or conspiracy in violation of the Act of Congress, between the stockholders of the Great Northern and the Northern Pacific Railway Cos., whereby the Northern Securities Company was formed as a holding corporation, and whereby interstate commerce over the lines of the constituent companies was restrained, it must follow that the court, in execution of that act, and to defeat the efforts to evade it, could prohibit the parties to the combination from doing the specific things which being done would effect the result denounced by the act. To say that the court could not go so far is to say that it is powerless to enforce the act or to suppress the illegal combination, and powerless to protect the rights of the public as against that combination.

"It is here suggested that the alleged combination had accomplished its object before the commencement of this suit, in that the Securities Company had then organized, and had actually received a majority of the stock of the two constituent companies; therefore, it is argued, no effective relief can now be granted to the Government. This same view was pressed upon the Circuit Court, and was rejected. It was completely answered by that court when it said:

"Concerning the second contention, we observe that it would be a novel, not to say absurd, interpretation of the antitrust act to hold that after an unlawful combination is formed and has acquired the power which it had no right to acquire, namely, to restrain commerce by suppressing competition, and is pro-

ceeding to use it and execute the purpose for which the combination was formed, it must be left in possession of the power that it has acquired, with full freedom to exercise it. Obviously, the act when fairly interpreted will bear no such construction. Congress aimed to destroy the power to place any direct restraint on interstate trade or commerce, when by any combination or conspiracy, formed by either natural or artificial persons, such a power had been acquired; and the Government may intervene and demand relief as well after the combination is fully organized as while it is in process of formation. In this instance, as we have already said, the Securities Company made itself a party to a combination in restraint of interstate commerce that antedated its organization as soon as it came into existence, doing so, of course, under the direction of the very individuals who promoted it.' The circuit court has done only what the actual situation demanded. Its decree has done nothing more than to meet the requirements of the statute. It could not have done less without declaring its impotency in dealing with those who have violated the law. The decree, if executed, will destroy, not the property interests of the original stockholders of the constituent companies, but the power of the holding corporation as the instrument of an illegal combination of which it was the master spirit, to do that which, if done, would restrain interstate and international commerce. The exercise of that power being restrained, the object of Congress will be accomplished; left undisturbed, the act in question will be valueless for any practical purpose."

At page 360 the court said:

"This, it must be remembered, is a suit in equity, instituted by authority of Congress, 'to prevent and restrain violations of the act,' sec. 4; and the court, in virtue of a well-settled rule governing proceedings in equity, may mould its decree so as to accomplish practical results—such results as law and justice demand. The defendants have no just cause to complain of the decree, in matter of law, and it should be affirmed."

In *Standard Oil Co. v. United States* (221 U. S. 1), the court said, at pages 77, 78:

"It may be conceded that ordinarily where it was found that acts had been done in violation of the statute, adequate measure of relief would result from restraining the doing of such acts in the future. *Swift v. United States* (196 U. S. 375). But in a case like this, where the condition which has been brought about in violation of the statute, in and of itself, is not only a continued attempt to monopolize, but also a monopolization, the duty to enforce the statute requires the application of broader and more controlling remedies. As penalties which are not authorized by law may not be inflicted by judicial authority, it follows that to meet the situation with which we are confronted the application of remedies twofold in character becomes essential: First. To forbid the doing in the future of acts like those which we have found to have been done in the past which would be violative of the statute. Second. The exertion of such measure of relief as will effectually dissolve the combination found to exist in violation of the statute, and thus neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about."

The court then proceeded to direct the submission of a plan which would effectually break up and prevent a recurrence of the monopoly, and recognized the power of the court below to restrain the defendants from "doing any act which would recognize further power in that company," and to restrain or direct the doing of various specific acts and to prohibit the defendants from making any agreements "tending to produce or bring about further violations of the act" or from in any way combining or conspiring to violate the act or to monopolize or attempt to monopolize commerce.

In *United States v. American Tobacco Co.* (221 U. S. 106), the court said at page 184:

"We hence, in determining the relief proper to be given, may not model our action upon that granted by the court below, but in order to enable us to award relief coterminous with the ultimate redress of the wrongs which we find to exist, we must approach the subject of relief from an original point of view. Such subject necessarily takes a twofold aspect—the character of the permanent relief required and the nature of the temporary relief essential to be applied pending the working out of permanent relief in the event that it be found that it is impossible under the situation as it now exists to at once rectify such existing wrongful condition. In considering the subject from both of these aspects three dominant influences must guide our action: (1) The

duty of giving complete and efficacious effect to the prohibitions of the statute." * * *

And on pages 185, 186, the court said as follows: " * * * it is obvious that a mere decree forbidding stock ownership by one part of the combination in another part or entity thereof, would afford no adequate measure of relief, since different ingredients of the combination would remain unaffected, and by the very nature and character of their organization would be able to continue the wrongful situation which it is our duty to destroy."

And on pages 186 and 187, the following:

"We might at once resort to one or the other of two general remedies—
(a) the allowance of a permanent injunction restraining the combination as a universality and all the individuals and corporations which form a part of or cooperate in it in any manner or form from continuing to engage in interstate commerce until the illegal situation be cured, a measure of relief which would accord in substantial effect with that awarded below to the extent that the court found illegal combinations to exist; or (b) to direct the appointment of a receiver to take charge of the assets and property in this country of the combination in all its ramifications for the purpose of preventing a continued violation of the law, and thus working out by a sale of the property of the combination or otherwise, a condition of things which would not be repugnant to the prohibitions of the act."

At page 188 the court said:

"That in the event, before the expiration of the period thus fixed, a condition of disintegration in harmony with the law is not brought about, either as the consequence of the action of the court in determining an issue on the subject or in accepting a plan agreed upon, it shall be the duty of the court, either by way of an injunction restraining the movement of the products of the combination in the channels of interstate or foreign commerce or by the appointment of a receiver, to give effect to the requirements of the statute.

"Pending the bringing about of the result just stated, each and all of the defendants, individuals as well as corporations, should be restrained from doing any act which might further extend or enlarge the power of the combination by any means or device whatsoever."

The decree finally entered in this case is to be found in 4 Fed. Antitrust Dec. 246. It contains prohibitions against various specific acts fully as drastic as any to be found in the packers' decree.

In United States v. Union Pacific R. R. Company (226 U. S. 470), the court said at page 474:

" * * * each case under the Sherman Act must stand upon its own facts, and we are unable to regard the decrees in the Northern Securities Co. case and the Standard Oil Co. case as precedents to be followed now, in view of the different situation presented for consideration."

At pages 476-477 the court said:

"The main purpose of the act is to forbid combinations and conspiracies in undue restraint of trade or tending to monopolize it, and the object of proceedings of this character is to decree, by as effectual means as a court may, the end of such unlawful combinations and conspiracies. So far as is consistent with this purpose a court of equity dealing with such combinations should conserve the property interests involved, but never in such wise as to sacrifice the object and purpose of the statute. The decree of the courts must be faithfully executed and no form of dissolution be permitted that in substance or effect amounts to restoring the combination which it was the purpose of the decree to terminate."

It is not necessary further to multiply illustrations to demonstrate that the power of the Federal Courts to enforce the antitrust laws is not limited to restraining the doing in future of acts which have already resulted in a violation of law, but extends also to prohibiting the doing of any act or series of acts which, although not in and of themselves unlawful, the court in the exercise of intelligence or foresight or as the result of experience can plainly foresee will, if not prohibited, continue and perpetuate the illegal condition already found to exist and which it is the plain duty of the court to completely and effectually enjoin and stamp out.

The various antitrust decisions of the Supreme Court when read together establish beyond question that this power may be exercised not only (1) for the purpose of completely and effectually dissolving the combination or doing away with the conspiracy found to exist in violation of law, but also (2) for the purposes of neutralizing the extension and continually operating force

or momentum which the possession of power unlawfully obtained under the combination or conspiracy has brought about and will continue to bring about.

In short, the power to prevent and restrain violations of the antitrust laws necessarily includes power to prohibit acts which, though lawful if standing alone, are elements of an unlawful scheme or plan. As was said by the Supreme Court in *Gompers v. Bucks Stove & Range Co.* (221 U. S. 418, 438):

"The court's protective and restraining powers extend to every device whereby property is irreparably damaged or commerce is illegally restrained. To hold that the restraint of trade under the Sherman Anti-Trust Act, or on general principles of law, could be enjoined, but that the means through which the restraint was accomplished could not be enjoined would be to render the law impotent."

In the previous proceeding brought against these same defendants in the United States Circuit Court in the District of Illinois in 1903, and affirmed by the Supreme Court in 1905 (*Swift & Co. v. United States*, 196 U. S. 375), the injunction then granted sought to terminate the conditions still existing in 1920 and shown in the petition of the Department of Justice in this proceeding to have grown and become a real menace to open competition and public welfare.

It was objected in that case, as in the present proceeding, that the several acts charged were lawful, but the court dismissed this with the sententious statement that "the plan may make the parts unlawful" (p. 396).

The prohibitions in the previous decree having proved manifestly inadequate to accomplish the purposes aimed at, it was both wise and necessary for the Government in this prosecution of the packers to place more specific restrictions upon their acts than were contained in the previous decree of 1903. And in pointing out with such particularity the concrete acts which the defendants were prohibited from doing the present decree complied with the opinion of the Supreme Court in the previous case, where it was said (196 U. S. at page 401):

"The defendants ought to be informed as accurately as the case permits what they are forbidden to do."

IV.

THE FACT THAT THE DECREE WAS ENTERED ON CONSENT OF THE DEFENDANTS GIVES IT THE ADDED FORCE OF A SOLEMN CONTRACT BETWEEN THE GOVERNMENT AND THE DEFENDANTS WHICH CANNOT BE MODIFIED OR CHANGED IN FUNDAMENTAL TERMS EXCEPT BY CONSENT OF ALL PARTIES.

The consent by any defendant to the terms of a decree proposed to be entered against it strengthens the binding effect of such decree, for it is in effect an agreement by the defendant upon the provisions of the decree.

In 12 Corpus Juris 520, it is stated that a consent decree "is in effect an admission by the parties that the decree is a just determination of their rights upon the real facts of the case, had such been proved."

To the same effect see *Gibson's Suits in Chancery*, sec. 558; *Schmidt v. Oregon Gold Min. Co.*, 28 Ore. 9, 28.

In *Hariska v. Delph* (133 Fed., 158; 8 C. C. A., 8th Circ.) the court said at page 160:

"The consent of the plaintiffs on the trial of the cause in open court to the judgment so entered against them dispensed with the necessity of filing separate findings of fact or conclusions of law. The consent of the parties relieved the court of the necessity of finding the facts. *Saltonstall v. Russell* (152 U. S., 628); *Gregory v. Gregory* (102 Cal., 50)."

In *Adler v. Van Kirk Land, etc., Co.* (114 Ala., 551), the Supreme Court of Alabama said:

"In the absence of fraud in its procurement, and between parties sui juris, who are competent to make the consent, not standing in confidential relations to each other, a judgment or decree of a court having jurisdiction of the subject-matter, rendered by consent of parties, though without any ascertainment by the court of the truth of the facts averred, is, according to the great weight of American authority, as binding and conclusive between the parties and their privies as if the suit had been an adversary one, and the conclusions embodied in the decree had been rendered upon controverted issues of fact and a due consideration thereof by the Court."

In *United States Construction Co. v. Armour Packing Co.* (35 Okla., 178), which involves an attempt to vacate a consent judgment, the Oklahoma Supreme Court said:

"Several assignments of error are urged for reversal of the judgment, but there is one principle of law which conclusively determines this case, and that principle is that a court has no power, after stipulation for settlement, agreed to and signed by all the parties in interest, has been filed, and after judgment has been entered in accordance with such stipulation, to vacate and set aside or modify the judgment after the term at which it was rendered, in the absence of fraud between the parties agreeing to settlement by consent or stipulation, except for mistake, neglect, or omission of the clerk. * * * No attempt was made, after the parties entered into the stipulation consenting to the entry of judgment thereon, and before the court entered judgment, to show cause why judgment should not be entered as per stipulation. On the other hand, the decree entered had the approval at the time of all the parties, and no fraud is alleged or shown. We, therefore, hold that the judgment entered in this case was entered in accordance with the stipulation agreed to by all the parties in interest and, in the absence of fraud on the part of the parties to the case, is final and conclusive as between the parties, and that the court committed no error in overruling the motion to vacate."

In 12 Corpus Juris 520, it is said:

"Such a decree is so binding as to be absolutely conclusive upon the consenting parties, and it can neither be amended or in any way varied without a like consent, nor can it be re-heard, appealed from, or reviewed upon a writ of error, and the one only way in which it can be attacked or impeached is by an original bill alleging fraud in securing the consent."

To the same effect, see Gibson's Suits in Chancery, Section 558.

In 23 Cyc. 729, it is said:

"A judgment by consent of the parties is more than a mere contract *in pari*: having the sanction of the court, and entered as its determination of the controversy, it has all the force and effect of any other judgment, being conclusive as an estoppel upon the parties and their privies, and not invalidated by subsequent failure to perform a condition on which the consent was based, although it may be inquired into for fraud practiced upon one of the parties, or as against other creditors of defendant."

For cases illustrating the binding effect of such decrees upon consenting parties, see Central Life Sec. Co. v. Smith, 236 Fed. 170; Sidelinker v. York Shore Water Co. (Me. 1918) 2, A. L. R. 327.

The decree in this case has become popularly known as the so-called "Consent Decree." By many this term would seem to take it out of the usual and ordinary class of decrees rendered by a court in the prosecution of equity actions to enforce the provisions of antitrust laws. This view is entirely erroneous. An examination of the many hundreds of prosecutions by Federal prosecutors who are directed under the terms of section 4 of the Sherman antitrust law to bring such actions, will show that by far the majority of such decrees have been consent decrees.

In Davies on "Trust Laws and Unfair Competition," the author says, at page 478, with reference to decrees against violators of the Sherman law:

"By far the greater number of prohibitions of unfair competitive methods, however, are found in 'consent decrees.' The usual procedure in such cases has been for the Government to file a bill setting forth the organization of the offending combination, association, or other defendant, the violation of law complained of, and the competitive methods employed by the defendants. The latter coming into court have admitted a technical violation of the act and have agreed to the terms of a decree satisfactory to the Department of Justice."

In fact, the very essence of the subject matter involved, calling as it does not only for the determination of difficult legal questions but also for the application of such legal questions to economic and business conditions, makes it almost necessary for the prosecuting officer, the court, and the defendants to confer, consult, and to agree upon the terms of a decree, which shall not only satisfy the statute but also not do unnecessary violence to any economic principle.

Too great emphasis can not be placed upon the statement that consent decrees did not originate with the enforcement of the Sherman act. So long as there has been a system of jurisprudence and courts in which parties have appeared and pleaded their cases, it has been necessary to enter decrees and judgments on consent, and such decrees and judgments have always had especial sanctity.

Thus, in addition to having the same force and effect, as between the parties, as an ordinary judgment, a consent decree is peculiar in the following respects:

1. If the court had jurisdiction of the parties and the subject matter, the consent of all parties to the entry of the decree operates as a waiver of all defects and irregularities in the previous proceedings even though they be such as would have constituted reversible errors in the case of an ordinary judgment. 23 Cyc. 729, and cases cited.

2. A consent decree is not reviewable by appeal or writ of error. 3 Corpus Juris 671, citing a host of decisions in support of the following statement:

"It is a well settled general rule * * * that a party can not complain of a judgment, order, decree, or ruling rendered or made, on agreement or otherwise, with his express or implied consent, or appeal or sue out a writ of error to review the same."

While the United States Supreme Court, because of the terms of the acts of Congress regulating its appellate jurisdiction, does not follow the established equity rule that a consent decree is not appealable, "yet a decree which appears on the record to have been rendered by consent is always affirmed without considering the merits of the cause." Nashville, etc., R. Co. v. U. S., 113 U. S. 261; U. S. v. Babbitt, 104 U. S. 767; Pacific Railroad v. Ketchum, 101 U. S. 289.

3. A consent decree can not be modified or vacated by the court which entered it except upon consent of all parties to the decree. 12 Corpus Juris, 520; 23 Cyc., 733.

In *Morris v. Peyton*, 29 W. Va. 201, 212, the West Virginia Supreme Court, speaking of the power of a court to vacate or modify a decree entered by consent of the parties to an action, said:

"As such a decree is not the judgment of the court upon the merits of the case but the act of the parties to the suit, it is obvious that it can not be modified, set aside or annulled by any order in the cause made by the court below *without the consent of all the parties to the cause.*"

It is for these reasons that the various United States attorneys in seeking to enforce antitrust laws have availed themselves of decrees fixed after conference and by and with the consent of the defendants, because such decrees were less susceptible to attack and more liable to do justice to all parties than decrees entered after the opposition of trial.

Mr. Davies in his work on "Trust Laws and Unfair Competition," says, at page 478:

"But while the legality of particular competitive methods probably can not be determined from these decrees, they show at least that the methods prohibited are unfair in the opinion of the officials charged with the administration of the antitrust act, and inferentially, also in the opinion of the courts signing the decrees."

The fact that the decree in this proceeding was entered upon the consent of the parties instead of after trial does not in any way affect its validity, and in fact gives it a special force as against any effort direct or indirect on the part of the defendants to obtain a modification.

Since it became noised abroad that, by some arrangement between the Government and the packers, a movement was on foot to obtain a modification of this consent decree, certain parties have been allowed by the court to intervene on the ground that their interests would be seriously affected by the proposed modification.

Whether or not the consent of these intervening parties would be necessary to a modification of the decree, as has been suggested, it is certainly clear that, upon any application for a modification, they would have a full right to be heard and to urge any valid objections thereto.

V.

AN APPLICATION TO MODIFY THE COURT'S DECREE, IF MADE BY THE DEPARTMENT OF JUSTICE, WOULD BE MOST DIFFICULT TO SUSTAIN AND MOST INJURIOUS TO THE FUTURE ENFORCEMENT OF ANTITRUST LAWS.

1. The duty of enforcing the Sherman antitrust law and the Clayton Act rests upon the Attorney General of the United States. (Sherman antitrust law, sec. 4; Clayton Act, sec. 15.)

2. The Attorney General represents the people of the United States in the enforcement of these laws and should use every means in his power to see that the prohibitions of the statute against conspiracy, restraint of trade, monopoly and attempts to monopolize are carried out.

3. Any application by the Attorney General to modify the decree must allege and he must later prove to the court both that the provision of the decree complained of was not justified and that the Government was unable to prove the facts which were alleged in the petition setting forth violations of law by the defendants.

4. He must also prove that even assuming the Government was able to prove that the defendant packers had violated the law, there was no need, notwithstanding the allegations contained in the petition to the contrary, for the court going so far as to prohibit the packers from engaging in business in the unrelated lines in order to prevent violations of law.

5. He must further show to the court, in order to justify his position, why the modification seeks only to strike out the prohibition of the decree with respect to unrelated lines and to leave in the decree the other prohibitions with respect to (a) stockyards and stock-market newspapers; (b) retail meat business; (c) dealing in fresh milk and cream; (d) public cold-storage warehouses.

The burden would be upon the Attorney General to show why these prohibitions are necessary to carry out the objects of the Sherman antitrust law and the Clayton Act with respect to the packers' future conduct and why the prohibition as to unrelated lines is not necessary. Some reason must be given to justify a distinction between handling milk and cream on the one hand and coffee and tea on the other.

6. He must further convince the court that it had no authority to go as far as the prohibition with respect to unrelated lines, although the decisions in antitrust cases have held that the court had power to go so far as to actually dissolve defendant corporations or to appoint receivers to sell their assets, if, in the discretion of the court, such action was necessary to accomplish the objects of the statute.

It hardly seems reasonable that the prosecuting officer of the Government should seek to limit the power of the courts to fully and completely enforce our antitrust laws.

7. If, however, such arguments should prevail before the court, not only would future prosecutions of violations of antitrust laws be seriously handicapped but such a decision would furnish a precedent for the opening of many of the thousands of decrees obtained by consent or otherwise in the United States courts.

8. The Attorney General must also overcome the legal effect of the defendants having actually consented to the terms of the decree in question and urge some unique argument to contradict the many decisions clearly holding that a consent of the defendants amounts to a contract with the plaintiff, which is not appealable and can not be abrogated or changed except by the mutual consent of both parties.

It has been urged that the preliminary statements in the decree, protesting innocence on the part of the defendants of any violation of law, in fact or intent, and that the defendants' consent to the entry of the decree shall not be considered an adjudication that they have in fact violated any law of the United States, amounts to a nullification of the actual terms of the decree, to which the defendants formally agreed and consented.

A prejudiced mind might picture the defendants willing to stultify their action and come into court and urge that the decree which they formally consented to was void for such a reason, but the wildest fancy could not picture the Government presenting such an argument for modification.

9. The Attorney General must also overcome the objections of the parties who were forced to intervene in this proceeding, because of the public intimation that the Government and the packers were about to agree upon a modification of this decree.

10. The Attorney General must also take into consideration that at the hearings just completed no public demand for the modification of this decree has been shown, while, on the other hand, a very large public opinion was voiced in favor of the decree at the time of its entry by the court, and was shown by appearances before the committee to still exist.

11. The Attorney General must also overcome the objection which is certain to be presented to the court, that the request and entire agitation for this modification has come from one (Vernon Campbell, of the California Co-operative Canneries) who has himself shown that he and his corporation are intimately connected with one of the defendants.

This immediately raises the question as to whether the application for modification is made in good faith and as to whether the defendants, or some

of them at least, are not seeking by this indirect method to obtain favorable action by the Attorney General and the court in behalf of modification.

It is not customary for the court to allow its judgments and decrees to be played "fast and loose" with in any such fashion.

12. The Attorney General must also overcome the objection which is bound to be urged before the court, that this application to modify has been made after the statute of limitations has run as to many of the acts which might constitute a violation of the criminal provisions of the Sherman antitrust law and the Clayton Act, and for which the defendants could have been prosecuted in 1919.

13. The Attorney General must also overcome the additional objection that Congress has recognized the decree and framed legislation for the regulation and control of the packers in the lines in which they now have a monopoly, omitting therefrom all reference to the specific lines which the decree forbids the defendants from handling.

It should be borne in mind, however, that the packers' control legislation, even if it did cover all of the activities of the packers in any line, is only designed to regulate and control their activities. It was not framed upon the theory of superseding the Sherman antitrust law or the Clayton Act, or of relieving the defendants from any prosecution, either criminal or in equity, should they conspire to restrain trade or attempt to create a new monopoly in other lines. In other words, the packers' control law is framed on the theory that there was need and necessity for regulation and control of a real monopoly, and the Government still looks to the Department of Justice to enforce the antitrust laws and to prevent not only individuals and corporations from obtaining a monopoly in part of the trade and commerce of the country but particularly from preventing an existing monopoly, with all of its special powers and privileges, from extending its field into other lines, to the injury of the public and in contravention of law.

14. Finally, the Attorney General must recognize that, under all of the decisions of the courts with respect to consent decrees, no modification of this decree in any substantial provision can be obtained without the consent of the defendants, of whom there are five principal defendants and 127 defendants, including individuals and subsidiaries.

It therefore follows that if the statements made by the chairman of the Interdepartmental Committee are correct that none of the defendants has applied to the Department of Justice for a modification of the decree—and certainly none of the packers appeared at the hearing—that then the Attorney General, representing the Government of the United States, which brought this action, alleging a violation of the antitrust law, must of his own volition approach the defendant packers and ask them to consent to a modification of this decree.

It is also clear that if any of the parties defendant object to a modification of the decree in any of its specific terms the Government would fail in its application and the court would have no authority to grant such modification.

VI.

THE DECREE IS NOT INVALIDATED BY ANY PROVISION OR RECITAL THEREIN, NOR DOES ANY PROVISION AUTHORIZE MODIFICATION.

(a) The Eighteenth clause of the Decree does not provide a basis for an application for modification.

The eighteenth clause of the decree reads as follows:

"Eighteenth. That jurisdiction of this cause be, and is hereby, retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree."

If the committee will investigate any one of a large number of decrees entered both by consent and otherwise, in actions brought by the United States for the enforcement of antitrust laws, as well as in general equity actions, it will be found that some such provision is contained at the foot of the decree.

In most of the antitrust cases the provision is much broader than the verbiage of clause Eighteenth, and frequently provides for an opportunity for the parties to apply to the court "if it be hereafter shown to the satisfaction of

the court that by reason of changed conditions or changes in the statute laws of the United States, the provisions hereof have become inappropriate or inadequate to maintain competitive conditions in interstate trade or commerce of the United States * * * and are no longer necessary to secure or maintain competitive conditions in such trade or commerce." (See *United States v. Kluge et al.*, decree dated October 8, 1917, United States District Court, Southern District of New York.)

The clear intent of clause eighteenth was to provide for application to the court, as the decree states: "As may become necessary or appropriate for the carrying out and enforcement of this decree." The general words following must certainly be construed in the light of the whole clause.

Furthermore, it has never been held by any court that after a judgment or decree, and particularly where it has become final and the terms thereof have been confirmed and agreed to by the parties, that either could apply for a change of any of the fundamental provisions without the consent of the other. In fact, the courts have held to the contrary.

In most equity decrees, as in this case, the court itself reserves the right to grant other relief in the interests of carrying out the fundamental provisions of the final judgment, and the granting of such other relief as would take into consideration the reasonable, appropriate, and proper economic methods of carrying out such decree.

(b) The reservation in the decree that it should not be considered an admission by the defendants that they had violated the law was reasonable.

The decree contains the following assertion:

"* * * that while the defendants and each of them maintain the truth of their answers and assert their innocence of any violation of law, in fact or intent, they nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States."

The reason for the insistence by the defendants upon this assertion of innocence and stipulation that their consent, embodied in a decree, should not amount to an adjudication that they had not violated any law of the United States, can undoubtedly be found in the records of the Attorney General's office.

It is to be quite reasonably accounted for by the provision of the Sherman antitrust law (sec. 7), which provides as follows:

"Any person who shall be injured in his business or property by any other person or corporation, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee." Many of the antitrust laws of various States also include similar provisions.

It is not to be doubted and the evidence discloses that the defendant packers, through their methods of competition, have injured the business of many of their competitors. That the march of their monopoly has left in its wake many victims and enemies who desire vengeance can not be doubted.

It therefore follows that in insisting upon this stipulation the defendants were not only wise, but that their contention was reasonable. If they were to consent formally to the entry of a decree, under which they were to go out of the various lines of business such as stockyards, retail meat markets, public cold storage warehouses, fresh milk, cream, eggs and unrelated lines, the decree being based upon a petition which alleged not only that they were a monopoly, but were seeking to become a monopoly in other lines, it may be considered eminently proper that they should wish that such a formal decree should not be used against them as a basis for triple damage actions or any other personal proceeding.

We are aware that the Clayton Act (sec. 5) contains a provision that a consent decree shall not be prima facie evidence in any such proceeding. The act of the Packers in signing this decree was of sufficient moment to warrant them in being unwilling to rely on this provision and to insist that their position with respect to threatened damage suits be left unprejudiced.

This reservation in no way affects the court's jurisdiction. The Attorney General did not agree that the defendants had not violated the law nor did the court so find. In spite of this reservation the defendants consented to the entry of the decree and thereby admitted that under the circumstances the terms of the decree were justified and the restraints placed upon the defendants were warranted.

CONCLUSIONS.

We respectfully submit to the Interdepartmental Committee that there can be no question as to the proper conclusion which should be reached by the Attorney General in this matter.

The Consent Decree marks the only real victory (outside of the dissolution of the National Packing Co.) which was ever obtained by the United States Government in restricting and checking the monopolistic tendencies of the Big Five meat packers. Such restriction and limitation of the powers of the Big Five meat packers have been demanded by the public for many years, and it undoubtedly was largely through recognition of such public demand that the meat packers consented to the decree.

The court which entered the decree had full jurisdiction to do so, and the terms of the decree are proper and in all respects adapted to the purpose and aim of preventing monopoly and combinations or conspiracies which would lessen competition.

Neither the public nor producers and manufacturers of food products will derive any advantage from a modification or setting aside of this decree, but on the contrary, such modification or setting aside of the decree would inevitably result in the prompt resumption by the Big Five meat packers of their march toward a complete domination of all our foods.

That such a situation will be brought about on the application of a Government department supposed to represent the people of this country is unbelievable, especially with the knowledge in hand which has been produced at these hearings.

Confident, therefore, that we are expressing the opinion not only of our client but of the public generally, we ask that the application for a modification of the Consent Decree be in all respects denied.

Dated January 16, 1922.

Respectfully submitted.

BREED, ABBOTT & MORGAN,

WILLIAM C. BREED,
SUMNER FORD,
Of Counsel.

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PACKERS' CONSENT DECREE

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON AGRICULTURE AND FORESTRY UNITED STATES SENATE

SIXTY-SEVENTH CONGRESS

FOURTH SESSION

PURSUANT TO

STANFORD
LIBRARIES

Senate Resolution 211

TO INVESTIGATE MATTERS CONCERNING THE CONSENT
DECREE ENTERED IN THE SUPREME COURT OF THE
DISTRICT OF COLUMBIA IN THE CASE OF THE UNITED
STATES OF AMERICA, PLAINTIFF, v. SWIFT & CO. ET
AL., DEFENDANTS

MARCH 1, 1923

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Volume 2

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II

PACKERS' CONSENT DECREE.

THURSDAY, MARCH 1, 1923.

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D. C.

The subcommittee, pursuant to Senate Resolution 211 (set forth in vol. 1, p. 1), present a further report to be printed as volume 2 of the packers' consent decree, with the following general statements:

The Senate document, known as the Hearings before a Subcommittee of the Committee on Agriculture and Forestry of the United States Senate, the Sixty-seventh Congress, second session, upon the Packers Consent Decree, pursuant to Senate Resolution 211 to investigate matters concerning the consent decree entered in the Supreme Court of the District of Columbia, in the case of United States of America, plaintiff, *v.* Swift and Company et al., defendants, contains at pages 28 to 73, inclusive, the petition of the California Cooperative Canneries for leave to intervene in such suit of United States of America *v.* Swift and Company et al. That petition for leave to intervene requests that they be permitted to intervene to ask the court to set aside or modify said decree. Volume I of these hearings does not contain any step in the proceedings subsequent to that petition.

In order that this Senate document may be complete it seems important to have a second volume of these hearings, including the further proceedings in this petition for leave to intervene, as well as an extension of time granted by the court to Armour & Co. within which to dispose of certain unrelated lines as defined in said consent decree. The proceedings so set out in this volume are as follows:

First. Answers of the National Wholesale Grocers' Association and objections of the Southern Wholesale Grocers' Association to the petition of the California Cooperative Canneries for leave to intervene.

Second. The complete report of the arguments in the Supreme Court of the District of Columbia on June 15, 1923, on the motion of the California Cooperative Canneries for leave to intervene, such arguments being those of Frank Hogan, Esq., on behalf of the California Cooperative Canneries; Herman J. Galloway, special assistant to the Attorney General, and Peyton Gordon, United States attorney for the District of Columbia, on behalf of the United States of America; William C. Breed, Esq., on behalf of the National Wholesale Grocers' Association; Edgar C. Watkins, Esq., on behalf of the Southern Wholesale Grocers' Association; M. W. Borders, Esq., on behalf of the Morris group of defendants; and Thomas Creigh, Esq., on behalf of the Cudahy group of defendants, together with the statements filed by the Morris defendants and Cudahy defendants.

Third. Memoranda of authorities and briefs submitted by counsel or attorneys for the California Cooperative Canneries, the United States of America, the National Wholesale Grocers' Association, and the American Wholesale Grocers' Association (formerly Southern Wholesale Grocers' Association).

Fourth. Petition of defendant Armour & Co. for extension of time within which to comply with the terms of the decree, memorandum of the National Wholesale Grocers' Association with respect thereto, and the order of court extending such time to May 1, 1923.

Fifth. The memorandum opinion rendered by Mr. Justice Bailey denying the application of the California Cooperative Canneries for leave to intervene.

Sixth. Petition of the California Cooperative Canneries for a rehearing of their motion for leave to intervene, together with briefs filed upon such motion by Peyton Gordon, United States attorney, and Herman J. Galloway, special assistant to the Attorney General, on behalf of the United States of America; Breed, Abbott & Morgan on behalf of the National Wholesale Grocers' Association, and by Edgar C. Watkins, attorney for the American Wholesale Grocers' Association (formerly Southern Wholesale Grocers' Association).

ANSWER OF NATIONAL WHOLESALE GROCERS ASSOCIATION OF THE UNITED STATES TO THE PETITION OF THE CALIFORNIA COOPERATIVE CANNERIES FOR LEAVE TO INTERVENE IN THE ACTION OF UNITED STATES OF AMERICA v. SWIFT & CO. ET AL, DATED MAY 22, 1922.

In the Supreme Court of the District of Columbia. United States of America v. Swift & Co., Armour & Co., Morris & Co., Wilson & Co., Cudahy Packing Co., et al. Equity, No. 37623. Answer of National Wholesale Grocers' Association of the United States to the petition of the California Cooperative Canneries for leave to intervene in the above action.

The answer of National Wholesale Grocers' Association of the United States, hereinafter called the "association," is filed herein solely under the authority of an order of this court entered on November 5, 1921, providing that said association be allowed intervention in this action, for the limited purpose of being heard "in opposition to any proposed change in the decree herein, which would deprive said association of the protection now secured by said decree."

The association upon information and belief respectfully shows to this court, as follows:

PARAGRAPH I.

The association admits that California Cooperative Canneries is a corporation organized under the laws of the State of California, but denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph I of the intervening petition with respect to the details of organization of said California Cooperative Canneries.

Further answering the allegations in Paragraph I, the association alleges:

That the California Cooperative Canneries or its predecessor, Producers' Warehouse Co., was organized pursuant to a plan made with Armour & Co. and one J. Ogden Armour, for the organization in California of a cooperative growers' association which could be dominated and controlled by Armour & Co. and which would enable Armour & Co. to obtain a source of supply of California fruits and vegetables and ultimately to acquire a monopolistic control over the production of these products, through use of the vast capital and banking facilities which it has acquired in the development of its meat business; that pursuant to said plan, said California Cooperative Canneries was organized and financed with money furnished by Armour & Co., as security for which advances Armour & Co. received and still holds a first mortgage on certain of the properties of said California Cooperative Canneries and there is now due on said mortgage at least the sum of at least \$200,000. In furtherance of said plan of Armour & Co. to finance said canneries, said J. Ogden Armour offered to indorse negotiable paper of said Canneries for the purpose of raising money thereon.

And the association further alleges that said California Cooperative Canneries is generally known in California as "Armour's Cooperative Canneries," and is entirely dominated and controlled by Armour & Co., both in the general operation of its business and in its efforts to secure the annulment of the decree entered herein upon the solemn written consent of Armour & Co., and that attorneys employed by Armour & Co. have furnished counsel and advice to representatives of the California Cooperative Canneries and actively cooperated with said canneries in the endeavor to induce both the Department of Justice and this court to consent to a modification of the decree herein.

PARAGRAPH II.

The association denies any knowledge or information sufficient to form a belief as to the existence or correctness of the alleged contract between Producers' Warehouse Co., predecessor of the California Cooperative Canneries, and Armour & Co., set forth in Paragraph II of the intervening petition and as to whether said contract sets forth the full and complete understanding between Armour & Co. and the California Cooperative Canneries.

Further answering and admitting, for the purposes of this pleading, that said contract is correctly and fully set forth in the petition, the association alleges that the rights and privileges accruing to the California Cooperative Canneries under said contract are in no way destroyed or affected by the entry of the decree in the suit of United States v. Swift & Co. et al, other than as contemplated according to the terms of the instrument itself, and further that the said instrument does not constitute a binding agreement between the parties which insured the California Cooperative Canneries of the sale of the whole or any part of its product, for the following reasons:

(a) Armour & Co. is not obligated thereunder to purchase the product of the Producers' Warehouse Co., or its successors, but merely has an option on the canned fruits packed by said company.

(b) The contract specifically provides in paragraph 3 that Armour & Co. shall not be required to take or accept goods packed by the Producers' Warehouse Co. "in case the parties are unable to agree upon a price to be paid for such grades."

(c) The contract provides, paragraph 1, that Producers' Warehouse Co. agrees to purchase and Armour & Co. to receive "all the California canned fruits required by the business of the second party" (Armour & Co.). It appearing that Armour & Co.'s business is a meat business and does not require any canned fruits whatever, and that it merely purchases for resale, under the decisions, the alleged contract is not valid or binding.

(d) The association alleges that at the time said alleged contract was made, May 9, 1919, it was anticipated by the parties that said contract might meet with governmental objection, as objection to the activities of the packers doing business in unrelated lines had already been made in the Federal Trade Commission report, dated July, 1918. The said contract therefore contained an express provision that "in case governmental action materially interferes with the performance of this contract by second party, then and in that case it (Armour & Co.) shall have the right to cancel and terminate this agreement by giving 60 days' written notice to the first party of its intention so to do and shall not be held liable for any loss resulting therefrom," and that therefore no right of the intervening petitioner has been violated by the cancelling of said alleged contract.

(e) The association further alleges that said alleged contract was grossly unfair and inequitable to the Producers' Warehouse Co., and that by the provisions thereof Armour & Co. obtained an unfair advantage as to quantity of product, price, settlement of disputes, right to cancel, and in many other respects and by said contract Armour & Co. obtained all the benefits usually obtained from a contract for futures without assuming any of the obligations imposed by such a contract.

PARAGRAPH III.

The association denies that said California Cooperative Canneries by reason of said contract has any special interest in this litigation or the subject of this suit, or that it is entitled to assert its rights by intervention herein or as a real party in interest.

PARAGRAPH IV.

In answer to the allegations of Paragraph IV of the intervening petition, the association alleges that it has no knowledge or information sufficient to form a belief as to the truth of the allegations setting forth the extent of purchases made by Armour & Co. from the California Cooperative Canneries and the profit derived by the California Cooperative Canneries from its operations with Armour & Co.

Further answering, the association specifically denies the allegations contained in Paragraph IV that many of the California Cooperative Canneries products reached the consumer at a smaller cost by reason of said contract, and alleges that it was provided in said contract that the price to be paid the canneries for its product should be the same prices as those fixed by the California Packing Corporation and that said products were resold by Armour & Co. at the usual market prices and were sold at neither a higher nor lower price than the average price paid by the consumer for other canned fruits and vegetables of the same grade and quality. And the association alleges that in the event that any saving was effected by Armour & Co. in the distribution of such products, that such saving was kept by Armour & Co. as an additional profit to itself. The association has no knowledge or information with respect to the notice given to California Cooperative Canneries by Armour & Co. refusing to proceed with said contract, but the association denies that the decree in this case entitles the California Cooperative Canneries to any standing in this court or to any consideration in any court of law or equity; and the association calls attention to the fact that said alleged contract by the canneries' predecessor and Armour & Co. contained the express provision heretofore quoted giving Armour & Co. the right to cancel and terminate said contract at any time upon 60 days' notice, without any resulting liability to the canneries' predecessor for any loss resulting therefrom in case governmental action interfered with the performance of the contract.

The association alleges that under the terms of the decree the defendants were permitted until February 27, 1922, to dispose of the unrelated lines and that Armour & Co. has obtained a further extension until August 27, 1922, and is still handling the unrelated lines although the other defendants have complied with the decree in this

respect. Up to the present time therefore the decree has not prevented Armour & Co. from carrying out said alleged contract, and Armour & Co.'s refusal to act thereunder is doubtless due to other reasons such as falling prices or business depression.

The association further alleges that the alleged termination of said contract by Armour & Co. has in no way injured or affected the business of the canneries, but alleges that on the contrary during the year 1921, according to testimony given by Vernon Campbell, the president and general manager of said canneries, before the interdepartmental committee referred to in the intervening petition, the sales up to December 1st were not less than those made normally up to that period of the year, and furthermore, that large sales were made during said year to Armour & Co. (Ltd.), which the association believes is a British company affiliated with and controlled by Armour & Co.

The association further alleges that the year 1921 was a year of widespread industrial and business depression and the fact that the sales of the California Cooperative Canneries during said year were not less than normal is persuasive evidence that its business was in no way damaged by the termination of its alleged contract with Armour & Co.

Further answering, the association alleges that if the petitioner has suffered any loss or damage, it has a full, complete, and adequate remedy at law against Armour & Co.

PARAGRAPH V.

In answer to the allegations in Paragraph V of the petition, the association admits that the defendant Armour & Co. has built up an efficient and expeditious system for the distribution of fresh meats, but denies that Armour & Co. has any more efficient system for the distribution of nonperishable food products not requiring refrigeration, than is offered by thousands of other distributors, except in so far as it is able to obtain preferential service from the railroads in the transporting of nonperishable products in its refrigerating cars, and in so far as it is sometimes able by reason of its large financial resources and great power to obtain advantages which less powerful and less wealthy competitors were unable to obtain.

The association further alleges that practically the entire business of Armour & Co., in connection with the purchase, distribution, and sale of unrelated food products other than meats, was not undertaken until during the period of the war, and then largely consisted, not in distribution to private consumers, but in the purchase and sale in large quantities for a speculative profit, and that prior to this date, Armour & Co. had built up no very efficient, expeditious, or economical system of distributing food products to the consuming public other than its system for the distribution of meats through its expedited refrigerator car transportation service.

PARAGRAPH VI.

The association, in answer to the allegations of Paragraph VI of the petition, denies that the decree herein is void for want of jurisdiction and invalid because of any reason set forth in said intervening petition, or for any other reason whatsoever, and denies that the effect of said decree was to restrict and not promote competition in the distribution of food commodities, and denies that said decree was in the interest of the Southern Wholesale Grocers' Association and the National Wholesale Grocers' Association of the United States, or any other particular group or body of persons; and denies that the result of said decree has been to decrease the profit of the producer and increase the cost of the consumer; and the association denies that said decree is improvident or unwise; and denies that it is interlocutory and not final.

Further answering the allegations of Paragraph VI of the intervening petition, the association alleges that there are in this country approximately 5,000 wholesale grocers, many thousands of canners and food manufacturers, with and without selling organizations, mail-order houses, chain stores, department stores, and approximately 400,000 retail grocers. These wholesale grocers, canners and manufacturers, mail-order houses, chain stores, department stores, and retail grocers are in active competition with each other and said competition is real and substantial.

On the other hand, the main defendants in this case are only five in number, who by reason of their rapid growth, great power, and monopolistic tendencies were seeking to gain complete control over the source of supply and manufacture of the food products of the country and to extend their existing domination over the sale and distribution of meats and meat food products to unrelated food lines.

The association further alleges that between said five defendants there was no real or substantial competition, but that they cooperated among themselves to divide the country and to extend their mutual control.

The association alleges that by the entry of the decree herein the sinister menace of the monopoly of these five defendants over the Nation's food has been removed and that competition has again been made real and substantial.

The association further alleges that the tendency of the five defendants has not been to give to either producer or consumer the benefits of such economies as they may have effected in the distribution of food products, but to obtain a greater profit for themselves, and the association asserts that at the time the decree was entered herein the prices paid by consumers for food products had reached an unparalleled height and the association urges comparison with the prices paid by consumers for the unrelated lines at the time when the decree was entered herein and to-day, certain of which facts were brought out in the testimony before the interdepartmental committee.

The association admits that due to widespread business and industrial depression producers have not received during the past year as high prices for food products as they were entitled to receive, but the association alleges that comparison between the general financial condition to-day of persons engaged in the growing and production of unrelated food products and persons engaged in the production of live stock who have had an outlet for their product through the defendants herein, will show that the latter have suffered more than the former as partially shown in the testimony before the interdepartmental committee.

The association alleges that said decree is final and that the provision that jurisdiction is retained by the court over the decree is limited to the purpose of taking action to carry out the decree, as shown by the last paragraph thereof. The association further alleges that said provision confers no jurisdiction on the court to modify the decree for any other purpose, much less to set it aside.

The association alleges that the decree herein was and is a final settlement of the attempt of the defendants to dominate the country's food supply through the extension of the monopoly and control, which they now enjoy and possess over meats and meat food products, to all other food products essential to the daily existence of the American people, through control of sources of supply and markets and by means of large financial resources, and that said decree has been of inestimable advantage and benefit to the people of the United States.

PARAGRAPH VII.

In answer to the allegations of Paragraph VII of the intervening petition, the association denies the allegations contained in said paragraph that the decree herein was passed without any notice to the California Cooperative Canneries and without any opportunity whatever to be heard.

The association alleges that at least two months prior to the entry of said decree on February 27, 1920, formal and official announcement was made by the Attorney General of the United States that an agreement had been made or was about to be made by the Attorney General with the defendants for the entry of said decree in substantially the same form as contained in said decree, and said announcement was widely published in the press of the country and met with widespread public favor, and the fact that said decree was about to be entered into was a well-known fact.

The association further alleges that the California Cooperative Canneries was not entitled in law to any notice of the entry of said decree, and upon information and belief further alleges that said California Cooperative Canneries was well acquainted with the fact that Armour & Co. had, or was about to enter into, the proposed stipulation, which stipulation preceded the decree by about two months, and made no objection whatsoever to the entry of said decree.

The association repeats the allegations herein contained that said California Cooperative Canneries was at the time of the signing of the stipulation and the entry of the decree herein and still is entirely dominated and controlled by Armour & Co. and therefore was not interested in opposing such decree.

The association admits that since May, 1920, the California Cooperative Canneries has been actively engaged in secret and furtive attempts to undermine said decree and to have it vacated or modified, and the association alleges upon information and belief, that said California Cooperative Canneries is still entirely under the control and domination of Armour & Co., and that such actions of said California Cooperative Canneries in attacking and seeking to destroy said decree are made with the full knowledge and acquiescence and solicitation of Armour & Co.

PARAGRAPH VIII.

The association admits that on or about January 7, 1920, the Attorney General of the United States appeared before the Senate Committee on Agriculture and Forestry and made a certain statement to said committee, as set forth in Paragraph VIII

of the intervening petition, but denies that there is set forth in said intervening petition a correct statement of either the entire memorandum filed by the Attorney General with the Senate committee or a complete statement of the testimony filed before said committee.

Further answering said paragraph, the association refers to the complete record of the hearing before the Committee on Agriculture and Forestry of the United States Senate, Sixty-sixth Congress, second session, on S. 2199 and S. 2202, part 4, for a complete record of such hearings, and the association calls particular attention to the following statement which was filed by the Attorney General in regard to the provisions of the decree prohibiting the defendants from dealing in the unrelated lines:

"FIFTH ALLEGED EVIL—SUBSTITUTES FOR MEAT.

"The investigation demonstrated that even with a practical monopoly of the supplies of meat in the country the price could not be controlled by the defendants without the control of substitute foods.

"That if meat prices advanced out of proportion to those of other substitute goods, the consuming public manifested 'a tendency to turn to such substitutes.' To prevent this it is charged that the defendants sought by controlling the Nation's supply of fish, vegetables, fresh or canned fruits, cereals, milk, poultry, eggs, cheese, and other substitute foods ordinarily handled by wholesale grocers or produce dealers. To accomplish this purpose the defendants availed themselves of the advantages at hand in the autotrucks, route cars, branch houses, and storage warehouses owned or controlled by them.

"These facilities, intended primarily for the sale of meats, were employed, with comparatively no increase of overhead in the distribution of the substitute foods and unrelated commodities. The defendants were thereby enabled to reach remote spots. These attempts to monopolize have resulted in complete control in many of the substitute food lines. They have made substantial headway in others. The control was extensively and rapidly increasing. New fields were gradually being invaded. Yearly great numbers of competitors abandoned the contest and quit business or sold out to the parent corporations or their subsidiaries. Unless prevented by this decree the defendants would have, within the compass of a few years, controlled the quantity and price of practically every article of food found on the American table.

"In the 15 years from 1904 to 1919, Swift & Co., Armour & Co., Wilson & Co. (Inc.), and the Cudahy Packing Co., according to their financial reports grew from a net worth of approximately \$92,000,000 to a net worth of approximately \$479,000,000, but in this same period they paid in cash dividends \$105,000,000. Only \$89,000,000 of their increased worth was represented in capital. Though always asserting a very low rate of profit on sales, the five parent companies have grown so rapidly that their combined net profit for 1919 has equaled nearly the amount of their total sales in 1904. The sales themselves in 15 years have increased until for the fiscal year 1918 they reached the vast sum of \$3,200,000,000. This was realized from meats, substitute foods, and unrelated lines as hereinabove set forth. In stating these figures, account has been taken only of profits and sales to the parent companies and subsidiaries included by them upon their books. No account has been taken of the many corporations which are owned or controlled by the same family of financial interests as own or control the parent companies.

"In addition to these profits, there have been other vast profits, difficult of ascertainment, realized by the individuals by virtue of either their personal control of packing houses and slaughtering companies or their interests in stockyards, terminal railroads, rendering companies, cattle loan institutions, and banks, and other corporations, all of which corporations have their inception and depend for their prosperity upon advantages or privileges growing out of the interlocking control of the stockyards and stockyard appurtenances.

"The parent companies, or the individual defendants, and their families maintain and control 574 corporations or concerns, including 131 trade names. They have a significant minority-stock interest in 95 others and an interest of unknown extent in an additional 93. Thus, the total number of concerns in which they have control or interest is some 762. Practically all of these companies, however, come under the jurisdiction of the court through the naming of the above-mentioned defendants.

"In the years that have passed, the parent companies have acquired or organized many other concerns and have maintained them so long as they were useful for their purposes. When no longer useful, these concerns so acquired or organized have been dissolved and their businesses have been merged into that of the parent companies or into that of other subsidiaries. Such dissolved corporations and concerns are omitted in the above compilation, except in such instance as the name has been

continued as a trade name. The total of 762 above stated therefore falls far short of representing the number of concerns that corporate and individual defendants have acquired or have organized in furtherance of their general scheme and plan of action already explained. It would be an enormous undertaking to determine the degree of control exercised by the defendants in all of these various interests. Enough has been ascertained to indicate that the growth has been rapid and that if permitted to continue unchecked in a matter of a few years the control would be complete.

"In 1916 the business of Armour & Co. canned fish, vegetables, and sundries, canned and dried fruits, fruit preserves and grape juice amounted to \$6,396,036.73. In 1918, two years later, the same company's volume of business in these same items was \$39,820,000, over sixfold increase. While part of this increase of business may be attributed to the increase of population, and the consequent increase of consumption, the greater part thereof was acquired at the expense of competitors.

"Of the corporations which have been acquired by the parent companies in recent years, the large number are concerns manufacturing or selling these substitute foods or unrelated commodities. This fact, together with the increased activities of the parent organizations themselves in these lines, indicated a well-defined purpose on their part to secure control of the market for meat substitute foods.

"In addition to the companies in which control has been acquired by outright purchase, the parent companies have in a large number of instances contracted for the exclusive output of many other companies engaged in the production of the substitute foods and the unrelated commodities. The output of these plants are marketed by the parent companies, or by their subsidiaries, through the distribution facilities of the parent companies. In this fashion the parent companies control the output of these concerns and the market price of their products as completely as though they themselves owned the producing companies.

The association further alleges that the statement contained in Paragraph VIII of the intervening petition purporting to report the views of the Attorney General fails to give a complete and accurate representation of the views of the Attorney General in that it fails to show the specific and definite statements made by the Attorney General to the effect that the defendants had violated the laws of the United States and the association calls attention, merely as a typical example of the nature of statements which have been eliminated, to the following question and answer which are entirely omitted from the statements set forth in Paragraph VIII:

"Senator NORRIS. In your examination of the evidence that was submitted to you by the Federal Trade Commission and other evidence which you examined, did you reach the conclusion, as a lawyer, that the packers or any of them had violated the criminal statute or were criminally liable?

"ATTORNEY GENERAL. I think they had violated the Sherman antitrust law: that is, both a criminal and a civil statute, Senator." (Hearings on S. 2199 and S. 2202, pt. 4, p. 47.)

The association also refers to the statements made by the Attorney General of the United States with regard to the consent decree at certain hearings before the Committee on Agriculture of the House of Representatives of the Sixty-sixth Congress, second session, on meat-packer legislation, part 31, in which hearings it was also made clear that the Department of Justice was of the opinion that the defendants had violated the antitrust law.

Further answering said paragraph, the association alleges that by the statements made in Paragraph VIII of the intervening petition it is sought to convey the impression that the Department of Justice was not convinced and did not have evidence to show that the defendants were guilty of violations of Federal statutes, whereas an examination of said hearings will disclose that the Attorney General was of the opinion that the evidence in his possession showed violations of the Sherman antitrust law, and that the only question which had not been determined was whether the proceedings should be criminal or in equity.

And the association further alleges that said defendants, well knowing the acts of which they had been guilty, and fearing prosecution for said acts, either criminally or in equity, of their own volition approached the Attorney General and solicited the decree herein believing this would result in an abandonment of criminal proceedings against them, and the statements of the Attorney General of the United States contained in Paragraph VIII of the intervening petition show that the entry of the decree herein did result in abandonment of further criminal prosecution.

The association denies that the testimony given by the Attorney General of the United States to the Senate Committee on Agriculture and Forestry was copied and sent to the wholesale grocers of the United States, and also alleges that such allegation has no relevancy in any event.

PARAGRAPH IX.

The association admits that the decree herein was entered on February 27, 1920, and denies any knowledge or information sufficient to form a belief as to whether the complaint and answers of the defendants were filed in this court on the same day, but if such were the case, the association alleges that it is the usual and ordinary practice where decrees are agreed upon and are to be entered on consent to have the decree entered at substantially the same time when the complaint and answer are filed.

With regard to the allegations of the complaint and the answers herein, your association refers to same with the same force and effect as though they were set forth in full in this answer.

PARAGRAPH X.

In answer to the allegations of Paragraph X of the intervening petition, the association denies that any of the reservations in the stipulation and decree had the effect of depriving this court of jurisdiction or power to enter this decree in any respect, and further denies the allegations in said Paragraph X that the effect of said decree was to create a monopoly and denies that said decree is so general in its terms to be a nullity, and denies that the decree is void because it enjoins the defendants from conducting lawful businesses and because it prevents them from engaging in trade authorized by the Webb Export Act, and the association further denies that the decree was an economic mistake, unfounded in law or in fact.

The association further alleges that the stipulation or saving clause, referred to in Paragraph IX of said petition, providing that the defendants maintained the truth of their answers and asserted their innocence of any violation of law, and that the consent to the terms of the decree should not be considered an admission or an adjudication that they had in fact violated any law of the United States, did not in any sense detract from the binding effect of the decree and of its specific provisions and prohibitions thereof, which constituted an agreement between the defendant packers and the Government of the United States with respect to the matters covered by the terms of said decree.

In further answer to said paragraph, the association alleges, upon information and belief, that the reservations contained in said decree were inserted for the purpose of preventing said decree from being used in evidence against the defendants in treble damage suits, which the defendants anticipated would be brought against them by some of the many persons who had been injured by the unlawful acts of the defendants, and the association calls attention to the fact that it is contrary to the policy of Congress that consent decrees in antitrust suits should be accepted as prima facie evidence or as final adjudications in suits for damages as section 5 of the act of October 15, 1914, known as the Clayton Act, specifically provides.

The association again alleges that dealings in the unrelated commodities are not confined to wholesale grocers, of whom there are approximately 5,000 in the United States, but said commodities are and to a very large extent dealt in by producers, manufacturers, chain stores, retail grocers, mail-order houses, department stores, and many others, and that the total number of distinct concerns dealing in unrelated commodities exceeds 500,000. The statement contained in Paragraph X that the elimination of five concerns out of so large a number resulted in the creation of a monopoly is absurd upon the face of it.

The association further alleges that the injunctions contained in said decree with regard to the unrelated lines are in no way general, but are specific, setting forth the particular lines which the corporate defendants are prohibited from handling and specifically defining the interest which the individual defendants may have in the concerns dealing in such products. And the association alleges that such specific prohibitions and provisions are necessary to check the unlawful act of defendants as an injunction in general terms issued in 1913 and affirmed in 1905 by the United States Supreme Court (*United States v. Swift*, 196 U. S. 375), had been ineffective for this purpose.

The association alleges that the allegations contained in the complaint herein setting forth the persistent violations of law by the defendant packers and the evidence obtained by the Department of Justice, the Federal Trade Commission, and other agencies as a result of investigations and prosecutions over a period of years showing the flagrant disregard by the defendants of the restrictions imposed upon them by law, fully justify the provisions contained in said decree.

The association alleges that the provisions of said decree do not in any way conflict with the Webb Export Act of April 10, 1918, and alleges that the defendants were at no time engaged in business pursuant to said statute and that none of the defendants had ever registered thereunder, and furthermore sets forth that said statute specifically

provides that no association formed pursuant to its provisions shall either in the United States or elsewhere "enter into any agreement, understanding, or conspiracy or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association or which substantially lessens competition within the United States or otherwise restrains trade therein."

And the association alleges that the defendants herein have for a long period of time entered into agreements, understandings, or conspiracies in violation of the statutes and that their acts had substantially lessened competition within the United States and restrained trade, all of which facts were known to the Attorney General and to the Federal Trade Commission and to committees of Congress prior to the filing of the complaint in this proceeding and the entry of the decree herein on February 27, 1920, and many of which are specifically referred to in report of Federal Trade Commission to the President of the United States dated July 3, 1918.

PARAGRAPH XI.

In answer to the allegations of Paragraph XI of the intervening petition, the association denies that it has any knowledge or information sufficient to form a belief as to the quantity of goods purchased by Armour & Co. from the California Cooperative Canneries under the contract heretofore referred to, and the association denies that said contract was of great value or that it gave the California Cooperative Canneries a ready market for its output, and the association refers to the allegations above set forth herein with regard to the terms of said contract.

The association in further answer alleges that said contract, because of its indefiniteness and because it imposed no obligation whatsoever upon the purchaser to purchase if price was not agreed upon, was not of the character which would justify banks in making loans thereon.

The association further alleges that any and all products delivered to Armour & Co. pursuant to said alleged contract were sold to Armour & Co. and were not given to Armour & Co. for distribution as the agent of the California Cooperative Canneries.

PARAGRAPH XII.

In answer to the allegations in Paragraph XII of the intervening petition, the association denies any knowledge or information sufficient to form a belief as to the character of any notice given by Armour & Co. to the intervening petitioner, and further denies that the intervening petitioner has suffered any legal damages resulting from the entry of the decree or any other damages of any character by reason thereof but alleges that if the petitioner really believes it has suffered any damages through violation of its rights, it has an adequate remedy at law against Armour & Co.

The association denies that the decree destroyed markets for the intervening petitioner built up during a long period of years and directs attention to the fact that the alleged contract between the petitioner and Armour & Co. was entered into less than a year prior to the entry of the decree herein and after charges had been made by the Federal Trade Commission that the extension of the packers' monopoly into unrelated lines was a menace to the public welfare.

Further answering said paragraph, the association admits that the intervening petitioner has been seeking ever since May, 1920, in various ways to secure a nullification of said consent decree, with the support or at least the approval of Armour & Co., and in particular has urged the Department of Justice to move the court to vacate said decree. The association admits that the Department of Justice was inclined to be fair and reasonable, and for that reason refused to move to vacate said decree until an opportunity had been given to all persons interested to appear and be heard, and for that purpose hearings were held before the Hon. Herman J. Galloway, Hon. Bayard T. Hainer, and Mr. Frank C. Hall, designated by the Department of Justice to hear all parties who desired to be heard either in favor of or against modification of said decree, and after such hearings said committee reported to the Attorney General that the Attorney General should not grant such request of the California Cooperative Canneries to move for the modification or setting aside of the decree.

The association further admits that at such hearings the Southern Wholesale Grocers Association and the National Wholesale Grocers Association of the United States appeared and were granted a hearing, and alleges that the California Cooperative Canneries appeared as the leading exponent of modification.

The association denies that the wholesale grocers' associations referred to exercise plenary authority over their members and seriously affect the producers, retailers, and consumers of food commodities, and alleges that any power and influence that such

associations may have arise only from the merits of the cause which said associations have supported.

The association denies that the wholesale grocers' associations have at any time attacked the intervening petitioner through the public press, or otherwise, except in so far as said associations have given publicity to the true facts in regard to the California Cooperative Canneries, its organization in connection with Armour & Co., its efforts to secure a setting aside of the consent decree, and the reasons for the entry of said consent decree and the objections to its to its being vacated or modified in any way.

The association denies any knowledge or information sufficient to form a belief with regard to the true facts in connection with the complaint filed with the Federal Trade Commission charging that the intervening petitioner was affiliated with Armour & Co., or as to the findings of the commission in regard to same. But your association alleges it to be a fact that said California Cooperative Canneries is closely connected with and is dominated and controlled by Armour & Co.

The association denies the allegations of said Paragraph XII in so far as it is therein alleged that the association does not represent the public interest and that the association has fought honest and fair competition, and also any implications contained in said paragraph to the effect that the association has at any time been made a party to any proceedings by the Federal Trade Commission or at any time adjudged guilty of violations of the Sherman Act or of any other statute, or that any proceedings have at any time been brought against the association by the Federal Trade Commission or by any other governmental body.

The association in further answer alleges that it has at all times endeavored to further and support the interest of the public generally as well as the interest of its members, and that it has at no time been guilty of any violation of statute.

The association further alleges that the defendants, on the contrary, have been guilty of repeated violations of Federal and State statutes; that they have been the subject of repeated investigations by Congress, by the Department of Justice, and by the Federal Trade Commission, and that said investigations have revealed many violations of law by said defendants; and that said defendants have been the subject of civil and criminal proceedings, in which it has been found and determined that they had been guilty of such violations of law.

PARAGRAPH XIII.

The association denies each and every allegation contained in Paragraph XIII of the intervening petition in so far as it is therein alleged that the association has at any time conducted a campaign of coercion and intimidation in order to secure, through any improper means, cannery and others to oppose a modification of the consent decree, and in particular denies the allegations contained in said Paragraph XIII in so far as it is therein alleged, either directly or by insinuation, that the association in any improper way influenced the action of the Western Cannery Association in opposing modification of the consent decree.

Further answering said paragraph, the association alleges that, on the contrary the intervening petitioner, ever since May, 1920, has been seeking in various ways to secure a modification or setting aside of the said consent decree and has conducted a widespread propaganda for this purpose. The association further alleges that said campaign of the intervening petitioner has been conducted with a concealment and misrepresentation of the facts in relation to the decree and of the true situation of the California Cooperative Canneries; that the intervening petitioner has at all times attempted to conceal its connection and relationship with Armour & Co., and has represented itself as an independent organization, although it has at all times been controlled and dominated by Armour & Co., and the association believes its actions in seeking to secure a modification of said decree are being directed, furthered, and assisted by Armour & Co.

The association alleges that prior to September 1, 1921, the intervening petitioner had met with considerable success in creating sentiment in favor of a modification of the consent decree, due to the fact that it had been able to conceal its true character, and the efforts which it was making along these lines, whereas the large public interest which is opposed to the modification of the consent decree, being entirely unaware of the steps being taken by the intervening petitioner, had made no effort to counteract its efforts and to present the true facts to the public. Because of this situation, the vice-president and general manager of the intervening petitioner was able to secure the passing of a resolution in favor of modification of said decree at an irregularly called and held meeting of a few members of the Western Cannery Association, which meeting was attended by the said vice president and general manager, who consulted

privately with the committee which prepared such resolution. Thereafter, when the general membership of said association learned of the passage of such resolution and also learned of the true facts in connection with the matter, the membership at its annual convention held in Chicago on October 11 and 12 and attended by more members than any other meeting ever held by the Western Cannery Association, by unanimous vote repudiated said previous resolution and adopted a resolution opposing any modification of the decree.

The association alleges that the only support which the intervening petitioner has been able to obtain for a modification of the consent decree has been through misrepresentations and concealment of facts, and that in almost every case when the true facts have become known, the modification or setting aside of the decree has met with immediate opposition.

The association denies that the bill of complaint in this suit does not charge the defendants with attempting to create a monopoly, and denies the allegation in Paragraph XIII in so far as it is therein alleged that the defendants have not created a monopoly in the handling of food products and have not been guilty of violations of law; and the association denies the allegations contained in said paragraph seeking to minimize the extent of the dealings of Armour & Co. in rice, which the association alleges Armour & Co. handled in such large quantities that the president thereof boasted that he was the largest rice merchant in the world; and the association alleges that the price of rice was greatly increased by reason of the operations of Armour & Co. therein.

In further answer to said paragraph, the association refers to the complaint in this action and to the terms thereof charging the defendants with contracts in restraint of trade, monopolization and attempts to monopolize, unfair competition and other violations of statute, and in particular repeats the allegations of the complaint with regard to the attempted control of substitute foods reading as follows:

CONTROL OF SUBSTITUTE FOODS.

"Having eliminated competition in the meat products, the defendants next took cognizance of the competition which might be expected from what we here refer to as substitute foods. Their experience had taught them that if meat prices advanced out of proportion to that of other substitute foods, the consuming public manifested a tendency to turn to such substitutes. To prevent this the defendants set about controlling the Nation's supplies of fish, vegetables, either fresh or canned fruits, cereals, milk, poultry, butter, eggs, cheese, and other substitute foods ordinarily handled by wholesale grocers or produce dealers. To accomplish this purpose the defendants availed themselves of the advantages afforded by the refrigerator cars, route cars, auto trucks, branch houses, and storage warehouses owned or controlled by them. These facilities intended primarily for the sale of meats were employed with comparatively no increase of overhead in the distribution of substitute foods and unrelated commodities. The defendants were enabled thereby to reach remote spots. This advantage was also employed temporarily to fix prices so low as to gradually eliminate competition.

"These attempts to monopolize have resulted in complete control in many of the substitute food lines. They have made substantial headway in others. The control is extensively and rapidly increasing. New fields are gradually being invaded, and unless prevented by a decree of this court the defendants will within the compass of a few years control the quantity and price of each article of food found on the American table."

PARAGRAPH XIV.

In answer to the allegations of Paragraph XIV of the intervening petition, the association denies the allegations contained therein with regard to the business of the defendants in unrelated commodities, and alleges that in many of the unrelated commodities the extent of the business of the defendants far exceeded the percentages and figures set forth in said paragraph, and that the defendants were making rapid progress toward a monopolization of many lines of substitute foods.

Further answering said paragraph, the association alleges that in considering the extent of the business of the defendants in the unrelated lines, there must be considered their complete monopolization and control of meat and meat food products, dairy products, and other lines, and that their business must be considered as a whole in determining their true relation to the unrelated lines. The association refers in particular to the extensive reports made by the Federal Trade Commission of its investigation of the meat-packing industry, and would direct particular attention to the following facts which were found with regard to the defendants as set forth in the summary report of the commission:

"It appears that five great packing concerns of the country—Swift, Armour, Morris, Cudahy, and Wilson—have attained such a dominant position that they control at will the market in which they buy their supplies, the market in which they sell their products, and hold the fortunes of their competitors in their hands." (Summary report, p. 3.)

"We have found that it is not so much the means of production and preparation, nor the sheer momentum of great wealth, but the advantage which is obtained through a monopolistic control of the market places and means of transportation and distribution." (Summary report, p. 4.)

"The producer of live stock is at the mercy of these five companies because they control the market and the marketing facilities and, to some extent, the rolling stock which transports the product to the market." (Summary report, p. 4.)

"The competitors of these five concerns are at their mercy because of the control of the market places, storage facilities, and the refrigerator cars for distribution." (Summary report, p. 4.)

"The consumer of meat products is at the mercy of these five because both producer and competitor are helpless to bring relief." (Summary report, p. 4.)

"Five corporations, Armour & Co., Swift & Co., Morris & Co., Wilson & Co. (Inc.), and the Cudahy Packing Co., hereafter referred to as 'Big Five' or 'the packers,' together with their subsidiaries and affiliated companies, not only have a monopolistic control over the American meat industry but have secured control, similar in purpose, if not yet in extent, over the principal substitutes for meat, such as eggs, cheese, and vegetable-oil products, and are rapidly extending their power to cover fish and nearly every kind of foodstuff." (Summary report, p. 9.)

"The monopolistic position of the Big Five is based not only upon the large proportion of the meat business which they handle, ranging from 61 to 86 per cent in the principal lines, but primarily upon their ownership, separately or jointly, of stockyards, car lines, cold-storage plants, branch houses, and the other essential facilities for the distribution of perishable foods." (Summary report, p. 9.)

"The control of these five great corporations, furthermore, rests in the hands of a small group of individuals, namely, J. Ogden Armour, the Swift brothers, the Morris brothers, Thomas E. Wilson (acting under the veto of a small group of bankers), and the Cudahys." (Summary report, p. 9.)

"The combination among the Big Five is not a casual agreement brought about by indirect and obscure methods, but a definite and positive conspiracy for the purpose of regulating purchases of live stock and controlling the price of meat, the terms of the conspiracy being found in certain documents which are in our possession." (Summary report, p. 10.)

"The power of the Big Five in the United States has been and is being unfairly and illegally used to manipulate live-stock markets; restrict interstate and international supplies of foods; control the prices of dressed meats and other foods; defraud both the producers of food and consumers; crush effective competition; secure special privileges from railroads, stockyard companies, and municipalities; and profiteer." (Summary report, p. 11.)

"The most satisfactory single index of the proportion of the meat industry controlled by the Big Five is the fact that they kill, in round figures, 70 per cent of the live stock slaughtered by all packers and butchers engaged in interstate commerce. In 1916 the Big Five's percentage of the interstate slaughter, including subsidiary and affiliated companies, was as follows:

Cattle.....	82.2
Calves.....	76.6
Hogs.....	61.2
Sheep and lambs.....	86.4

(Summary report, p. 11.)

"The business of the packing companies originally was limited to the slaughter of live stock and the distribution of meat and animal products and by-products. Now, however, they are rapidly extending their control over all possible substitutes for meat—fish, poultry, eggs, milk, butter, cheese, and all kinds of vegetable oil products, and have secured strategic points of collection, preparation, and distribution of these products." (Summary report, p. 13.)

"These strategic positions, which serve not only to protect the controls which the big packers have already acquired, but to insure their easy conquest of new fields, are: Stockyards, with their collateral institutions, such as terminal roads, cattle-loan banks, and market papers; private refrigerator car lines for the transportation of all kinds of perishable foods; cold-storage plants for the preservation of perishable foods; branch-house system of wholesale distribution; banks and real estate." (Summary report, p. 15.)

"The purpose of this combination, which for more than a generation has defied the law and escaped adequate punishments, are sufficiently clear from the history of the conspiracy and from the numerous documents already presented, namely: To monopolize and divide among the several interests the distribution of the food supply not only of the United States but of all countries which produce a food surplus, and, as a result of this monopolistic position, to extort excessive profits from the people not only of the United States but of a large part of the world." (Summary report, p. 40.)

The detailed evidence supporting said consideration of facts will be found in the report of the Federal Trade Commission, to which reference is made.

The association alleges that the amount of business done by wholesale grocers who are in active competition with each other and with thousands of other merchants, is entirely irrelevant in this proceeding as contrasted with the business done by the five defendants who have been operating in close cooperation and harmony with each other for many years, in alleged violation of law.

The association asserts that no proceedings are here pending against the wholesale grocers and that this is not a controversy between the wholesale grocers and the defendant packers, but is a controversy between the United States of America and the defendant packers; and the association alleges that the allegations of Paragraph XIV and other allegations of the intervening petition are entirely irrelevant and without value in this proceeding.

With respect to the allegations of Paragraph XIV in regard to the proceeding brought before the Interstate Commerce Commission by the National Wholesale Grocers' Association charging that the packers were granted unfair advantages in the transportation of products by the carriers, the association refers to the decision of the Interstate Commerce Commission in that case and alleges that it was found and held in that case that the packers did receive certain unfair advantages over the complainants, and the association alleges that in so far as it was determined in that proceeding that there was not an unfair advantage with regard to the expedited transportation service claimed to have been afforded the meat packers, there is pending an application for a reconsideration of the case, which application has not yet been determined.

PARAGRAPH XV.

In answer to the allegations of Paragraph XV of the intervening petition, the association asserts that the allegations therein contained are entirely immaterial to this proceeding, but the association denies the allegations therein contained with regard to the cost of distributing food products and in so far as it is alleged that the wholesale grocers charge excessive sums for the distribution of food products, and alleges that food products are distributed by wholesale grocers reasonably and economically and that the profit received by the wholesale grocers for their services is an extremely reasonable and moderate profit.

In so far as it is claimed food products are distributed more economically and reasonably by the defendants, the association denies such allegations and invites comparison between the retail and wholesale prices of meat in this country between 1913 and 1921 and also the prices paid producers and growers for these different kinds of food products, and the association alleges the distribution of meat and meat food products is entirely monopolized by the defendants.

The association in further answer alleges that it is far more to the public interest to have its food products distributed through wholesale grocers, chain stores, retail grocers, department stores, mail-order houses, totaling at least 500,000 different concerns, all in honest competition with each other, than to have the Nation's food distributed by 5 concerns working under a common understanding and in close cooperation, even though food products were distributed more efficiently by said 5 concerns, and the association alleges that it is the policy of the American Government to foster a competitive system of industry open to all instead of placing industries in the hands of monopolies.

The association specifically denies, however, that the distribution of the unrelated food products by defendants would result in any saving to the consumer. In answer to the allegation of this paragraph that there are 300 concerns in this country engaged in the business of meat packing, the association points out that this decree affects only 5 such concerns.

PARAGRAPH XVI.

In answer to the allegations of Paragraph XVI of the intervening petition, the association denies any knowledge or information sufficient to form a belief as to whether or not two of the defendants, Armour & Co. and Wilson & Co., are willing to distribute

food products on a commission basis if permitted so to do, inasmuch as the association has not been so informed by said Armour & Co. and Wilson & Co.; but the association alleges that the intervening petitioner, being entirely controlled and dominated by Armour & Co., has doubtless been informed by Armour & Co. as to its wishes in this matter, and further alleges that this proceeding has been brought by the intervening petitioner with the consent, acquiescence, and at the direct instance of Armour & Co. With respect to the defendants other than Armour & Co., the association alleges that Swift & Co., Morris & Co., and Cudahy Packing Co. are unwilling to consent to a modification of said decree as sought by the petitioner and are opposed to same.

As a further answer the association, upon information and belief, denies that the handling of unrelated food products by the defendant meat packers would meet with the approval of the Department of Agriculture and would enable producers, canners, and food manufacturers to sell their product at the lowest possible cost, believing that the Department of Agriculture is opposed to the extension of defendants' monopoly and on the contrary favors a competitive system of industry.

And the association further alleges that such a system of doing business as is proposed by the petitioner would make it impossible for small growers, producers, and manufacturers to carry on their business which is now financed largely by means of future contracts entered into by the present concerns engaged in the distribution of food products. Moreover, such a system of doing business on a commission basis is solely in the interest of defendant packers, as it would enable them to carry on their business at an assured profit without risk of loss, and the association alleges that the commission which was paid by the California Cooperative Canneries under its contract with Armour & Co. gave the latter a larger profit from its handling of the products of the California Cooperative Canneries than the profit usually received by wholesale grocers for services in acting as a distributor of food products.

The association alleges that it is to the interest of Armour & Co. to make it impossible for small growers, producers, and canners to finance themselves, as their failure would enable Armour & Co. to acquire at a low price sources of production and manufacture.

The association further denies that under such a system as proposed by the intervening petitioner consumers would receive products at any less price than to-day, and denies that the distribution through the meat packers would reduce the retail price of food products, and the association refers to the prices charged by the meat packers for food products in comparison to prices charged by wholesale grocers as substantiating these facts.

The association further alleges that the commission proposed to be charged by the defendants—i. e., 5 per cent—exceeds the profit now made by the distributors of the unrelated food products, and the giving of such an increased profit to the defendants would necessarily result in an increased price to the consumer.

The association admits, as alleged in Paragraph XVI, that the ordinary producers, canners, and food manufacturers and distributors are not concerns of huge magnitude as alleged in Paragraph XVI, and admits that the defendant packers are concerns of tremendous magnitude as therein alleged; but the association alleges that it is contrary to public policy and contrary to law to concentrate the handling of the Nation's food products in a few large monopolistic concerns to the complete destruction of competitive business and industry in the United States.

PARAGRAPH XVII.

In answer to the allegations of Paragraph XVII the association denies the allegations therein contained that the decree was an economic mistake and that the Webb Export Act in any way sanctions the violations of law in which the defendants have been engaged.

Further answering said paragraph, the association alleges that the defendant meat packers have organized many subsidiary concerns under the laws of foreign countries and that said decree does not in any way prevent said subsidiaries from engaging in the export business of food products, and as an instance of this the association alleges that the California Cooperative Canneries during the year 1921 sold large quantities of its product to Armour & Co. (Ltd.), a British corporation.

The association further alleges that said decree is not inconsistent with the provisions of the Webb Export Act of April 10, 1918, and refers to the previous allegation contained in Paragraph X of this answer showing that under said act a combination in restraint of trade and monopolies, such as that of the defendant packers, is unlawful.

The association further alleges that if said defendant packers were allowed to engage in the export business of unrelated commodities while being prohibited from selling same in the United States, such action would very likely result in a large increase to the consumers of the United States of the cost of food products due to the large quantities which would be exported by the defendant packers.

PARAGRAPH XVIII.

The association denies each and every allegation contained in Paragraph XVIII of the intervening petition which alleges that the meat packers are under Federal supervision and control by virtue of the packers and stockyards act of August 15, 1921, except in so far as they are engaged in the distribution and sale of meat food products, and alleges that in the event of modification of this decree, the said packers would be subject to no supervision and control with regard to their dealings in unrelated lines; and the association alleges that said packers and stockyards act does not in any way regulate and supervise the dealings of the meat packers in such unrelated products and that it would be impossible to devise any practical and efficient system of supervision.

The association again admits the allegations contained in Paragraph XVIII of the intervening petition with regard to the huge size of the defendant packers and again alleges that it is contrary to Government policy to foster and further such growth. The association desires to emphasize the fact that the intervening petitioner favors and urges the creation of a huge monopoly for the purpose of handling the Nation's foods, all of which would be most detrimental to the interests of the public.

With regard to the allegations of Paragraph XVIII setting forth the views of a Member of Congress, the association alleges that it has no knowledge or information sufficient to form a belief as to the correctness of said views, or who expressed same, but alleges that the views therein expressed are bad law and unsound economics; and the association further alleges, upon information and belief, that said letter was obtained at the instance of the intervening petitioner for the purpose of spreading its propaganda.

PARAGRAPH XIX.

In answer to the allegations of Paragraph XIX of the intervening petition, the association admits that the petitioner has repeatedly solicited the Attorney General of the United States to move for a modification of the decree herein but denies that the intervening petitioner made any application for a public hearing or that the interdepartmental committee was appointed by the Attorney General at the request of the petitioner.

The association alleges that the intervening petitioner was most anxious to avoid any public hearing on this matter at which the true facts could be brought out and the merits revealed, and complained of the action taken by the association to secure such a hearing; and the association further alleges that the hearing before the interdepartmental committee was held at the solicitation of those opposed to a modification of the decree.

Further answering said paragraph, the association admits that it was represented at said hearing and that others also appeared at said hearing in opposition to modification of the decree; but denies the allegation in said Paragraph XIX that no evidence was presented evidencing the existence of a monopoly or restraint of trade on the part of the defendants, and the association alleges on the contrary that at said hearing the evidence was most conclusive to show the danger to the people of the United States from the monopolistic tendencies of the defendants and showed that the public welfare demanded the maintenance of the consent decree.

The association refers to the record of the hearings before the interdepartmental committee in substantiation of its allegations, and submits the record of such hearings herewith for examination by the court.

The association admits the huge size of Armour & Co., as is again alleged in this paragraph, and repeats the allegation that it is not in the interest of the public that said concern be permitted to increase its power and size, by extending its business into unrelated lines.

The association denies all the allegations contained in said Paragraph XIX with reference to the existence of a monopoly on the part of wholesale grocers and repeats those allegations heretofore made with regard to the large number of different channels which exist for the distribution of food products and to the existence of the most active kind of competition to the benefit of the public of the United States between such channels.

In further answer, the association denies that before the hearing of the interdepartmental committee the wholesale grocers charged that the defendant Cudahy Packing Co. was building enormous canning factories in the Hawaiian Islands, and alleges that on the contrary reference to the interest of the Cudahy Packing Co. in pineapple industry was contained in a letter of Hon. John W. Weeks, Secretary of War

of the United States, opposing the extension of the defendant packers into the handling of food products not connected with the packing industry. Said letter is as follows:

"MOUNT PROSPECT, LANCASTER, N. H.,

August 22, 1919.

HON. WILLIAM S. KENYON,
United States Senate, Washington, D. C.

MY DEAR KENYON: I am well aware how ineffective it is for one who has not heard all the evidence to pass on any pending matter, and, moreover, it is almost an impertinence for a farmer living in the extreme northern end of New Hampshire to make a suggestion relative to legislation, but after I finish my day's work I have little to do except to look over the papers, and I am following some of the activities of my friends in Washington with interest.

One of the things now receiving a great deal of newspaper attention and in which we are all more or less interested is the question of food supplies, and in that connection the activities of the packers are receiving the usual denunciations and defense. I have rather positive views on that subject, which may or may not accord with yours, but, in any case, I want to very briefly send them to you.

Such investigations as I have made of the packers' activities in the past leads me to the conclusion that they handle the meat business of the country most efficiently, and that if there were not such organizations as the packers with their methods of distribution, the consumers would probably pay more for their meat products and in many cases not get as good meats as they do under present conditions. I doubt if that general proposition can be successfully controverted, and personally I think it would be a pity to interfere with a system that enables a citizen in the most remote section to get the benefit of this great business with almost as much regularity and with very little more cost than the citizen in the large center, but there, I think, the packers ought to stop. Unfortunately they have not done so, and, as I see it, are gradually reaching out and either temporarily or permanently controlling other food products. They did it during the war without any question, purchasing the output of many canning factories, the products of which had nothing whatever to do with the meat business, and selling it to the Government in many cases or to others in some cases.

I am told, for example, that the Cudahys are building enormous canning factories in the Hawaiian Islands and purpose controlling the canned pineapple industry, which is a very important one there, as you know. I do not think that that kind of activity should go on. It would be unthinkable and certainly unbearable to permit a half dozen men or a half dozen firms to obtain control of the food supply of this country, even assuming that it would, on the whole, be efficiently managed. Undoubtedly the packers will contend—and the contention has a great deal of merit—that having such distribution facilities for their meat products, those facilities should be worked to their full capacity to get the highest efficiency and a resulting lower cost, and that for that reason they should go into the manufacture and distribution of other products than meat. But there is grave danger of trouble resulting from such a monopoly which is too great to warrant its being permitted even if there is a lessening of efficiency as a result.

If you could work out a solution of this difficulty which would divorce the packers from handling of any food products not related to the legitimate packing industry, my impression is that you would leave that part of the high cost of living problem in the best possible shape.

I am sure you will pardon this intrusion and will file my letter in the good old waste basket if you do not see anything in it which merits your consideration.

Sincerely yours,

JOHN W. WEEKS."

The association denies the allegations in Paragraph XIX to the effect that no farm organizations appeared before said interdepartmental committee in opposition to modification of said decree, and alleges the exact contrary to be the case; and further denies the allegation in said Paragraph XIX that farm organizations representing millions of producers asked the Department of Justice to move for such modification. The association alleges that the farm organizations of the country are fully alive to the danger to the farmer through the extension of the defendants' monopoly and are bitterly opposed to same.

With regard to the allegations of said Paragraph XIX setting forth the lack of power of Congress to in any way modify the terms of the consent decree, the association alleges that Congress has ample power to repeal the existing laws against monopolies and organizations in restraint of trade, but that Congress manifestly considers such an exercise of its power would be contrary to public interest.

The California Cooperative Canneries, by its vice president and general manager, has appeared at hearings of Congress and urged Congress to legislate so as to vacate or modify the decree, but such action has not been recommended or favored by any committee of either the Senate or House of Representatives.

The association denies absolutely the truth of the statement contained in said Paragraph XIX that the decree in this case has never met with the approval of any of the Agricultural Committees in Congress. The association alleges that on the contrary, said decree has met with the approval of both Houses of Congress and also with the committees having charge of legislation affecting the business of the meat packers.

The following are a few extracts from statements made in Congress with reference to said decree:

EXTRACTS FROM CONGRESSIONAL RECORD REGARDING CONSENT DECREE.

Senator Robinson: "For some months a somewhat unusual proceeding has been in progress. A committee composed of one representative from the Department of Justice, another from the Department of Agriculture, and a third from the Department of Commerce, have been conducting a quasi-judicial proceeding, and without any authority of law, within my knowledge, to determine the question of policy underlying a decree of the court affecting very important subjects. The decree of the court is intimately related to questions of legislation, not only those which Congress has heretofore considered, but others which Congress is now considering and may be called upon to determine in the early future." (Congressional Record, February 3, 1922, p. 2339.)

Senator La Follette: "Mr. President, I must say that I think it very important that the Committee on Agriculture should investigate this whole matter, as provided in the resolution. If such an investigation is made, I am convinced that facts would be disclosed which would result in such a report to the Senate as would insure legislation which would so safeguard this consent decree that neither the present Attorney General nor any successor will give assent to its modification." (Congressional Record, February 3, 1922, p. 2339.)

Senator Spencer: "I agree with the Senator from Wisconsin that the decree should not be modified." (Congressional Record, February 3, 1922, p. 2340.)

Senator Owen: "Mr. President, as I understand this matter, in effect the consent decree was the basis of most important legislation in this body. Having obtained that legislation upon that consent decree the parties now desire to change the contract upon which the Congress of the United States acted. I can not see any reason why we should not institute this inquiry in order to be informed, and I see every reason why we should demand to know before it is too late, because after the decree has been entered it will be too late." (Congressional Record, February 3, 1922, p. 2342.)

Senator Norris: "It may be that somebody can show a reason why the decree ought to be modified. I do not know of any" (p. 2343).

"* * * I am entirely in sympathy with the proposition of passing the resolution here, or of passing a law—perhaps it ought to go through both Houses—instructing the Attorney General or the Department of Justice not to consent to any decree without submitting the facts to Congress and first obtaining their consent. I am inclined to think that when the Attorney General thinks of the matter in the light of what is shown by the record of the court and the Congress put together he would not do that." (Congressional Record, February 3, p. 2343.)

Senator Harris: "Mr. President, several days ago I brought this matter to the attention of the Senate and urged that the Attorney General not modify the decree, as the packer legislation that was passed was based on that decree, and it would be unjust to the Congress to modify it in any way." (Congressional Record, February 3, 1922, p. 2343.)

Senator Caraway: "Without being at all antagonistic to the Senator, I had made up my mind that the people have a right under this decree that the Attorney General has neither the legal nor the moral right to give away. I think the people acquired a right under this decree." (Congressional Record, February 3, 1922, p. 2343.)

Senator Pomerene: "From the statements that have been made here it looks very much as if the entering of that decree might have had some influence with the conference committee in the preparation and presentation of its report. If that is so, then there is an additional reason why the Congress should be on its guard so as to protect the interests of all the people." (Congressional Record, February 3, 1922, p. 2344.)

Congressman Schall: "This is a question of whether we want a Government based on monopoly or a system of Government based on competition. The question is, Is it American for this or any monopoly to be allowed to retain special privileges and be

given further opportunities over the one thing which concerns the people's life, namely, food? We should all be for a competitive system. If we do not stop this thing now, it will not be very long—seven years at their present rate of turnover—until the packers control the whole food business of the United States.

"This is certainly of vital interest to Congress, and if this decree is modified Congress should pass a resolution to have laid before it the evidence and testimony on which that decision was rendered." (Congressional Record, December 5, 1921, p. 11.)

Senator Harris: "It shows that the meat packers, who have kept a lobby here all these years opposing any regulation of their business, are not satisfied with anything that will do justice to the consuming public of this country, and as soon as legislation is passed and a decree is entered they immediately take steps to have it changed." (Congressional Record, January 4, 1922, p. 857.)

Senator Lodge: "What has been the history of that group of men who run these packing establishments? It has been a history of utter defiance of law and public opinion. * * *" (Congressional Record, June 30, 1916.)

During the year 1921 Congress after long investigation passed a statute known as the packers and stockyards act of August 15, 1921, for the express purpose of regulating and controlling the monopoly of the defendant packers over meat and meat-food products. Originally it was proposed to extend such regulation and supervision to the dealings of the defendants in the unrelated commodities, but upon the entry of the decree herein Congress assumed that said decree finally settled the questions arising out of the handling of unrelated commodities by the defendants and the bills introduced in Congress were amended so as to strike out the provisions which related to the handling of such products by the defendants.

The association refers to the reports of the congressional committees having to do with the planning of the packers and stockyards act, and to the discussions set forth in the Congressional Record with reference to said act in support of the statement herein made that the decree was accepted by Congress with approval and that the packers and stockyards act was framed upon the existence of the decree herein.

With regard to the allegation in said Paragraph XIX referring to the investigations made by the Federal Trade Commission of the defendant meat packers, the association refers to the minutes and reports of said investigation as a refutation of the allegations of this paragraph with respect to the Federal Trade Commission, which the association alleges is a governmental body honestly and diligently endeavoring to enforce the laws over which it has jurisdiction, and the association alleges that the records and the reports of that commission, and also the evidence obtained by the Department of Justice show repeated violations of statutes by the defendants.

The association further alleges that the real reason why the defendant packers consented to the entry of the decree was not as stated by petitioner but because they well knew they were guilty of many violations of law and were subject to civil and criminal prosecutions which were threatened and about to be instituted against them and that they therefore solicited and consented to the decree herein as a means of securing absolution from the consequences of their unlawful acts.

The association in further answer to said paragraph denies the truth of any of the allegations of said Paragraph XIX attacking the wholesale grocers system of distribution and alleges that the wholesale grocers distribute food products economically and efficiently, although such method of distribution is not in issue here and not in any way involved.

The association, however, alleges that the meat packers when distributing unrelated food products adopt substantially the same method, except in so far as they are able, by reason of their great power, to secure preferential treatment from the railroad. The association again refers to and urges a comparison of the figures between the prices paid to the raisers of live-stock and the producers of the unrelated commodities and the prices paid by consumers for the same products as absolute proof that there is no public advantage in having the food of the Nation in the control of the defendants.

The association denies that the complaint in this action was brought for its benefit or at its solicitation, and alleges on the contrary that the suit was brought by the Attorney General of the United States, representing the people of the United States and that the decree herein is of great benefit to the general public.

The association further alleges that said decree was eagerly solicited by the defendants in order to avoid other prosecution.

The association repeats that the conduct of the defendants, prior to the entry of said consent decree, was unlawful and that they were working in close cooperation with each other and that the allegations contained in said Paragraph XIX as to the defendants having no relation with each other are absolutely untrue, as shown by repeated investigations; and the association further repeats the allegations above set forth that such unlawful combinations are in no way authorized by the Webb Export Act.

PARAGRAPH XX.

In answer to the allegations of Paragraph XX of the intervening petition, the association admits, upon information and belief, that the Interdepartmental Committee appointed by the Attorney General made the report to the Attorney General set forth in said Paragraph XX of the intervening petition.

PARAGRAPH XXI.

In answer to the allegations of Paragraph XXI of the intervening petition, the association admits that in answer to a resolution adopted by the Senate of the United States being Senate Resolution No. 211, of February 3, 1922, the Attorney General submitted to the Senate a report which is set forth in part in said Paragraph XXI of the intervening petition.

The association alleges that said Senate Resolution was as follows:

"Resolved, That the Attorney General of the United States be requested to report to the Senate (a) what steps, if any, have been taken to enforce and carry out the terms of said decree, (b) what modification, if any, has been proposed to him, or is being considered by him, with a view to his applying to the court for the adoption thereof, (c) any and all evidence which may have been taken in the recent hearings on the subject before the representatives appointed by the Attorney General's office; and be it

"Resolved further, That the Committee on Agriculture and Forestry be authorized and directed to investigate this entire matter fully and recommend to the Senate what action it deems necessary and desirable."

And the association further alleges that said resolution, together with the discussions of said resolution as contained in the Congressional Record at the time of its adoption part of which discussion is set forth in Paragraph XIX above, clearly indicate that it was adopted because of the apprehension of the Senate that the decree might be modified in some respect and that said resolution and discussions show clearly the attitude of the Senate with regard to said decree and utterly refutes the allegation contained in the said intervening petition in Paragraph XIX to the effect that said decree has not met with the approval of Congress.

PARAGRAPH XXII.

In answer to the allegations of Paragraph XXII of the intervening petition, your association denies that any modification of this decree would be to the public interest and alleges, on the contrary, that said modification is sought solely in the benefit of the defendant packers, and in particular for the benefit of Armour & Co., whom the intervening petitioner really represents.

PARAGRAPH XXIII.

In answer to the allegations of Paragraph XXIII of the intervening petition, the association admits that it denies any right on the part of the intervening petitioner to be heard for the purpose of vacating or modifying said decree, and alleges that the position of the intervening petitioner in seeking to attack and destroy said decree is entirely different from the position of the association in asking to be heard on an application made by any of the parties seeking to modify the decree, and the association denies that the petitioner has any special or legitimate interest in this litigation, and that the only reason this petition is made by the intervening petitioner is to hide and conceal from the court the fact that this move is being directed by Armour & Co. which completely controls and dominates your petitioner's actions.

PARAGRAPH XXIV.

In answer to the allegations of Paragraph XXIV of the intervening petition, the association denies that the remarks of Judge Stafford contained therein in any way constitute a judicial suggestion or ruling that that decree is in any way invalid or subject to attack and further alleges that the facts suggested in said remarks are in no way before the court in this proceeding.

PARAGRAPH XXV.

In further answer to the intervening petition, the association repeats the allegations above set forth to the effect that the intervening petitioner is an agent and representative of Armour & Co. and that the intervening petitioner is entirely under the domination and control of Armour & Co., and that by reason of said facts the intervening petitioner is bound by the written consent to the decree herein heretofore executed by Armour & Co.

PARAGRAPH XXVI.

And for a further answer, the association alleges that in any event the intervening petitioner is not entitled as a matter of law to be granted intervention for the purpose of vacating or modifying said decree.

Wherefore, the association asks that the intervening petition of the California Cooperative Canneries be dismissed on the following grounds:

(1) That said California Cooperative Canneries is not a party to this proceeding, and not being a party is not entitled to intervention for the express purpose of vacating and nullifying all that has been done herein.

(2) That the decree herein having been entered upon the consent of the parties hereto, plaintiff and defendants, said decree can not be vacated or set aside upon application of any intervenor without the consent of the original parties, and that it nowhere appears that said original parties have consented to the modification or setting aside of the decree as prayed for by the petitioner.

(3) That on the contrary, it appears herein that the Attorney General of the United States has refused to move for a modification of said decree or consent thereto, although requested so to do by the petitioner, and that without the consent of the United States of America, this court is without jurisdiction to modify or vacate said decree upon the application of any outside party.

(4) That it appears that at least three of the five defendant packers state that they are opposed to modification of said decree and without the consent of all of said defendants as well as the consent of the Government, the plaintiff herein, the court is without jurisdiction to vacate or modify said decree.

(5) That action by the court allowing intervention to the petitioner, without having first determined whether the plaintiff and the defendants are prepared to consent to the vacating or modification of said decree would be futile, as it is beyond the power of the court to vacate or modify said decree without such consent.

(6) That during the period of the two years, since the date of the decree, February 27, 1920, the positions of the parties have materially changed. Property has been sold and disposed of by certain of the defendants, and proceedings and steps undertaken to carry out the terms of the decree by both Government and packers, and the vacating or modification of such decree by the court at this time would be in violation of the rights of all parties.

(7) That the decree constitutes an agreement between the plaintiff, the Government of the United States, and the defendant packers which can not be vacated or modified by the court, by either of the parties to the action or by any intervening party except upon proof of fraud or mistake of facts, and no such proof is offered or produced to the court.

(8) That there is evidence before the court taken in the proceedings before the inter-departmental committee which would indicate that the petitioner is so clearly identified with one of the defendants, Armour & Co., which company has a mortgage interest in the property of said petitioner, as to warrant the conclusion that the petition for leave to intervene for the purposes of vacating or modifying the decree, is not made in good faith, but is an attempt on the part of one of the defendants, acting by and through the intervening petitioner, to avoid in some manner the consent given by it to the decree entered herein on February 27, 1920.

9. That the decree herein was a final decree determining the issues between the United States of America and the defendants, and that the court is without jurisdiction to vacate or modify same; that jurisdiction was retained of said decree as set forth therein merely for the purpose of taking such action as might be necessary to carry out and enforce the decree and not for the purpose of vacating and modifying the decree.

10. That the modification or setting aside of the decree as prayed for by the petitioner is contrary to the public interest and would result in an extension of the monopoly of the defendants contrary to law, and that in particular the portion of the public represented by the association would be seriously injured and would lose the protection afforded them by the decree against the unlawful acts of the defendants.

NATIONAL WHOLESALE GROCERS ASSOCIATION OF THE UNITED STATES.

By M. L. TOULME, *Secretary*.

STATE OF NEW YORK,

County of New York, ss:

M. L. Toulme, being duly sworn, deposes and says: That he is the secretary of National Wholesale Grocers Association, above named, an unincorporated membership association; that he has read and knows the contents of the foregoing answer, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, he believes it to be true.

M. L. TOULME.

Subscribed and sworn to before me this 22d day of May, 1922.

ALEXANDER L. HILLYARD,
Notary Public Kings County.

Certificate filed in New York County.

**OBJECTIONS OF SOUTHERN WHOLESALE GROCERS' ASSOCIATION
TO MOTION OF CALIFORNIA COOPERATIVE CANNERIES FOR
LEAVE TO INTERVENE, DATED MAY, 1922.**

In the Supreme Court of the District of Columbia. Equity No. 37623. United States of America v. Swift & Co., Armour & Co., Morris & Co., Wilson & Co., Cudahy Packing Co., et al. Motion to file intervening petition of California Cooperative Canneries. Objection to above motion by Southern Wholesale Grocers' Association, et al., interveners.

**ANSWER AND OBJECTIONS TO MOTION TO INTERVENE OF CALIFORNIA COOPERATIVE
CANNERIES.**

Come now Southern Wholesale Grocers' Association, Henry G. Sears Co., John Hoffman & Sons Co., Mason, Ehrman & Co., J. M. Radford Grocery Co., Southern Distributing Co., Hall Grocery Co., Albert Mackie & Co. (Ltd.), The Hicks Co., W. D. Cleveland & Sons, Rapides Grocery Co., and Oliver Finnie Grocery Co., by their attorney, Edgar Watkins, and file this their joint answer in law and in fact to the motion for leave to intervene presented by California Cooperative Canneries and to the intervening petition filed with said motion, and for cause why said motion should not be granted jointly and severally say:

PARAGRAPH 1.

These interveners being advised, submit that the motion to file the petition of intervention made by California Cooperative Canneries should not be granted for

(a) That it appears from said petition of intervention that there is nothing now pending or proposed in this cause;

(b) That it appears from the petition of intervention filed by said California Cooperative Canneries as part of its motion herein that said proposed intervener is without legal interest in the decree heretofore entered in the main cause; and

(c) That it further appears that said decree was entered by consent and is a final decree over which this court has no jurisdiction other than jurisdiction to enforce said decree; and

(d) That it further appears that said petition of intervention states no sufficient facts to sustain a cause of action or support any relief on behalf of said intervener.

PARAGRAPH 2.

Further objecting to the motion to file an intervention by the California Cooperative Canneries, these interveners say that said intervention should not be granted for the following additional reasons, to wit:

(a) There is no suit pending. A final decree was heretofore on February 27, 1920, entered in this cause, as appears of record herein and as also appears in the said intervening petition here sought to be filed.

(b) Because the intervening petition sought to be filed by California Cooperative Canneries shows on its face that said corporation has no interest in this suit, paragraph 2 of the proposed intervention, which according to paragraph 3 thereof is the basis of the claim of interest, showing that the alleged contract set up in paragraph 2 is unilateral, without consideration and void.

(c) Because said contract set up in said paragraph of the said proposed intervention in section 11 thereof is made subject to the regulations of the Food Administration, Federal Trade Commission, and other Federal agencies, and said contract being subject thereto is contrary to the regulations of the Food Administration and the decree of this court of February 27, 1920.

(d) Because it appears from paragraphs 4 and 12 of the proposed intervention that the claimed interest of the canneries under the control alleged in paragraph 2 has been terminated and can not now be enforced; the only remedy, if any, being a suit at law for the breach by Armour & Co. of the said claimed contract.

(e) Because said proposed intervention shows on its face that the original defendants in this cause have obtained benefits from the said decree of February 27, 1920, by depriving these interveners hereinbefore named of rights which without said decree they would have had before the Interstate Commerce Commission.

(f) Because the motion to intervene herein and the intervention proposed to be filed therewith by the California Cooperative Canneries is in effect a bill of review or a supplemental bill in the nature of a bill of review, and the same was not filed within two years after the entry of the decree of February 27, 1920, as required by equity rule 62 of this court.

(g) Because of the laches of the proposed intervener in filing the motion here presented.

PARAGRAPH 3.

Interveners hereinbefore named object to granting the motion to file the intervention of the California Cooperative Canneries because a final decree was entered herein on February 27, 1920, and said proposed intervener is concluded by said decree and can not, under the law and principles of equity, become an intervener except in subordination to and in recognition of the propriety of the main proceeding heretofore had in this case, including recognition of and subordination to the validity and propriety of said decree of February 27, 1920.

PARAGRAPH 4.

Your intervener herein and named above object to granting the motion of said California Cooperative Canneries to file intervention herein and object to parts of said proposed intervention because such parts are impertinent and should not be considered or permitted to be filed. The impertinent parts are as follows:

(a) Paragraphs 8 and 9 of said proposed intervention should be stricken for impertinence, the matters therein stated, except as already of record in this cause, having no materiality to any issue herein.

(b) All the allegations of paragraph 12 of said proposed intervention, except possibly the first two paragraphs thereof, are impertinent and refer to matters in nowise material in this cause and should not be considered.

(c) All the allegations of paragraph 13 of said proposed intervention are impertinent and refer to matters in no wise material in this cause or on this motion and should not be considered.

(d) All the allegations of paragraph 14 of said proposed intervention are impertinent and refer to matters in nowise material in this cause or on this motion and should not be considered.

(e) All the allegations of paragraph 15 of said proposed intervention are impertinent and refer to matters in nowise material in this cause or on this motion and should not be considered.

(f) All the allegations of paragraph 16 of said proposed intervention, except the second sentence thereof, are impertinent and refer to matters in nowise material in this cause or on this motion and should not be considered.

(g) All the allegations of paragraph 18 of said proposed intervention are impertinent and refer to matters in nowise material in this cause or on this motion and should not be considered.

(h) All the allegations of paragraph 19 of said proposed intervention are impertinent and refer to matters in nowise material in this cause or on this motion and should not be considered.

(i) All the allegations of paragraph 20 of said proposed intervention are impertinent and refer to matters in no wise material in this cause or on this motion and should not be considered.

(j) All the allegations of paragraph 21 of said proposed intervention are impertinent and refer to matters in no wise material in this cause or on this motion and should not be considered.

(k) All the allegations of paragraph 23 of said proposed intervention are impertinent and refer to matters in no wise material in this cause or on this motion and should not be considered.

(l) All the allegations of paragraph 24 of said proposed intervention are impertinent and refer to matters in no wise material in this cause or on this motion and should not be considered.

Without waiving their objections in law and praying the same benefit and advantage as though this were a case of a motion to dismiss the proposed intervention, these interveners, in answer to said motion for leave to file, and answering said proposed intervening petition, jointly say:

PARAGRAPH 5.

Interveners being without knowledge are unable either to admit or deny paragraphs 1 and 2 of the proposed intervention; but as they do not know and can not set forth what the facts are, they pray that said paragraphs be taken as denied.

PARAGRAPH 6.

Interveners deny paragraph 3 of the proposed intervention.

PARAGRAPH 7.

Interveners are without knowledge as to how much, if any, of the output of California Cooperative Canneries claimed in paragraph 4 of the proposed intervention to have been taken by Armour & Co., was so taken, and as to the rest of said paragraph 4 interveners deny the same.

PARAGRAPH 8.

Interveners, answering paragraph 5 of the proposed intervention, admit that Armour & Co. had prior to the entry of the decree herein, and by reason of special advantages growing out of their ownership of private cars and the rates and privileges granted to them by interstate carriers, built up a large and efficient system for the distribution of these food commodities which by the decree herein they were enjoined from further distributing. Interveners, except Southern Wholesale Grocers' Association, which is not engaged in buying or selling, admit that they were in competition, prior to the entry of the decree herein, with said Armour & Co. in the distribution of such food commodities, and interveners, other than Southern Wholesale Grocers' Association, further say that they were also in competition with some 5,000 other wholesale grocers in the distribution of the same commodities. Interveners admit that they have heretofore been given leave to intervene in this cause and have intervened herein. Any inference or statement in said paragraph not in this paragraph admitted is expressly denied.

PARAGRAPH 9.

Interveners deny paragraph 6 of the proposed intervention.

PARAGRAPH 10.

Interveners, answering paragraph 7 of the proposed intervention, admit that the original decree was entered herein without process directed to the California Cooperative Canneries, but say on information and belief that said California Cooperative Canneries had full notice and knowledge through the public press, hearings before the Senate committee, and in other ways of what was proposed at least two months prior to the entry of said decree of February 27, 1920. These interveners, being without knowledge, can neither admit nor deny the allegation that Armour & Co. and plaintiff and other defendants had notice of the alleged contract between the proposed intervenor and Armour & Co. and these interveners are without information as to whether or not like notices existed as to similar contracts, but interveners do not believe that any knowledge of said claimed contract or contracts, if any such there were, existed outside the parties thereto and their agents.

PARAGRAPH 11.

These interveners admit that proceedings were had and testimony given similar to those alleged in the proposed intervention in paragraph 8 thereof. However, for greater certainty as to the contents of the documents, agreements, testimony, and statements referred to, these interveners beg leave to refer to the original records.

PARAGRAPH 12.

These interveners admit that proceedings were had similar to those alleged by the proposed intervention in paragraph 9 thereof. However, for greater certainty as to the contents of the documents and agreements referred to, these interveners beg leave to refer to the original records.

PARAGRAPH 13.

These interveners deny paragraph 10 of the proposed intervention.

PARAGRAPH 14.

These interveners are without knowledge of the statements contained in paragraph 11 of the proposed intervention and pray therefore that the same be treated as denied.

PARAGRAPH 15.

These interveners are without knowledge as to the first sentence of paragraph 12 of the proposed intervention and deny all the rest of said paragraph except the following parts: They admit that the proposed intervenor protested as alleged to the Attorney General and that a bulletin of September 22, 1920, a part of which is quoted in said paragraph, was sent out by Southern Wholesale Grocers' Association. As to the allegation of the statement of the Federal Trade Commission, interveners pray that the exact and complete record be looked to. Intervenors admit that the proceedings described in 207 Fed. 434 were had, that the decision was rendered in 275 Fed. 725 as alleged in the proposed intervention, and that other similar cases are pending before the Federal Trade Commission. These intervenors, however, deny that such allegations have any place in this cause and deny that the Southern Wholesale Grocers' Association or its president are now violating or have since the decision in 207 Fed. 434 in any wise violated the injunction granted by Judge Pardee, Shelby, and Jones. These intervenors further deny that they or any one of them are now or have been since the entry of the decree in said 207 Fed. 434, engaged in any unfair methods of competition or in any act or acts which restrain or would tend to restrain or restrict the free flow of interstate commerce.

PARAGRAPH 16.

Answering paragraph 13, these intervenors deny the same except as to the letters quoted therein as to which these intervenors are without knowledge, and except as to the part of paragraph 13 referring to report of the Trade Commission, and these intervenors pray, if said report be regarded as pertinent, that reference be had to the official report.

PARAGRAPH 17.

Answering paragraph 14, except as herein stated, these intervenors deny said paragraph. In so far as said paragraph quotes from the Federal Trade Commission, intervenors pray that the official report be referred to if deemed pertinent to any issue in this case. Intervenors admit that the cases of National Wholesale Grocers' Association and Southern Wholesale Grocers' Association v. Walker D. Hines were heretofore pending before the Interstate Commerce Commission and that a decision therein has been rendered. These intervenors admit that there are a large number of wholesale grocers, perhaps as many as 5,950. These wholesale grocers are in competition among themselves and furnish adequate distributing agencies for the distribution of all food commodities. They admit that the statement quoted as made by counsel of the Southern Wholesale Grocers' Association was made. These intervenors are without knowledge as to that part of paragraph 14 referring to the action of the National Wholesale Grocers' Association or its agents and are without knowledge and are not responsible for the alleged action of a trade journal called "The Wholesale Grocer."

PARAGRAPH 18.

These intervenors deny paragraph 15 of the proposed intervention, except as to the statement of the number of meat packers as to which they are without knowledge.

PARAGRAPH 19.

Answering paragraph 16 of the proposed intervention, these intervenors are informed and therefore admit that Armour & Co. does desire to return to the distribution of those unrelated food items which it agreed it would discontinue distributing, and these intervenors are informed and believe that in truth and in fact the proposed intervention herein is but the effort of Armour & Co., through the agency of California Cooperative Canneries, to escape from the results of that company's agreements and from the injunction the granting of which it consented to. Intervenors on information and belief deny that Wilson & Co. desires to evade or escape from the decree to which it consented. All the other parts of paragraph 16 of the proposed intervention are denied.

PARAGRAPH 20.

Answering paragraph 17 of the proposed intervention, these intervenors say that they admit that the foreign export business is important and presents an economical problem; and say they are without knowledge of the extent of defendants' foreign

business. The construction of the decree set up in said paragraph is a matter for the court and is not an issue of fact, but these interveners do say that such decree was not a grave economical mistake but was a just and fair determination of the issues then before this court, and that the act of April 10, 1918, is not violated by such decree. Further answering, interveners say that said decree is a just injunction against practices unlawful under the laws of the United States and which practices were properly enjoined.

PARAGRAPH 21.

Answering paragraph 18 these interveners deny that the packers and stockyards act completely regulated the defendants in this cause, and allege on information and belief that such act was made less restrictive against the defendants because of the decree herein, and that the defendants in this cause obtained the benefit of the decree herein in defeating a more restrictive act by the Congress. As to the part of said paragraph 18 referring to the report of the Federal Trade Commission, these interveners pray that such report be looked to and the language thereof taken if it is deemed that said report has pertinence to this cause. These interveners are without knowledge as to the alleged speech of an unnamed Member of the Congress. All the other parts of paragraph 18 of the proposed intervention are denied.

PARAGRAPH 22.

Answering paragraph 19, these interveners say that they are without knowledge as to just when the California Cooperative Canneries began its campaign to release the defendants in this cause from the effect of their agreement. These interveners admit that the interdepartmental committee was organized as stated in said paragraph 19; admit that the statement by the attorney for Southern Wholesale Grocers' Association, one of the interveners, which is copied in said paragraph 19, was made; and admit that wholesale grocers made contentions before said committee somewhat similar to those set out in said paragraph. However, for greater certainty these interveners pray reference to the full record for a correct statement of the arguments before said committee, if this court deems such arguments pertinent. While the former Attorney General testified before a committee of the Senate, it is prayed that the full record of such testimony and not a mere reference thereto be used if deemed pertinent by this court. All other allegations in said paragraph 19 are denied. Especially do these interveners pray leave to call attention to the fact that this denial applies to the allegation that Southern Wholesale Grocers' Association "alone was called into conference" prior to the entry of the decree herein. The truth being that said Southern Wholesale Grocers' Association, as was open to all other interested parties, participated in the presentation of facts and made suggestions prior to the entry of the decree of February 27, 1920. For a correct statement of what actually occurred with reference to this matter, interveners pray, if this court deems the matter pertinent, reference to their intervention of file in this cause.

While already denied, these interveners pray leave to repeat their denial of the truth of the claim of California Cooperative Canneries that—

"The wholesale grocers' system of distribution is one of monstrous profiteering, at the cost of the producer and consumer. They refuse to better their own antiquated methods of distribution, if they can do so, and they also refuse to allow any one else to operate a better system. At one time they declare that the packers' business is not economic in its operation, and at another time they declare that the packers' methods of distribution are so efficient and economical that the wholesale grocers will be unable to compete in price, and therefore will be driven out of business, and at another time they declare the packers have passed the point of economic operation on account of their size, and are therefore subject to the so-called 'Law of diminishing returns.' Despite these theories, the fact is that the packers are able to market food products at a less cost than can the wholesale grocers, or other middlemen, or speculators."

The truth is that the defendants in this cause did have before the entry of the decree herein many advantages over wholesale grocers because of special privileges granted them by interstate carriers, but such advantages did not and will not redound to the benefit of the consumer, but were and would be used by defendants to restrict and suppress competition and to build up a monopoly. Wholesale grocers distribute to more people and more cheaply for the consumer than the defendants, and such grocers create and maintain competition in the broadest sense, and grocers do care for the "welfare and interest of the general public" and do not seek only to "promote their own selfish interest," but seek and do promote such welfare and interest.

PARAGRAPH 23.

Answering paragraph 20, these interveners admit that a report was made substantially as therein alleged. However, for greater certainty these interveners pray reference to the original report if the court should deem the same pertinent to any issue in this case.

PARAGRAPH 24.

Answering paragraph 21, these interveners admit that a report was made substantially as therein alleged. However, for greater certainty these interveners pray reference to the original report if the court should deem the same pertinent to any issue in this case. As to the statement in the quoted report that no notice of filing the intervention of these interveners was given, such statement is true, and under equity rule 15 no notice is required.

PARAGRAPH 25.

These interveners, answering paragraph 22 of the proposed intervention so far as the same makes any statement of facts, deny the same, and so far as the same alleges conclusions of law, these interveners deny the correctness of such conclusions:

PARAGRAPH 26

Answering paragraph 23, interveners admit that they denied and do now deny the right of this court to vacate or modify the decree hereinbefore made. These interveners also aver that they have the right to be heard herein for the protection of their interests under the original decree, and in order that such original decree may be maintained in its entirety; and these interveners admit that they do and will deny the right, legal or equitable, of California Cooperative Canneries to intervene herein for the purpose of setting aside or materially weakening the original decree herein. These interveners deny that said California Cooperative Canneries have any interest, legal, special, or legitimate, in this cause and further deny that said decree is the protection of any monopoly and deny that they have enjoyed or do now enjoy any monopoly and deny that said decree effected any monopoly. These interveners further deny the allegation that California Cooperative Canneries is entitled to intervene, and deny that it has any legitimate interest justifying intervention herein, and these interveners further deny that there is any litigation now pending before this court and aver that as they are advised, all this court can do in this cause is to enforce the decree heretofore rendered therein.

PARAGRAPH 27.

Answering paragraph 24, these interveners say that it is true, as alleged therein, that Mr. Justice Stafford suggested the questions there quoted, but these interveners deny that such suggestions constituted any ruling of the court and deny the construction of such suggestions contained in said paragraph 24, and these interveners further allege that whatever questions existed in the court's mind at the time such suggestions were made were discussed in a subsequent printed brief and the court was convinced that intervention of these interveners was proper and entered an order refusing to strike the intervention theretofore filed by these interveners.

PARAGRAPH 28.

For further special answer, these interveners say that intervenor Southern Wholesale Grocers' Association is an association of wholesale grocers with a membership of approximately 2,100 and whose members are located throughout most of the sections of the United States. The other interveners herein and named hereinbefore are themselves wholesale grocers engaged in business at the places shown in their petition for intervention heretofore filed herein: that all such wholesale grocers, those here intervening and the members of the Southern Wholesale Grocers' Association, and other wholesale grocers are engaged in distributing the food products named in paragraph 4 of the original decree herein, and are in competition among themselves and with others; that heretofore and prior to February 27, 1920, the Southern Wholesale Grocers Association, on its behalf and on behalf of other grocers, filed with the Interstate Commerce Commission a petition seeking to obtain an order against the carriers of the United States requiring them to cease and desist from preferences theretofore granted and then being accorded to the defendants in this cause; that when the decree

of February 27, 1920, was entered, the Southern Wholesale Grocers' Association recognized the importance to the public of said decree and the protection that the public would receive therefrom; and such relief being for the benefit of interveners and others of the general public, did not further prosecute the complaint before the Interstate Commerce Commission. The defendants in this case pleaded and relied on said decree of February 27, 1920, as a reason why the Interstate Commerce Commission should not issue the orders prayed for in the complaints thereto, and the Interstate Commerce Commission later, in the complaint of the National Wholesale Grocers' Association similar to that filed by the Southern Wholesale Grocers' Association, denied any substantial relief, and in its decision referred to the decree in this cause, relying thereon as a reason for its decision, as these interveners believe and believing so allege; and therefore these interveners allege that because of said decree the defendants in this cause were enabled to defeat a recovery before the Interstate Commerce Commission. Wherefore the defendants, the California Cooperative Canneries and all others are estopped from seeking to set aside the decree rendered herein on February 27, 1920, and are estopped from seeking such a modification of said decree as would destroy in any substantial way its force.

PARAGRAPH 29.

Further answering the proposed intervention herein, these interveners say that the proposed intervention is nothing more in substance than a supplemental bill in the nature of a bill of review seeking to set aside the judgment of this court, and that more than two years have elapsed since the entry of said decree and prior to the filing of the motion of the California Cooperative Canneries herein. Wherefore because of said delay and because of the laches of the proposed interveners, and because of equity rule 62 of this court, the proposed interveners have no right or equity to have their motion considered or granted.

Wherefore these interveners pray that the motion made by California Cooperative Canneries herein to be permitted to file an intervention be denied and that the decree of February 27, 1920, remain as entered and be enforced as authorized by paragraph 18 thereof when and as necessary.

Southern Wholesale Grocers' Association; Henry G. Sears Co.; John Hoffman & Sons Co.; Mason, Ehrman & Co.; J. M. Radford Grocery Co.; Southern Distributing Co.; Hall Grocery Co.; Albert Mackie & Co. (Ltd.); The Hicks Co.; W. D. Cleveland & Sons; Rapides Grocery Co.; Oliver Finnie Grocery Co.; by Edgar Watkin, the attorney.

**PROCEEDINGS BEFORE HON. JENNINGS BAILEY, JUSTICE OF THE
SUPREME COURT OF THE DISTRICT OF COLUMBIA, JUNE 14, 1922,
ON THE MOTION OF THE CALIFORNIA COOPERATIVE CANNERIES
FOR LEAVE TO INTERVENE.**

In the Supreme Court of the District of Columbia. Holding an equity court. *United States v. Swift & Co., Armour & Co., Morris & Co., Wilson & Co., Cudahy Packing Co., et al.* Equity No. 37623.

WASHINGTON, D. C., *Wednesday, June 14, 1922.*

The above-entitled cause came on for hearing at 10 o'clock a. m., before Mr. Justice Bailey, on the petition of California Cooperative Canneries.

APPEARANCES.

On behalf of the Government: Hon. Peyton Gordon, United States attorney for the District of Columbia; Hon. Herman J. Galloway, special assistant to the Attorney General.

On behalf of the petitioner: Frank Hogan, Esq.

On behalf of the National Wholesale Grocers' Association: William C. Breed, Esq.

On behalf of American Wholesale Grocers' Association: Edgar Watkins, Esq.

The COURT. Are you gentlemen ready in the case of the *United States v. Swift & Co. et al.*?

Mr. HOGAN. We are ready to proceed, your honor.

Mr. WATKINS. If your honor please, the Southern Wholesale Grocers' Association, one of the interveners, has changed its corporate name to American Wholesale Grocers' Association, and I desire now to ask your honor to enter an order indicating that change.

The COURT. That will be done.

Mr. M. W. BORDERS (attorney for Morris & Co). May it please the court, I do not know that there is any line of procedure agreed upon in this case, but I would like to make a statement in this case on behalf of my clients, defendants. It will not exceed five minutes. It is immaterial to me whether made now or later, and of course I want to meet the convenience of the court and the parties.

Mr. HOGAN. If your honor please, I feel that the line of procedure is to bring the court's attention to the matter before the court, and then, I should take it, the United States will be heard, and the defendants, and then the interveners, provided any of them want to be heard. If that is agreeable to Mr. Borders and the court, I will be glad.

Mr. BORDERS. Anything is agreeable to me. I merely wanted to call attention to my desire to make a statement on behalf of my clients, one of the defendants, whenever it is agreeable to the court and to the parties.

The COURT. Very well. You may proceed, Mr. Hogan.

Mr. HOGAN. Upon the filing by the California Cooperative Canneries in April last of its motion for leave to intervene, and its motion to be heard by this court *amicus curiæ* for the purpose of bringing directly to the court's attention the claim of invalidity of the so-called consent decree entered February 27, 1920, there was served upon counsel of record for all the parties, including the Attorney General as representing the United States and the district attorney of this district, copies of the motion and copies of the petition which set forth the ground for the request to intervene; and acknowledgements from all the parties have been received and will this morning be filed in the case.

The case now comes before your honor on that motion filed as I have just briefly outlined it.

The California Cooperative Canneries, the mover, is a corporation organized under the laws of the State of California, and its membership is composed of a very large number of fruit growers in the State of California.

Through this organized company on a purely cooperative basis, these fruit growers have established in that State, in four of its counties, canneries where they are annually taking care of all the fruit packed and the canned fruits are sold and distributed throughout the United States.

Prior to the time of entering the consent decree in this case the canneries—and I say canneries as covering these petitioners—had built up a business amounting

annually to approximately \$4,000,000. In May, 1919, the canneries, under its then corporate name, but which name has since been changed to California Cooperative Canneries, entered into a contract with Armour & Co., one of the defendants in these proceedings, which contract was to run for a term of approximately 10 years, it being made in May, 1919, but being made to expire in January, 1929.

Generally speaking, the terms of that contract provided that Armour & Co. should purchase annually from the canneries all the canned fruits required in its business, excepting only such as it was obliged to purchase under a contract theretofore existing with another fruit canning company. A method by which from year to year the price paid by the packer was to be fixed was provided in the contract.

Petitioners inform the court that up to the time of the entering of the decree herein which enjoined Armour & Co. from in any manner, at any time, with any person doing any business in the sale or transportation or distribution or handling of canned fruits up to that time Armour & Co. had, under this contract, been taking approximately 52 per cent of the entire annual business of petitioners. That is to say, over \$2,000,000 of its \$4,000,000 of annual business was done with and through Armour & Co. I outline that briefly to show your honor the legal interest, the special interest, the vital interest of the canneries in this matter.

Out of its chronological order let me say to your honor that the result of this decree and in compliance with its preemptory provisions, Armour & Co. advised the canneries subsequent to February 27, 1920, that it would not be in a position to thereafter comply with the terms of the contract, and that the contract was canceled. The contract has a provision in it to the effect that in event of material Federal interference the packer would be relieved from the performance of the obligations of the contract upon it by its terms imposed.

The petition here brings to the court's attention so far as I am advised for the first time, and certainly for the first time formally, the rather remarkable events that preceded the filing in this court of this suit, and preceding the entering in this court of the decree of February 27, 1920. Those events are disclosed in the testimony of the then Attorney General, Mr. Palmer, who appeared before the Senate Committee on Agriculture and Forestry on January 7, 1920, more than a month, nearly two months before the matter was brought into court.

Mr. Palmer, in his testimony before the Senate committee, which is set forth in substance in the petition here, advised the committee that a contract had been entered into between himself representing the United States and the representatives of the so-called five big packers; which contract, with remarkable attention to detail, had already started a proceeding that closed up this suit. The contract was exhibited by the Attorney General on January 7, 1920, and he testified—the exact date does not appear—that it was entered into some time prior to Christmas, in the month of December, 1919.

So that contract was made two months before these papers were filed in this court. The contract provided that there should be filed in such court of the United States as the Attorney General might select a bill against the defendants, all of whom were named in detail, charging violation of the antitrust law. It provided, second, that defendants would then file answers, which answers, said the contract, would deny the allegations of the bill—that they had violated the law in any respect, would assert their complete innocence of any violation of law; would strike down by denial the right of the United States to the relief that was prayed in the bill which was being asked between the packers and the Government should be filed. Would, moreover, says this remarkable contract, contain affirmative matter in defense showing entire lawfulness of conduct of business by the packers. That thereupon, says the contract, and I am still keeping to the contract, the parties would enter into a stipulation, which stipulation would provide: First, that all these defendants stood upon and maintained the absolute truth of all the matter in defense set forth in their respective answers; that they would, moreover, be permitted to maintain their entire innocence of any violation of law whatsoever, but that in order to avoid appearing even to oppose anything that the Government of the United States wanted in this or in any respect, and with the distinct understanding that there would be no adjudication that they or any of them had violated the law in the slightest respect, without any findings of fact being made by any court whatsoever, they would consent to the decree; provided, however, that that decree would solemnly carry into its terms the provisions of the stipulation which, in substance, I have attempted to recite; that the decree should be as follows—and thereupon, saving this court considerable trouble, apparently, in December, 1919, the parties, by this contract duly signed and presented in the Senate in January, 1920, all the provisions that were afterwards incorporated in the decree of February 27, 1920, in this court were set forth.

So that we had an amicable contract between parties who had no controversy with each other, not to bring any hostile action, not to bring any controverted thing, not to bring any case into court, but to bring this stipulated thing into a court and have the court go through the form of signing that which has been called a decree. That was the situation, if the court please, in January, 1920. And then came—

The Court (interposing). You mean that it put this court in the position of acting in an administrative way rather than discharging a judicial function?

Mr. HOGAN. Yes; having nothing justicial before it, really; nothing to judicially act upon.

It was—I will not say funny—but peculiar enough at that time. These facts which I have recited were not, of course, known to the court; and I say so far as I am aware have never been known to the court, certainly have never been brought properly to the court's attention. Individual members of the court might have seen it mentioned in the newspapers, but certainly it has not been properly brought to the court's attention until now. It has not been stated in open court until this moment, and not filed upon your records until April 17 last, when I filed the printed petition which is before your honor on the bench.

I have finished with January, 1920. Then came in this concededly far-reaching case, this case the effects of which it is asserted on both sides are felt on the ranges of the West and on the meal tables of the people of all lands, particularly in the congested districts in the East. In a case of that kind there came, chronologically, the remarkable day, February 27, 1920. I do not know whether your honor has had occasion to look into the dockets of the court of that day, but let me tell you what is disclosed: On that day was filed a bill, a quite lengthy, a quite remarkable bill of complaint. The bill of complaint alleges that the packers and the other defendants had entered into contracts in restraint of trade.

As I now recall it the only thing that approaches a specific allegation of fact in that respect is that the packers, the five big packers, so called, had contracts, understandings, or agreements whereby they parceled out on a percentage purchase basis the entire live-stock output of the country, or certainly so large a percentage of it as to approach if not actually reach a monopoly. In general terms, but not directly as that allegation I have just recited is made: I say, in general terms and more or less by implication throughout the bill it is charged that various other activities had been entered into by the packers for the purpose of aiding them to effectuate this combination or contract in restraint of trade and the ultimate monopoly of the food business of the United States.

As regards the things which for want of a better term appear to have throughout this proceeding and elsewhere been called unrelated commodities, it is simply charged that the packers, although primarily organized to engage in the business of dealing in meats and other products of cattle, had entered into the business of selling vegetables, fruits, fish, canned fruits and canned vegetables and other so-called unrelated commodities. It is not charged and in the nature of things it could not be charged that any contract in respect to these unrelated commodities such as my client deals in operated in restraint of trade, or that it in any way, shape, manner, or form approached or could possibly in the wildest flight of imagination approach a monopoly or violate any law, common or statutory, which had ever been enacted or ever been heard of.

The bill, I assume for the purposes of this discussion, would have withstood a demurrer and motion to dismiss. It is doubtful if it would, but let us assume for this purpose that it would. On that day, simultaneously with the filing of that bill, there were filed voluminous answers by all of the defendants. I suppose that since your honor has been in charge of this case it has not been necessary for you to have been concerned with these answers. I do not know that you have read them. I can state to you in substance what they contained and what they stated, some of them in greater wealth of detail than others. They denied emphatically, in detail and very pointedly, every implication in the bill which charged or squinted at the slightest violation of the law. In specific and clearly understandable terms they met squarely the issue with regard to the so-called contract in restraint of trade whereby their purchases were made on a percentage basis; they deny that any such contract ever was in existence in any manner, shape, or form. And they deny, so that the language could be as comprehensive as any requirement in the bill would require it to be answered, any combination, understanding, convention, or arrangement, remote or near, that could be construed into being a contract in restraint of trade.

Step by step each one of these packers and each one of the individual corporate defendants deny any combination or arrangement between any of the packers; deny that they acted in concert with respect to any matter at all; deny that they dealt in concert in meats or any other commodities; show that while they were not com-

bined, if they were acting in concert at all, that the percentage of business handled by them was in competition with more than 1,000 competitors; the percentage of their combined business, in the meat industry, is less than that done by the other packers in the country. And the percentages in canned goods and the so-called grocery commodities, the business done by each is infinitesimal and, as I recall, that the business done by each does not approximate more than 5 per cent of the business done in those commodities throughout the country.

I quite naturally point out that it is playing with terms to point out to the court or anybody else that there is any monopoly in restraint of trade in the light of those facts.

They meet every single allegation that could have been the basis of an adverse decree. And nothing else coming into the case, they bring it within the jurisdiction of the court. And I am working up to the language that I shall ask your honor to consider here. Suppose the record had stopped there; suppose that had been the end of the record, as your honor well knows; the court can act only when a case is put up to it on which to act. Had the United States put up that case and set it down on any day on bill and answer none of the gentlemen who are gathered here from the four corners of the country who are interested in this matter will dare to assert that there could have been anything but one result, and that preemptory dismissal of the bill. The court would have been without power to do other than that. There was then in this court no foundation upon which this decree, or any part of it, could have safely rested.

But it did not end there. On that same remarkable day, February 27, 1920, there was filed in this court this stipulation. I do not want to overwork the word "remarkable." I wish I had a thesaurus here so that I could get the various words that describe it. Of course, your honor has read it, but let me read its pertinent parts again.

"It is hereby stipulated by and between the parties hereto that the decree herein-after contained may, upon consent of the parties and without any findings of fact, be entered in this cause.

"The corporation and individual defendants, while maintaining the truth of their answers and asserting their innocence of any violation of law in fact or intent, nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, consent to the making and entry of said decree; but this stipulation shall not constitute or be considered as an admission, and the rendition or entry of the decree, or the decree itself, shall not constitute or be considered as an adjudication that the defendants, or any of them, have in fact violated any law of the United States."

That is signed by A. Mitchell Palmer, Attorney General of the United States, and a long list of signers for all these defendants.

I said there was no foundation, then, in the record up to that moment for the decree.

And if I were an extremist, I would suggest that if it were possible to remove a foundation which in fact existed, that removed it.

And then what followed on that same day? Of course, the learned chief justice could not have read the papers which were presented. My recollection is, and my understanding is, that they were all handed in here simultaneously. Of course, the learned chief justice was right in assuming that there was something upon which to found a decree when the parties came in and said it had been stipulated. I can not believe, and I shall refuse to believe, that any member of this court who had read the record, as I have thus far read it and recited it, would have entered such a decree in this case. The court relied, as your honors must rely, upon counsel and a statement of the record. I presume your honor has read this decree, and it has been read to the court, but I would like to read to the court the first few lines to refresh your honor's mind upon the subject again:

"This cause having come on to be heard on this 27th day of February, in the year 1920, before the Hon. Walter I. McCoy, Chief Justice, and the petitioner having appeared by the Hon. A. Mitchell Palmer, Attorney General of the United States, by its district attorney, John E. Laskey, and by Isidor J. Kresel, John H. Atwood, and Joseph Sapinsky, special assistants to the Attorney General, thereto duly authorized, and having moved the court for an injunction in accordance with the prayer of its petition, and it appearing to the court that the allegations of the petitioner state a cause of action against the defendants under the provisions of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplemental or additional thereto, and that the court has jurisdiction of the persons and the subject matter; and the several defendants having accepted service of process and having appeared and filed answers to the petition, which answers are on file in the office of the clerk of this court; and the parties having this day entered into a stipulation in this action, which stipu-

lation is on file in the office of the clerk of this court, and from which it appears, among other things, that while the defendants and each of them maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they, nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States.

"Now, therefore"—

There is no warrant of law that gives this court, or any other court of the United States, power to enjoin these defendants, or anyone else, from doing something, unless there is a violation of the law, or proof that the law is about to be violated in respect to a subject matter that is capable of being restrained by injunction.

The result of that decree has been distorted, if it is a valid thing, a valid circumstance, that large, that important, that valuable business which resulted to the canneries under the contract of May, 1919, has been lost, and therefore having a special and direct legal interest in the matter, the canneries consider that it is proper for it to come here and present this situation to the court, to the end that the court being advised, whether the court determines ultimately that it is proper to permit the canneries to come in formally as interveners—that the court being advised of this situation; being advised that it was led improvidently to impair the obligations of a contract, and to exercise a power in excess of its jurisdiction in a case where there was not presented to the court the material matters in the case of a mandatory record upon which an injunction could rest, will undo that thing which it has done, and vacate the decree under those circumstances.

And I want to show your honor how we came to be invited, if not directed, to come here.

When the effect of this decree began to be felt, the canneries, and I think—although I am not advised, and therefore do not speak with positiveness on the subject—sought to have the parties to the case take up the matter and have either vacated or properly modified this decree.

With respect to the business of my client, if your honor please, I do not think there can be any possibility of anyone successfully denying this assertion, that that decree enjoins the doing by lawful corporations of lawful business in a lawful way. So far as dealing in the commodities my client deals in, that is indisputably true with respect to that decree. So the canneries endeavored to have the parties look into and find out if that was the situation; to consider whether it was accurate to state the case as I have stated it. And they did resort to the Department of Justice of the United States. The Department of Justice, recognizing the seriousness and the grave importance of the question raised, asked the cooperation of the Department of Agriculture and the Department of Commerce in having the matter in all of its aspects sifted and determined for the Government's guidance. An interdepartmental committee was appointed. On that committee there was a representative of each of the three departments which I have mentioned. At the head of that committee, as its chairman, was the assistant to the Attorney General who appeared in this case, and who appears this morning in this case.

The two associations of wholesale grocers, who frankly conceded that they are, with respect to all the public, the most directly benefited by this destruction of the canneries competition, were invited to take part in that interdepartmental hearing. On September 10, 1921, while, if I am correctly informed, the hearings were in progress, and without notice to the United States on the one hand, or to any of the defendants on the other hand, the Southern Wholesale Grocers' Association, whose name is now American Wholesale Grocers' Association, came to this court ex parte, and obtained an order giving it the right to intervene in this case.

The United States, at the end of that month, on September 30, filed in this court a motion to strike the order which gave that leave to intervene, and an objection to the conduct of the case being thus taken, as it was contended by the Government, out of the hands of the Government and placed into the hands of the Southern Wholesale Grocers' Association, or into the hands of any other parties. The case was elaborately argued on September 30 before your honor's associate, Mr. Justice Stafford. The oral arguments were supplemented by written briefs, filed by the representatives of the National Wholesale Grocers' Association and the Southern Wholesale Grocers' Association, and resulted, in November, 1921, in the filing of an opinion by Mr. Justice Stafford, in which he held that in view of the fact that it was contended by the Southern Wholesale Grocers' Association that it was a moving factor in getting the

Government to come into court, that association—and subsequently the National Wholesale Grocers' Association, also asked for intervention—should be allowed to intervene in this court for the purpose of being heard in opposition to any movement to set aside the decree, it being alleged in the petition, as I recall, that the Government, or the packers, were about to come into court and apply for a modification of the decree. I now know, because I have been served with copies of their petitions, that the two associations came into court with no contracts that were affected; no special interest other than the interest that a grocer might have as distinguished from the interest of the rest of the public, but they were allowed to come into this case. I am not criticizing that. The court allowed that—allowed them to come in and intervene. That is passed. But they are vigorously opposing our coming in now.

I don't know exactly what arguments my friends will present to your honor. I am fortunate in having the able argument of Mr. Watkins. I am also fortunate in being able to look over the argument of Mr. Galloway, as well as Mr. Watkins's argument, and they have largely changed places. Mr. Galloway's arguments were a pearl of logic, and based on the soundest of reasons. And in arguments for allowing persons to come in and intervene—such persons as we are, said Mr. Watkins, not to allow them to come in, would be asking a court of equity to close the portals of justice to parties who should be allowed to come in. Thus far I adopt their arguments.

From a time late in 1920, or early in 1921, they had endeavored and endeavored, by their petition in every way, to get the parties to move in this matter; to get the Government to move in this matter. There were hearings after hearings. There is the testimony [indicating] that was taken before this interdepartmental committee, particularly at the instance of the canneries, to show the situation that required the Government to move to undo the claimed harm that this decree was doing.

In January of 1922, apparently the grocers had been informed that the Government had been sufficiently impressed with the need of having this decree vacated, or at least modified, when they came in here and asked to be allowed to intervene. I don't know that it is alleged, but it certainly is implied in this petition—the canneries' petition is here—and they had every reason to believe that long before they were compelled to move on what I shall show you in a few moments was at the suggestion of the Attorney General of the United States himself, they believed that the Government would come in itself. There has been no sleeping on their rights; there has been no laches, but there has been a consistent and persistent effort to have action brought, and to say the least they were lulled in the belief that appropriate action would be taken, until less than two months before this petition was filed.

The interdepartmental committee, of which Mr. Galloway, as I have already stated, was chairman, made a report to the Attorney General; and I am not going to read it, but I wish to call attention to a few points made by the committee in its report.

The committee, after stating that it carefully considered all the testimony and communications received in the matter, together with the arguments and briefs, says it is of the opinion that the following questions are raised for consideration:

"1. Did the court have jurisdiction to render a valid decree in this matter, in view of the allegations in the answers and of the statements in the stipulations and decree that:

"* * * while the defendants and each of them maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered *without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States.*"

The italics, it is said, are the italics of the committee. That is a part of the allegations in the answers and the statements which I have already read to your honor.

"2. Did the court have jurisdiction to grant the relief awarded in this decree, as to unrelated commodities, in view of the contentions that:

"(a) The bill does not allege any violation of law with reference to unrelated commodities.

"(b) The relief granted is an absolute prohibition of the corporate defendants in engaging in the manufacture and distribution of unrelated lines and is not confined to a restraint of the defendants from committing unlawful acts in carrying on this business, which is not of itself an unlawful business.

"(c) The relief granted is broader than either the allegations of the bill or the relief prayed for therein.

"(d) The decree imposed penalties in excess of those authorized by the antitrust laws. The remarks of Chief Justice White, at pages 77 and 78 in the decision in the case of *Standard Oil Co. v. United States of America*, 221 U. S. 1, are urged upon the committee in support of this contention. Such remarks are as follows"—

And then they quote from the court, as follows:

"As penalties which are not authorized by law may not be inflicted by judicial authority, it follows that to meet the situation with which we are confronted the application of remedies two-fold in character becomes essential. First, to forbid the doing in the future of acts like those which we have found to have been done in the past which would be violative of the statute. Second, the exertion of such measure of relief as will effectually dissolve the combination found to exist in violation of the statute, and thus neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about.

"In applying remedies for this purpose, however, the fact must not be overlooked that injury to the public by the prevention of an undue restraint on, or the monopolization of trade or commerce is the foundation upon which the prohibitions of the statute rest, and moreover that one of the fundamental purposes of the statute is to protect, not to destroy, rights of property."

That is the end of the quotation. Then the committee goes on:

"3. Is the decree as to the unrelated commodities proper in view of the fact that the Federal Trade Commission, in the testimony given at the hearing, stated that they have no evidence of a monopoly by the defendants or of a combination or conspiracy against the defendants with reference to unrelated commodities, but that they justify such decree upon the ground of the menace of the potential power of the defendants to acquire such a monopoly (see pp. 2143, 2148, 2149, 2150, 2170, 2171, and 2304 of hearing before interdepartmental committee), and in view of the further fact that the Supreme Court of the United States in the case of *United States of America v. United States Steel Corporation and others*, 251 U. S. 417, decided on the 1st day of March, 1920, after the entry of the decree in this case, at pages 450 and 451 of such decision, says"—

Then this is a quotation:

"The Government, therefore, is reduced to the assertion that the size of the corporation, the power it may have, not the exertion of the power, is an abhorrence to the law, or as the Government says, "the combination embodied in the corporation unduly restrains competition by its *necessary effect* (the italics is the emphasis of the Government) and therefore is unlawful regardless of purpose." "A wrongful purpose," the Government adds, is "matter of aggravation." The illegality is statical, purpose or movement of any kind only its emphasis. To assent to that, to what extremes would we be led? Competition consists of business activities and ability—they make its life; but there may be fatalities in it. Are the activities to be encouraged when militant, and suppressed or regulated when triumphant because of the dominance attained? To such paternalism the Government's contention, which regards power rather than its use the determining consideration, seems to conduct. Certainly conducts we may say, for it is the inevitable logic of the Government's contention that competition must not only be free, but that it must not be pressed to the ascendancy of a competitor for in ascendancy there is the menace of monopoly.

"We have pointed out that there are several of the Government's contentions which are difficult to represent or measure, and, the one we are now considering, that is the power is "unlawful regardless of purpose," is another of them. It seems to us that it has for its ultimate principle and justification that strength in any producer or seller is a menace to the public interest and illegal because there is potency in it for mischief. The repression is extreme but short of it the Government can not stop. The fallacy it conveys is manifest."

And I digress to say that in that case the Supreme Court destroyed even the theory of the Government's bill in this case. The Government was proceeding in that case at the time the Government filed its bill in this case, and the theory upon which it based its bill in this case was destroyed within a month after the Government filed its bill in this case.

Then the committee continues:

"4. It is also urged that the operation of the decree with respect to unrelated commodities is a restraint of trade and commerce in such lines and is, therefore, in conflict with the purpose and intent of the antitrust laws.

"5. The further contention is made that the enforcement of the decree works an injury to the public generally and especially to producers, growers, and canners of fruits and vegetables in that it deprives them of one method of distribution of their products, which method was formerly open to them and entirely eliminates the de-

fendants as one class of competitors, leaving only one other class, namely, the wholesale grocers, to dominate the entire field of distribution.

"6. It is also contended that the decree with respect to unrelated lines is contrary to public policy in that it prohibits and restrains the defendants from engaging in export trade of the farm products of the United States, and would also hinder and prevent the defendants from participating in the organization or operation of such an export company as is authorized by the Webb Export Trade Act.

"7. Is the retention of the provisions of this decree with reference to unrelated commodities contrary to public policy, or do such provisions longer serve any useful purpose in view of the fact that it is contended that the packers and stockyards act, 1921, enacted by Congress since the entry of this decree, confers upon the Secretary of Agriculture full power and jurisdiction to supervise and regulate the activities of the meat packers with reference to the unrelated commodities mentioned in the decree, as well as other matters, and thus fully protects the public interest therein.

"There are several other questions of more or less importance raised and presented in the consideration of this request for a modification, which it is unnecessary to here state.

"All of the questions presented by this request for a modification and at the hearing conducted thereon were strenuously opposed and ably argued by counsel for the wholesale grocers."

And the committee concludes to the Attorney General as follows:

"Your committee has come to the conclusion that such grave and far-reaching questions which affect not only the provisions of the decree with respect to unrelated commodities, but which also strike at the very foundation of the entire decree and are of such vital interest to the public generally are matters which, regardless of what position the Attorney General might assume, must be ultimately decided by the court which entered the decree before any modification could be made, and as those who most strongly oppose any modification (namely, the wholesale grocers) are now parties to this cause, by intervention, which intervention has been sustained by the court since the request for this hearing before the Attorney General was granted, it seems that the way is now open for those who urged a modification and who so earnestly contended that they have been seriously injured by this decree and have never had their day in court to present such questions and contentions in the first instance to the court for decision, without the same being in any way prejudged by the Attorney General.

"Therefore, your committee feels that this request by the California Cooperative Canneries Co. and others for a modification of this decree should be presented in the first instance to the court which entered this decree and not to the Attorney General."

That is signed by the interdepartmental committee, January 20, 1922.

On February 3, 1922, the Senate of the United States passed a resolution which called upon the Attorney General to transmit certain information with respect to this case and this decree to the Senate. And in responding to that resolution the Attorney General concluded as follows—he states to the Senate that he has approved the report of the interdepartmental committee and is transmitting a copy thereof. Then he concludes, as follows:

"On the question of a modification of the consent decree in the case of *United States of America v. Swift & Co.* and others, with reference to unrelated commodities. I have come to the conclusion that such grave and far-reaching questions which affect not only the provisions of the decree with respect to unrelated commodities, but which also strike at the very foundation of the entire decree and are of such vital interest to the public generally are matters which, regardless of what position the Department of Justice might assume, must be ultimately decided by the court which entered the decree before any modification could be made, and as those who most strongly oppose any modification (namely, the wholesale grocers) are now parties to this cause, by intervention, which intervention has been sustained by the court since the request for this hearing before the Attorney General was granted, it seems that the way is now open for those who urged a modification and who so earnestly contended that they have been seriously injured by this decree and have never had their day in court to present such questions and contentions in the first instance to the court for decision, without the same being in any way prejudged by the Attorney General.

"Therefore, I feel that this request by the California Cooperative Canneries Co. and others for a modification of this decree should be presented in the first instance to the court which entered this decree and not to the Attorney General."

Apparently using the language, or paraphrasing the language of the committee's report to the Attorney General. We say that so far as the United States is concerned, that was a public invitation to the Canneries to come here and to present the petition,

and acting upon that invitation or suggestion of the Attorney General, the Canneries very promptly thereafter did present its petition, and it is now before your honor.

I do not want to be understood, in what I am now to attempt, in as brief a résumé as possible, to present to the court, as challenging the general jurisdiction of this court in this or like cases. I concede—of course, I must concede—that the Supreme Court of the District of Columbia has jurisdiction to issue injunctions in proper cases appropriately before it, restraining the violation of the antitrust act. Therefore, that this is a class of case which, if there had existed a controversy, would have presented a justifiable matter within the jurisdiction of this court, and of that I make no denial. Of course, this court had jurisdiction of the parties defendant, such as were made parties defendant, because they entered a general appearance in the case, and, therefore, upon an appropriate mandatory record, this court could have entered any proper lawful decree, and it would have been binding up the parties.

But I do assert, and I think the authorities are uniform in sustaining the assertion, that even though the court has general jurisdiction of a case, or a class to which the case belongs, and of the parties, it can not exceed its jurisdiction; it has no power, if I may use that word not exactly as a synonym for the accepted definition—but it has no power to exercise that jurisdiction, unless there is presented to it a mandatory record for its action in due process of law, upon which to exercise its jurisdiction. And when I come here, either as an intervener, technically so-called, or as a friend of the court, if I may be permitted by its grace to speak in that capacity, or when in any manner, may it please your honor, there is called, by the Canneries, or by myself, or by any other person, to the attention of the court the fact that it has been led to do that which it had no power on the record to do, it then becomes—altogether aside from my motion—the duty of the court, *sui sponte*, to set aside, vacate, and declare null and void and as of no effect whatsoever action it had taken in the absence of an appropriate mandatory record.

It would be trite to say that intervention—and I speak of intervention in its proper sense now—in a court of equity is a matter of right or discretion. He who comes into our courts under the rules and seeks intervention in a case in which he has an especial interest as contradistinguished from all the rest of the public, has a right—and I emphasize that word—has a right to intervene. And here is what our own court of appeals says: He who comes with respect of a matter in which he may not have that strict right to intervene, but which is a right which makes his application appeal to the discretionary power of the court to the end that he may be heard in the matter, should be allowed to intervene, in the proper exercise of a sound discretion by the chancellor.

When the grocers were before the court seeking to intervene, much industry and learning were displayed in presenting to the court the authorities on the right to intervene, on the one hand, and the limitation of that right, on the other—the limitation on the right of intervention. But we do not have to go, if your honor please, for an all-inclusive statement on that subject outside of our own jurisdiction. Particularly enough, and I know it was not for lack of industry, the very latest case in our court of appeals was not cited to the court at that time. That is the case of *Gaines v. Clark*, not yet reported in the court of appeals reports, but reported in 275 Federal, at page 1018. That case related to Senator Clark's operation of property in this so-called Randle Highlands, which your honor has heard something of. Gaines sought to intervene, claiming that he would be adversely affected by the decree if the decree went one way, or favorably affected if it went another way.

This court heard the petition to intervene and denied it. Gaines appealed to the court of appeals. The court of appeals in this decision, which was rendered June 26, 1921, speaking through Mr. Justice Van Orsdel, summed up, I think I am safe in saying, comprehensively practically all of the law on that subject, in the following paragraph:

"Wide discretion is vested in the chancellor in permitting or refusing leave to intervene in a proceeding in equity. But this discretion is not absolute. If the party seeking intervention will not be left without a remedy in the suit in which leave to intervene is sought, the granting or refusal will usually be deemed discretionary with the court. But, if the party seeking intervention shows ownership in or a lien against the res which is the subject of litigation, and he is without remedy elsewhere to protect his right, the court should not refuse leave to intervene."

Then the court quotes from the *United States Trust Co. v. Chicago Terminal T. R. Co.*, 188 Fed. 292, as follows:

"Applications for leave to intervene are of two kinds. In one the applicant has other means of redress open to him, and it is within the court's discretion to refuse to incur the main case with collateral inquiries. In the other the applicant's claim of right is such that he can never obtain relief unless it be granted him on intervention

in the pending cause. In this latter class the right to intervene is absolute, and the rejection of the petition is a final adjudication, and therefore appealable."

That is the end of the quotation, and our court goes on:

"The right is absolute where the intervenor shows an interest in the subject-matter of the litigation, and the refusal to permit intervention would result in the denial of certain relief."

And then the court quotes again, as follows:

"In such cases an order denying leave to intervene is not discretionary with the chancellor, and will generally furnish the basis for an appeal, since it finally disposes of the intervenor's claim by denying him all right to relief."

And there are cases cited.

In a case in which I think I can state the substance of, and will not read, therefore—in the case of the *United States v. Terminal Railroad Association*, of St. Louis, and others, and particularly with respect to the *Evans & Howard Firebrick Co.*, petitioners for leave to intervene, in the 236th U. S. 194, cited and relied upon by Mr. Watkins when he was here seeking intervention. The situation, briefly, so far as necessary to state it to your honor, was this: That was a proceeding under the antitrust laws. It resulted ultimately, after various ups and downs of an almost peculiar character, in the entry of a decree restraining the terminal railroad from carrying on certain businesses. The decree in its terms, in effect, restrained the terminal railroad from doing other than a certain class of terminal business, and particularly restrained it from doing certain classes of business, among others, for this brick company along its lines, which covered about 100 miles within the State where it operated. In the lower court those persons who were affected by being deprived of the use of the transportation facilities of the terminal railroad company by virtue of the terms of the decree sought to intervene after the decree for the purpose of applying for a modification of it, so that there would be stricken from it, either by modification or by court's construction, that portion which restrained the terminal company from doing the transportation business which consisted of carrying the commodities tendered it by the intervenors. The lower court denied the right to intervene. The *United States* appealed to the *United States Supreme Court* for the refusal of the lower court to put into the decree certain provisions which, under the mandate of the *Supreme Court* in a previous decree, the *United States* claimed it had a right to.

The fire-brick company and other industrial corporations doing business along this terminal railroad which was found to have been violating the antitrust law, came into the *Supreme Court* of the *United States* and asked leave to be heard there for the purpose of having that decree modified so that it would not destroy its right to use the facilities of the terminal company. And so the case is not different in principle from the case now at bar. The *United States* opposed the right of the intervenors to be allowed to intervene. Mr. Justice White, held, in 236 U. S. page 194, that the intervention was proper; permitted the intervention, and overruled as unsound and without merit the objections of the Government, and permitted the intervention in effect as prayed by the intervenors. And so, if your honor please, that case is an authoritative precedent for the position that I take here.

In the case of the *Cincinnati I. R. Co. v. Indianapolis Union Railway Co.*, 279 Federal, 356—I will not stop to read it, except to say to your honor that that case held there was not an inflexible rule against giving leave to intervene, even after final decree; intervention may be permitted after final decree; and that a party to a contract affected by a suit has a right to intervene in respect of his contract rights, even after final decree. Of course, I take it my friends will say that it is not proper in this case, in view of the fact that we came in, but not within a year after. The court further held in that case that where the decision adversely affected contract rights and claims of the intervenor, that that was a special legal interest justifying intervention.

Merely for the purpose of showing what our court of appeals has said with regard to what constitutes an interest in the matter, I cite to your honor, and shall very briefly refer to, *Weeks v. Heurich*, 40 Appeals, D. C., at page 56, and also page 61. Your honor probably has seen the Terminal Taxicab Garage on Twentieth Street in this city. I think this case arose before your honor came to our bench, but in other days that flourished as a garden where there was dispensed on warm nights the now historical beverage commonly known as beer, which was concocted at Heurich's brewing establishment. It was a resort for pleasure and for refreshments. With the coming on of the laws that we now live under the Terminal Taxicab Co. sought to establish a public garage there. Under the laws and regulations of the District of Columbia it was requisite to obtain the consent of a certain number of residents within a prescribed area. The taxicab company obtained that consent, and received permission to put its garage there. Weeks filed a bill in this court, saying that while he was within this area, regardless of what others did, this especially injured his prop-

erty, and seeking to have enjoined, as a holder of a special interest in the subject matter, the putting up of that garage. The history of the District of Columbia tells us that after this decision Week's property was bought. This court dismissed Week's petition, on the ground that he did not have such an interest as would permit him to litigate. The court of appeals reversed, and I briefly call your honor's attention to what it said:

"It is urged by counsel for defendant that inasmuch as plaintiff is not here representing the other property owners within the prescribed radius, he must show, as a condition for relief, that he will be damaged specially and irreparably to an extent not sustained by the other property owners within the radius. This contention is unsound. The plaintiff, in his individual capacity, is only required to show that he will sustain special and irreparable damages, not sustained by the general public.

* * * * *

"If the bill is dismissed he will stand in the same relation as the other members of the public who are not parties plaintiff. The only question before us is whether plaintiff is in position to maintain the present suit. He occupies such a position, and it is no concern whether he elects to join with other persons similarly injured or not. The title to the property is not in issue."

I digress here to say that before I take my seat I will submit to your honor, and I will submit it earnestly, that in the situation now presented to the court it may become, and for this argument let me concede that it will become, immaterial as to whether or not, technically, this motion for leave to intervene is granted or denied. I contend that, having served the purpose of bringing directly and unescapably to the court's attention the excess of its jurisdiction, the lack of its power at the time when upon the record then presented the decree of November 27, 1920, was entered, it becomes the judicial duty of your honor, regardless, I repeat, of your formal action upon my motion, to enter an order vacating that decree. Then if there is hereafter presented, either in this same cause upon the pleadings which then will stand, which will be merely the bill and answers, or in some independent proceeding properly prosecuted by the Government or any other persons who under the law have a right to move, a case where any decree against any of these defendants may on a proper showing be lawfully entered, let the parties then, in that proceeding, or in these proceedings properly conducted, meet it. My point now is that when we bring this thing to the attention of the court the duty of the court is unescapable and clear.

The Court. Mr. Hogan, does your petition allege that in the event this case be set aside your client would be benefited?

Mr. HOGAN. Oh, yes, sir.

The Court. And do you claim that the packers would not continue to perform the stipulation which they entered into?

Mr. HOGAN. We allege in our petition that if this decree is set aside we shall immediately be unable to resume our business with Armour & Co. and that we are so advised; that we have—I do not know that we have alleged it, but we have that agreement, that we can not go ahead and do this business. We allege in our petition, and we set up with, perhaps, too great a wealth of detail, the remarkable distributing facilities which the packers have, which are now limited to meats, which we say—of course that may be a fact which the court might at some time look into in some other proceedings—that no one else has. We allege that we were enabled by those distributing facilities which this contract gave us, to the extent of over one-half of our annual pack, to reach the marts of trade in this country, which are now closed to us. And we say you will do that if you will open it.

In the case of *Armour v. Fleming*, 1 Appeals, D. C., I read from page 533. The applicability of it your honor will quickly see. The court of appeals said this:

"It is greatly to be regretted that, after all the time and labor that has been expended in this case, and the mass of testimony that has been taken, the court, as a court of equity, notwithstanding the express desire of both parties for a final adjudication of their entire controversy in this suit, should feel itself constrained to decline to exercise jurisdiction. But consent can not give jurisdiction, and the allegation of fraud and collusion in the bill, unsustained by proof, can not give jurisdiction."

Let me stop there—although I dislike to stop while reading—and call attention to the limitations in this decree, which does not go further than to say that it appears from the allegations of the petition that the plaintiff is entitled to relief, without more, overlooking entirely the fact that at that very moment that entitlement was destroyed by the uncontroverted, unanswered, undisproved denials of the answer. And in this case of *Armour v. Fleming* the bill showed jurisdiction, just as I may concede for the purpose of the hearings here, the bill in the instant case showed jurisdiction and showed the right to exercise the power conferred by law, if there had been no more

and if there had been either denial—which is tantamount to admission—admission or proof. [Continuing reading:]

"But consent can not give jurisdiction, and the allegation of fraud and collusion in the bill, unsustained by proof, can not give jurisdiction: and the maxim invoked by the appellant, that when equity has acquired jurisdiction of a cause upon equitable grounds, it will proceed to administer complete relief, even though the relief should be such as would properly come from a court of common law, is not applicable to this case. A court of equity does not acquire jurisdiction by the allegation of an equitable ground of relief in a bill of complaint. If it did, it would be in the power of any plaintiff to close permanently the doors of all the courts of common law. It would not require even as much as consent of parties to give jurisdiction. Allegations and proof both are required for that purpose, and when the proof fails the jurisdiction fails. It is only when a party shows himself entitled to some part at least of the equitable relief which he seeks that a court of equity will proceed to administer common law relief also."

In *United States v. Walker*, a case which went up to this jurisdiction and is reported in 109 U. S. 258, the facts as I recall them—and, your Honor, as you have occasion to refer to any of these authorities will probably read them yourself—were these: Let me say that the proceedings were in the probate court—at that time called the orphans' court of the District of Columbia. There was not any question at all but that the probate court had jurisdiction to administer the estate of the deceased. There was not any question of doubt at all but that that same court had power to remove executors or administrators upon a proper showing, and to appoint administrators de bonis non. In this *Walker* case a showing was made to the court, in appropriate proceedings, that the administrator had been guilty of conduct warranting his removal from office, and he was removed. There the court undoubtedly had jurisdiction in that class of cases, and undoubtedly had jurisdiction for this purpose.

The court thereupon appointed an administrator de bonis non, and ordered the removed administrator to turn over to the administrator de bonis non assets in the hands of the administrator, specifically a certain sum of money which had been collected by the administrator prior to removal from the United States, as a result of a prosecution by him, representing his decedent's estate, of a claim against the United States. The removed administrator failed to make that return, and a suit was brought in this court—it is the *United States ex rel administrator de bonis non*—to recover that money. The defense was—I quote it substantially and not technically—the lack of power of the probate court to make that order, and there was a demurrer to the plea to that effect. The demurrer was sustained, and the case eventually reached the United States Supreme Court.

The Supreme Court held that undoubtedly the probate court had power to do the things which I have said it did, up to a certain point; that it exceeded its jurisdiction when it ordered the removed administrator to turn over to the administrator de bonis non the administered assets, that it was limited to nonadministered assets; that when that claim was reduced to money in hand that became an administered asset and it was beyond the power and in excess of the jurisdiction of the court to pass an order, and it was subject to that attack, even collaterally.

I cite that case to show your honor that it is not a question of whether the court had that plenary, general jurisdiction in this class of cases. The court can not exceed its power because it has a general jurisdiction.

Now, I do not know whether this is an analogy or not; but let us see whether it is, just to test, by way of illustration.

If in this court John Jones were indicted by a grand jury's presentment properly brought into court, of murder in the first degree, and if the record showed an indictment and arraignment and the plea of not guilty, but a statement of Jones that despite his plea of not guilty, not desiring to put himself in opposition to the Government—he liked the district attorney and he wanted him to make a good record—he was not going to interfere with—well, I will not say with the political ambitions of anybody, but he was not going to oppose the Government, and therefore, despite the plea of not guilty on the record, he would submit to sentence. Would the judgment of this court be other than void? Concededly the court has jurisdiction over the offense of murder in the first degree committed in the District of Columbia, concededly the court has jurisdiction of the person, but could it on that mandatory record have entered that which would have constituted anything other than a void decree?

There might be a distinction between those two cases, and I shall await my friends' bringing it forward. If I am right in my law-school understanding of the necessity of having as a foundation for a judgment at law or a decree in equity that thing which the books call a mandatory record, and that without it the judgment is utterly invalid, then there can be no answer to that analogy.

We might take a more far-fetched illustration, where the court directed its clerk to enter a judgment of guilty of murder in the first degree and a sentence thereon from one who had not been indicted at all or tried, and then set up as a defense to that action that no one can question the invalidity—except the one attempting to defend it at the time—of the statement that the court had jurisdiction in that class of cases.

The COURT. Suppose, Mr. Hogan, that a bill had been filed by A against B for specific performance of a contract, and B filed an answer denying all the allegations of the bill, and then came into court and said, "I consent to a decree for specific performance?"

Mr. HOGAN. I do not think there is any record there upon which that could be predicated. I think you would have to have an admission of the facts or you would have to have a default—which is tantamount to admission—or some proof. In other words, I do not believe that the courts ought to be used for that sort of purpose. If they have contracts to make or arrangements to make between themselves, they have no right to come in and use a court to give it a judicial sanction. And I say that is so, may it please your honor, if that action of B affects vitally other persons, as in this case it is shown to do. I do not think courts are usable for that purpose. I do not think that is what was meant when the Constitution of the United States provided for the setting up of judicial tribunals to hear and determine causes or controversies.

Now, if your honor please, I am going to close with reference to two cases only. One is *In re Columbia Real Estate Co.*, 101 Federal, 965—and let me digress from that case to answer your honor's thought by saying, in connection with that consent which was stipulated by both parties and incorporated in the decree, that that was not an adjudication of the fundamental, underlying facts upon which the decree would have to be based, and would emphasize my answer.

The COURT. That would seem to me to make a very strong distinction.

Mr. HOGAN. But here you have got something more. As I said in the beginning, had we stopped on the bill and answer, I made my contention. But we did not; we did not have to stop there. We are beyond that and beyond that thing which I say now is—using your honor's language—a strong distinction. We had a stipulation which took away from the court the power to do the thing which in this instance depended upon statutory authority. It was a remarkable stipulation. It was a decree that, I venture to say, is without any analogy in judicial history. The stipulation and the decree gave to the defendants a clean bill of health as being non-law violators, as asserting, and it being stipulated that they would have a right to continue to assert, their lily-whiteness, but it further provided that the court should solemnly say there should not be an adjudication: "You do not admit the necessary fact, and we do not adjudicate the essential prerequisite."

In that *Columbia Real Estate Co.* case there was an adjudication in bankruptcy. Thereafter a petitioner sought to intervene, claiming to be a creditor and seeking to have the adjudication set aside for want of jurisdiction of the court upon the record as it had been presented. The court found that the petitioner was not a creditor of the bankrupt and was not entitled to intervene in the proceedings, but nevertheless because it raised the question of the exceeding of the jurisdiction, permitted the petitioner to be heard, permitted a stranger to the record to be heard, because, said the court, "Want of jurisdiction is a question that the court should consider whenever and however raised, even if the parties forbear to make it, but consent that the case may be considered on its merits."

That thread runs all through the decision. Your honor has, perhaps, read it in dozens of cases. I have excerpts from just a few. The United States Supreme Court, for instance, in *Wetmore v. Rymer*, 169 U. S. 120, said:

"But * * * the trial court is not bound by the pleadings of the parties, but may, of its own motion, if led to believe that its jurisdiction is not properly invoked, inquire into the facts as they really exist."

■ So here we have brought to the attention of the court these facts as they really exist, and we say the court's duty necessarily follows from the presentation of those facts.

In *Metcalf v. City of Watertown*, 120 U. S. 587, the Supreme Court said:

"We are not, however, at liberty to express any opinion upon the question of limitation, if the court, whose judgment has been brought here for review, does not appear from the record, to have had jurisdiction of the case. And whether that court had or had not jurisdiction is a question which we must examine and determine, even if the parties forbear to make it, or consent that the case be considered upon its merits."

In *Hartog v. Memory*, 116 U. S. 588, the court said that if the court has been imposed upon to exercise that which is in excess of its jurisdiction, when that result appears to the court, the court's duty is to vacate the judgment of the court, which, were it not for the imposition, it would not have entered.

I said some time ago in this argument—which has proceeded further than I had intended—that what the court's action in this matter should be is—and I of course respectfully submit it—obvious and plain, now that the facts have been brought to its attention, irrespective of the court's judicial action upon my motion. In support of that I want to call your honor's attention to the case of *Kreider v. Cole*, 149 Fed. at 647. That case was in the Circuit Court of Appeals for the Third Circuit, and was heard before Dallas, Gray, and Buffington, Circuit Judge Gray writing the opinion. It was a case where the question of the court's jurisdiction or power in the premises was raised by an intervenor. The facts were these—and I state them substantially, subject to correction. I am sure all the gentlemen know the case.

A trust company in Pennsylvania and a suburban street-railway company, operating altogether in Pennsylvania, the former having in some way financed the latter, were desirous of having the railroad company put in the hands of a receiver. They wanted a Federal receiver. There was no ground known to these parties who were desirous of bringing about this result for the jurisdiction of the Federal court. When the case started, however, that was not apparent. A man named Cole, a citizen of the State of New Jersey, filed in the Federal court in the State of Pennsylvania a bill. He set up as his right to file that bill his ownership of bonds secured by mortgages issued by the Philadelphia & Eastern Railroad Co., the default in the payment of interest thereon, the requirement for the protection of creditors, and his residence in the State of New Jersey, and the railroad's residence in the State of Pennsylvania, as giving that diversity of citizenship which would make it appropriate for the Federal court in Pennsylvania to act upon the bill.

The railway company immediately answered, admitting the allegations of the bill and consenting to the granting of the relief there prayed. The trust company was appointed receiver. It took over the administration of the affairs of the street-railway company. Later on Kreider came into court, and he alleged that the ownership by Cole, a resident of New Jersey, of bonds which gave him a right to move was merely colorable collusion. The court granted a commission to ascertain the facts on that contention.

While these facts were being looked into, a citizen of the State of Wisconsin and a citizen of the State of Ohio severally filed petitions for leave to intervene, setting forth that they were creditors of this railway company and owners of its bonds, that they were nonresidents of the State of Pennsylvania, and they adopted the allegations of the bill and asked that the court continue to exercise its jurisdiction over the case, to the end that this administration of the railroad's affairs might be had through the Federal court proceedings.

Upon the coming in of the report of the commission with respect to Cole's right—which I will admit for the present, until we get to the court of appeals—the district court held that Cole was shown to have been the owner of the bonds, that while it was true that Cole had received those bonds in order to enable him to bring this suit there were no strings attached to the conveyance of the bonds, that he was under no obligation to return them, that they were given to him, that they were his, and he was a property owner in respect of them, and therefore he had a right to bring this suit, and quoted the language of certain cases in the Supreme Court to the effect that the mere fact that the ownership had been acquired in order to give one a right to go into a Federal court would not deprive that court of the right to exercise jurisdiction.

Appeal was taken by Kreider to the circuit court of appeals, and the circuit court of appeals reversed it. It set out at length the testimony of Cole himself, and then that the situation, an interesting one, although perhaps not important enough to recite at length—was this: That the attorneys for the railroad company and the trust company, desiring to bring about this situation, had gone over to a correspondent attorney's office in the city of Camden, just across the river from Philadelphia, and had given two bonds to a 22-year old stenographer named Cole in that office, and said, "These are yours. We give them to you in consideration of your signing this bill. You do not have to return them. They are yours. They put you in position to state that you own them, and they put you in a position to sign this bill, and ultimately if there is any value in these bonds the value comes to you." The circuit court of appeals said that that was trifling with the court's jurisdiction, and that that was a different question from a case where one might acquire property for the purpose of getting the right to intervene, and that this was a purely collusive transaction, and the court would be closing its eyes to the facts if it did not penetrate the veil. And the court held that, irrespective of the question of technical intervention, when Kreider brought the real situation to the attention of the court it was duty of the court *sui sponti* to act and to vacate the decree appointing the receiver. And the court held further, following a long line of decisions in that regard, that those Wis-

consin and Ohio intervenors could not be permitted to intervene, because the jurisdiction of the court depended on the situation as it existed originally, and it could not be bolstered up or established by intervenors afterward coming in, even though they might originally have had the right to institute the case.

Now, there was a class of cases, of course, in which the court would have had general jurisdiction. The Attorney General well said, if your honor please, in his report to the Senate, that grave and far-reaching questions are involved in these proceedings. At present the multitude of facts and economic questions as to whether or not public policy, generally speaking, and the policy of the law as it is set forth in the various antitrust acts require or are best to be served by an injunction against the packers in respect of any of the things complained of in the bill that was originally filed in this case—at present, I repeat, those are not before the court. They are entirely beside the purpose here. The one thing before the court—it may be there are two things before the court, but primarily the thing which really, strictly speaking, is before the court is simply whether or not your honor will grant the motion of the cannery for leave to intervene, to the end that it may move then for the vacation or a modification of the consent decree. Therefore it may be said, altogether aside from any economic considerations, or altogether aside from whether we are right or wrong in our contention that a decree as to the unrelated commodities never ought to be entered in a case of this kind—aside from that, the secondary thing which is here before your honor this morning, which your honor may make the primary thing, is the showing that the decree when it was entered was invalid, that there is no record upon which it can be founded, that nothing has occurred or can occur to give it validity, and that it ought, now that the court has had presented to it the situation, to be vacated by the order of the court.

ARGUMENT OF MR. HERMAN J. GALLOWAY ON BEHALF OF THE UNITED STATES.

MR. GALLOWAY. If the court please, I was somewhat at a loss to know just what the issue was here which we were supposed to discuss this morning when we digressed, or rather when Mr. Hogan digressed, to such an extent upon the jurisdiction of the court or the power of the court to exercise the authority which it has in this case. But Mr. Hogan has somewhat clarified the issue, I may say, in accordance with the views which I had, when he said that the only issue now before the court is the right of the California Cooperative Canneries to intervene. That right, if the court please, we believe is a question of whether they have a legal right. Is there any right in the law for these proposed intervenors to come in here, in view of the interests which they allege?

We had this same question discussed, as Mr. Hogan has said, when the Wholesale Grocers asked leave to intervene, and the Government at that time took the position that they had no right to intervene. We urged that as strenuously as we could, we filed briefs upon the question, and the court disagreed with our contentions. So with all due deference to the court's opinion, I do not feel inclined at this time to reargue that matter or to recite the authorities which we collected in those briefs which are now on file in this court in that connection.

THE COURT. Unless you wish to show that there is some difference in principle, Mr. Galloway, I shall follow the ruling of Mr. Justice Stafford.

MR. GALLOWAY. I expect to follow that out, your honor, in just a moment. However, in order to make the point which the court has now suggested, I do wish to recount the theory upon which we contended that the Wholesale Grocers had no right to intervene. Our position there was that this is an antitrust suit. It is a suit which is brought under the law authorizing the Attorney General, through the district attorney, to bring it representing the public. The Sherman law is specific on that. It provides:

"That the several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act, and it shall be the duty of the several district attorneys of the United States in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition, setting forth the case and praying that such violations shall be enjoined and otherwise prohibited."

That is the nature of the proceeding here.

THE COURT. Mr. Galloway, I consider that the action of Mr. Justice Stafford is the law of this case, so, unless there is something which you wish to argue which distinguishes this from the former action, I hardly think it is necessary to go into it.

MR. GALLOWAY. I do wish to state our objection, if the court please, with reference to this one point, that the interest of the California Cooperative Canneries here is the

interest of one class of the public, just the same as the interest of the Wholesale Grocers was, and that the Attorney General in this cause represents the public interest and represents it as provided by the statute, and that they have no right to come into this court and ask to intervene to represent their own interests.

The interest which they allege in this petition for leave to intervene is twofold, based upon a contract. The contract provides for the purchase by Armour & Co. of their requirements in canned fruits. It provides for no specific amount, for no stated price, the price to be determined according to quotations which may subsequently be ascertained. And there is a serious question upon that alone, as to whether this is a valid contract. However, I rely not upon that question but upon the copy of the contract, which says that—

"If either party hereto finds itself unable to perform any of the obligations of this contract by reason of fires, strikes, or other causes beyond its control, the performance of the contract in such respect is to be suspended until a reasonable opportunity is afforded to remove the cause of such suspension, and in case governmental action materially interferes with the performance of this contract by second party, then and in that case, it shall have the right to cancel and terminate this agreement by giving 60 days' written notice to first party of its intention so to do."

In other words, in the event of just such an action as has occurred here, Armour & Co. has a right to set aside and cancel this contract. Therefore I say to your honor that the only rights which the California Cooperative Canneries have here are the rights which they have as a class or as members of a class of the public who have been using the distributing facilities of the meat packers in distributing their products. That right is to be represented by the Attorney General of the United States, as is expressed in the statute; they have no right to intervene here and come in and attempt to represent themselves in this action.

The petition asks two things here: First, the setting aside of the decree in its entirety; and, secondly, the modification of the decree so as to permit the meat packers to handle the unrelated commodities.

The modification, which is the second point that I have mentioned, depends largely upon a technical question, which in turn involves a question of fact. They do not seek to raise that now. That is not an issue here. The only right is their right to intervene, so far as that is concerned.

The other question, the right to set aside the decree entirely, turns, as I see it, upon a question of law. They do go into and argue that.

But my contention, Your Honor, is that both of those questions depend upon whether or not they have any right to come into this court and raise such questions. Their right and interest, as I have said, depends upon the interest which they allege in their petition, eliminating the contract, which I feel is eliminated by the quotations from the contract itself. Their right is simply the right of a class of the public to come in and intervene.

I wish also to call the court's attention to the possibilities of such an intervention as this. If the intervention is allowed and they are permitted to come in here—this is a consent decree—there can be no modification of the decree without the consent of all of the parties, the original parties to the decree. They have not as yet consented. That is a question of law, I presume, whether the court has any power to modify it without such consent. If we should go into the economic question and the questions of fact we would be driven into a long and tedious trial. We would have practically a retrial of the packers' case. The proposed intervenor here would wish to take the testimony of the California Fruit Growers; perhaps of the rice growers in Louisiana; perhaps of the pea packers and pea growers in Wisconsin; and perhaps of the Maine sardine packers in Maine. So the entire four corners of the United States would be covered. I say this because of the fact that I know and have had an indication of the position of some of the parties upon this question.

In addition to that, the Wholesale Grocers here claim a membership in every State of the Union, and I assume that any of those members would be willing witnesses for such an association. So you can see the ramifications of this. You can see the possibility of being engaged in a long, tedious, and tiresome trial, the end of which would be: Can there be any modification of this decree without the consent of the parties?

That is the law question, that is the question which we have to decide ultimately. Therefore I say that the question is not upon these economic questions, not upon the question of the jurisdiction of the court, but have they a right to intervene?

Now, they have cited some cases here which, they claim, show the right of the parties here to intervene. They have cited, for instance, the case of the *United States v. St. Louis Terminal Railroad Association*. That case was discussed in the petition of the Wholesale Grocers for leave to intervene. While on the decision in that case

it might be contended that it is an authority for a right to intervene in such a case as this, at the same time an examination of that case and the case which immediately follows it shows that it is no such authority. I wish to read what I said in my brief in that connection upon that case:

"A full-investigation of the record in that case will show this, that the suit was brought in the first instance by the United States for an injunction, and an injunction was granted. Before that the circuit court of appeals, or a court composed of the circuit judges who were hearing it, had a division of opinion as to the case. They referred the case, on a certificate of division, to the Supreme Court of the United States. The Supreme Court remanded the case, with the request that it be disposed of in accordance with the law. The lower court dismissed the case, because the division of opinion still existed.

"The case then went to the Supreme Court of the United States on the dismissal, and they sent it back to the lower court with a mandate as to the decree. The decree was entered, and after the decree was entered the Government was dissatisfied with it and prayed an appeal.

"Before that the terminal association had filed a petition for modification, and after the appeal these intervenors asked leave to file and asked that the same modification be made which the defendants had requested. In that status the court permitted the filing of the petition.

"The case then went to the upper court. While it was pending there the intervenors filed a petition for intervention there, and the court, in the main decision, decided the question of the intervention in the Supreme Court and in the lower court."

And I may say, by way of digression, if the court please, that the petition in that case shows that they asked one of two things—that they be permitted to intervene in the case or that they be permitted to come in as friends of the court.

Mr. HOGAN. We do that here, Mr. Galloway.

Mr. GALLOWAY. Yes, they do that here.

The Supreme Court decided their right to intervene there, but decided they should have been denied the right to intervene in the lower court, because of the state of the record, and it did not decide the right of these intervenors to come into the lower court and intervene in a question of this kind.

And I may say to your honor that that is the only antitrust case which, I believe, has been cited in this connection. There are no others that I have been able to find where the question of intervention has been presented and decided. That is the distinguishing thing to my mind between this case and the general run of interventions; namely, that the statute requires this action to be brought by the Attorney General to protect the public interest; it is not to single out and protect the rights or interests of any particular persons.

The COURT. It might be said that the intervenors here ought to be allowed to intervene solely for the purpose of determining whether a decree that is void in whole or in part is being entered, or whether it would have any right to go further upon the merits of the case.

Mr. GALLOWAY. Upon that question, your honor, I wish to present this contention: We have here a decree which has been entered, a decree upon which the Government has expended a great deal of time and money in carrying it out, a decree which the defendants have carried out in many respects and in the carrying out of which they claim to have suffered great losses. They have changed their positions. Some of the parties have fully carried out the decree; others have not fully carried it out, but have done many things which have changed their position, no doubt to their injury and damage.

Further than that, with the interest which these petitioners have, far-fetched as it is and being only that, as I contend, as a member of the public, are we going to permit those people, when that situation exists, to come in here and upset what the court has done, what the Government has done, and what the defendants have done in the way of carrying out this decree when none of the defendants nor the Government is complaining? Are we going to permit that? Are we going to permit a person of that sort, so to speak, a member of the public, to come in and do this thing?

If the court please, what will be the result of this? The decree might fail, so they contend. We are not concerned with that now. Have they a right to come in and do this? Are we going to open the doors of this court, or of all courts, for any party with an alleged grievance to come in and upset or attempt to upset all of the consent decrees in antitrust cases, which have been rendered all over the United States after a long lapse of time? Are we thus going to render uncertain, insecure, and susceptible to attack at any time by any person all of those decrees which the statute authorizes the Attorney General to make in the public interest?

Further than that, what would be the effect of this case? It would be the opening of the door, the letting down of the bars, not only to these people but to every other

person who might claim a similar interest. I contend that they have no more interest than any other member of the public. It would open the doors perhaps to the stock growers' associations, to the farmers' associations, to the sardine packers of Maine, the rice growers of Louisiana, and, last but not least, if your honor please, to the consumer of meats and foodstuffs in this country who, it can not be questioned, is seriously affected by any interference with the trade and commerce in meats and foodstuffs. Are we going to permit those people to come in? Are we going to throw wide open the doors and say, "Come in. The Attorney General is authorized by statute to represent the public, but you may come in and speak for yourselves."

That is not the law. That is not the theory of the law. If the court will look at the case of *Minnesota v. Northern Securities Co.* it will see that the theory of the antitrust law is that the Attorney General should represent the public interest and should speak for the public.

I do not wish to burden the court with a discussion of the authorities at this time upon the question of consent decrees, upon the question of the jurisdiction of the court, upon any of these questions in fact, as I understand that perhaps the same proceeding will be followed here as was followed by Mr. Justice Stafford, that we will submit briefs upon those questions.

THE COURT. Yes; I should like to have that done.

MR. GALLOWAY. I think it would save the time of the court in discussing those authorities now.

However, I do wish to call further attention at this time to the case of *Weeks v. Heurich* in 40 Appeals, D. C., which Mr. Hogan has cited, and to call the attention of the court to the fact that that did not involve an intervention; that involved merely the right of a person to maintain the suit in the first instance.

But the fundamental point in our opinion is, Your Honor, that none of these cases are antitrust cases. An antitrust case of this kind stands in a peculiar and particular position, namely, that of a suit, not to protect the private interests of any person or class of persons, but to protect the interests of the public as a whole, and that the law charges the Attorney General with that.

And there is reason in that. The *Northern Securities* case, which I have mentioned, refers to the reason; that the purpose of that was not to have isolated cases here and there over the country, brought by diverse interests, with diverse motives to enforce this act, but to have one head which should determine the policy and work for uniformity in carrying out the purpose and plan of this law. That is the essential thing here, Your Honor, and that is the essential thing which precludes anybody with an interest no greater than that of a class of the public generally to come into this court and ask for leave to intervene in this cause of action.

MR. HOGAN. Mr. Galloway, before you take your seat, with the court's permission, do you mind if I ask you one or two brief questions?

MR. GALLOWAY. Surely not.

MR. HOGAN. First, with respect to what you said regarding the Attorney General being the one to act. You admit, do you not, Mr. Galloway, that Attorney General Daugherty in his report to the Senate last February said, "I feel that the request by the California Cooperative Canneries for a modification of this decree should be presented in the first instance to the court"?

MR. GALLOWAY. That is a correct statement, if the court please, and we feel that that is a correct position.

MR. HOGAN. One other thing, Mr. Galloway. You were, of course, chairman of that interdepartmental committee?

MR. GALLOWAY. I was chairman.

MR. HOGAN. You concede, do you not, speaking for the Government, that so far as my clients are concerned, they acted with a great deal of earnestness to try to get this done by the Government?

MR. GALLOWAY. We are not questioning that at all.

MR. HOGAN. Third, I understand you to say—and I just want to be corrected if I am wrong—that your contention now is—you admit, in fact, that the position of the California Cooperative Canneries is no different in principle from that of the Wholesale Grocers' Association?

MR. GALLOWAY. Why, the one is to tear down the decree, and the other is to uphold it.

MR. HOGAN. I mean as to the right to intervene.

MR. GALLOWAY. As to the legal right to intervene, the same argument would apply to both. But the additional argument might apply to yourself, that there is a distinction between their right to intervene to uphold a decree and your right to intervene to tear it down.

MR. HOGAN. But you would not say that the legal position is any weaker?

Mr. GALLOWAY. I would not say the legal position; I say that the same argument applies to them, as a generality, and the additional argument applies to yourself.

Mr. HOGAN. Lastly, Mr. Galloway, what you said about the State of Minnesota against the Northern Securities Co. case to Judge Bailey here was precisely what you said in opposing the Wholesale Grocers?

Mr. GALLOWAY. Precisely what I said.

Mr. HOGAN. And what you said about the Terminal Railroad case in 236 U. S. and the distinction you seek to make here is precisely what you said there?

Mr. GALLOWAY. Precisely; yes.

I just wish to make one further statement in connection with the position of the Government in what Mr. Hogan has seen fit to term an "invitation" for them to come here and intervene. The Government can not invite anybody into court. The right is determined regardless of anything the Government might say. Whether or not you have a right to come here is a question of law, and what the department may say can not change that.

Further than that, the situation at this time and at that time, if the court please, as was stated in that memorandum, regardless of what we do—this is a consent decree, mind you, but, regardless of what the parties might consent to, the court has indicated that it is going to hear these wholesale grocers—it is going to hear what they have to say and decide the matter for itself. We are not complaining of that. We think that is the proper thing to do. But in that view of the case we do not feel that the Attorney General ought to have said in that memorandum, "They are entitled to a modification," or "They are not entitled to a modification." We should not prejudice their case until the time comes when the case is presented in court.

The COURT. As I understand, it is alleged in this petition, in substance, that there was a prearranged agreement by which suit was brought, by which these answers were filed, and by which this decree was entered, prior to the filing of the bill?

Mr. GALLOWAY. If the court please, I was not in the Department of Justice at that time, but I was familiar with that. You are correct in that statement.

The COURT. It might be that that statement would enable the court to pass upon the validity of this decree without taking any evidence upon that.

Mr. HOGAN. There is no denial of that, is there?

Mr. GALLOWAY. I believe the Government would be in a position—

The COURT. I do not ask you now to decide about that, but that could be stipulated.

Mr. BREED. That already appears by the stipulation itself.

Mr. GALLOWAY. Yes. We have no denial to make that the facts with respect to the proceedings leading up to the entry of the decree are not correctly alleged in the petition.

Mr. HOGAN. You will agree, will you not, Mr. Galloway, that I have set out in this petition the agreement between the packers and the Government which Attorney General Palmer presented to the Senate?

Mr. GALLOWAY. Oh, yes; there is no question about that. But for the purpose of this argument, your honor, I think these facts are admitted anyhow.

The COURT. What I had in mind was, if I should decide that that petition should be filed, whether I should go further and consider that question.

Mr. BREED. If the court please, might I suggest one question to the court to ask Mr. Galloway? I understand Mr. Galloway to state that, this being a consent decree, he is very doubtful whether under the law the decree can be modified without the consent of the parties thereto, the plaintiff and the defendant. In order to expedite the matter I would like to inquire whether the parties would or would not consent to the petition here to vacate this decree?

Mr. GALLOWAY. I think that is a little in advance of the situation. We have not consented, nor have any of the defendants consented.

Mr. BREED. Are any of the defendants in court who have—as I understand, they have all received notice of this application. Is that correct?

Mr. HOGAN. That is entirely correct, sir—everybody.

Mr. BREED. It seems to me that one of the points would be clarified somewhat by knowing whether the parties hereto consent to the modification of this decree or the vacating of this decree as prayed for in this petition.

The COURT. Would not the proper procedure have been for them to seek to get that consent when it was filed?

Mr. BREED. I think so.

Mr. HOGAN. My friend would have liked to have me supply him with something like that, and then he would have said "collusion."

ARGUMENT OF MR. M. W. BORDERS, ON BEHALF OF MORRIS & CO., AND OTHERS.

Mr. BORDERS. If the court please, I would like to make a brief statement on behalf of my clients, who are defendants in this case, and I can conclude it—I see it is now 12.30—

The COURT. How long do you wish, Mr. Borders?

Mr. BORDERS. I should think I could conclude in five minutes.

The COURT. Very well.

Mr. BORDERS. In making this statement I appear for Morris & Co., a Maine corporation; Morris & Co., a New Jersey corporation; Morris & Co., a Louisiana corporation; Morris & Co., a Pennsylvania corporation; Morris Packing Co., a Maine corporation; Joseph Stern & Sons, a New York corporation; Brooklyn Beef & Provision Co., a New York corporation; Condit Beef & Provision Co., a New Jersey corporation; Corwin-Wilde Co., a Massachusetts corporation; Donnelly & Co., a Massachusetts corporation; Chamberlain & Co., a Massachusetts corporation; J. M. Wilson Co., a Massachusetts corporation; Middletown Beef & Provision Co., a Massachusetts corporation; National Hotel & Supply Co., an Illinois corporation; Glenn & Anderson Co., an Illinois corporation; Nelson Morris, Edward Morris, Charles M. Macfarlane, Louis H. Heymann, and Harry A. Timmins, defendants.

I appear for these parties that I have named, and no others, and in appearing and in making this statement we are not conceding that anyone has the right to intervene in this case.

May it please the court, as this is a consent decree, it can only be modified by the consent of all the parties thereto, and as two different interests are seeking to intervene in this case, one to modify the decree or set it aside altogether as invalid, and the other to sustain the decree, it is only fair to this honorable court, to these interveners and all parties interested that the position of above defendants should be made plain. Accordingly, these defendants would state their position as follows:

When the consent decree was entered in this case, on February 27, 1920, these defendants in open court and as a part of the proceedings made the following statement:

"These defendants have consented to this decree and to give up certain businesses not because of guilt, for they have not violated any law, but that the American people may be assured that there is not the remotest possibility of a food monopoly by the packers; that the constant criticism and agitation leveled at this vital industry, which is seriously injuring not only it but the people generally, may cease; that better understanding and feeling between this industry and the public may be reestablished; and that conditions in this uncertain and dangerous period of reconstruction may be stabilized and the efficiency and benefits of this great industry dealing as it does in a prime necessity of life, a highly perishable product, may be preserved. For these reasons, and in the sincere belief that these things will be thoroughly demonstrated throughout whatever subsequent proceedings take place in this case, we have consented to this decree."

That was the position of these defendants when the decree was entered; it is their position now.

This consent decree is not grounded upon any violation of law. This is clearly demonstrated by the following clause in the decree, to wit:

"The defendants and each of them maintain the truth of their answers and assert their innocence of any violation of law in fact or intent; they nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants or any or them have in fact violated any law of the United States."

This consent decree would never have been entered into without this clause. This language of the decree is unmistakably plain and speaks for itself.

These defendants state most positively and unequivocally that they violated no law.

The answer which these defendants filed to the Government's petition in this case is hereby expressly referred to and made a part hereof. These defendants now stand by that answer.

Immediately upon the entry of this consent decree, these defendants diligently set about to comply with the decree in good faith and to dispose of all the properties to be disposed of thereunder. The record in these proceedings will fully confirm the statement that these defendants have complied with this decree in good faith and at great financial loss.

On March 3, 1922, these defendants filed in this court a sworn report of the disposition of their prohibited holdings and of their acts and doings under this decree. This report has been approved by this honorable court and the report itself is hereby expressly referred to and made a part hereof.

When these defendants disposed of all their wholesale groceries in compliance with this decree and at a loss of more than \$1,000,000, they thought that particular question was definitely settled for all time. These defendants do not desire to reenter the grocery field.

These defendants state most emphatically that they have absolutely no connection with, or interest in, any intervening petition filed in this case, either directly or indirectly.

As these defendants for the purposes above indicated entered into, and have complied with, this decree in good faith, they are opposed to any modification thereof.

As to the validity of the decree, that is purely a legal question for this honorable court. The court knows the law and nothing that these defendants might say or do could have any possible effect upon that particular question.

(The answer of Morris & Co. and the report made to the court by the Morris defendants, are as follows:)

ANSWER OF MORRIS DEFENDANTS.

In the Supreme Court of the District of Columbia. United States of America, petitioner, *v.* Swift & Co., Armour & Co., Morris & Co., Wilson & Co. (Inc.), and the Cudahy Packing Co., et al., defendants. In equity, No. 36723. The joint and several answer of the following-named defendants to the bill of complaint filed herein.

Corporations: Morris & Co. (Maine), Morris Packing Co. (Maine), Morris & Co. (New Jersey), Morris & Co. (Ltd.) (Louisiana), Morris & Co. (Pennsylvania), Joseph Stern & Sons (Inc.) (New York), Brooklyn Beef & Provision Co., Conduit Beef & Provision Co., Corwin-Wilde Co., Chamberlain & Co. (Inc.), Donelly & Co. (Inc.), National Hotel Supply Co., J. M. Wilson & Co., Middletown Beef & Provision Co., Glenn & Anderson Co.

Individuals: Edward Morris, Nelson Morris, L. H. Heymann, C. M. Macfarlane, H. A. Timmins.

DEFENDANTS.

These defendants now and at all times hereafter saving unto themselves, and each of them, all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill of complaint contained, for answer thereto, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say:

COURT'S JURISDICTION.

These defendants admit that Morris & Co., of Maine, is engaged in the character of business mentioned and described in the bill of complaint, but say that the bill of complaint does not state facts which show that such business is interstate and foreign commerce.

These defendants deny that they, or any of them, have ever been a party to any contract, combination, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, either in the purchase of their raw material, or in the sale of their finished product and these defendants expressly and distinctly deny any and all allegations, charges, intimations, or inferences in the bill of complaint contained to the effect that the defendants, or any of them, are in any illegal combination, conspiracy, or contract of any kind or description with the other defendants, or any of them, or with any other person, firm, or corporation, either as to the purchase of their raw material, the sale of their finished product, or otherwise.

These defendants deny that they have in any manner whatsoever either monopolized, combined, or conspired to monopolize, or attempted to monopolize, any portion of the food supply of the Nation; and also deny that they control artificially either the supply or the price of the foods of the Nation; but, on the contrary, these defendants allege that the business of Morris & Co. has been, and is being, conducted in accordance with the laws of the land and the rules of good business ethics; that in considering the question of monopoly, the Swift, Armour, Wilson, and Cudahy interests must be considered separately, and not jointly, for each is in actual and active competition with the others and Morris is in actual and active competition with them all.

OBJECT TO BE ATTAINED.

These defendants deny that they have, or ever attempted, any monopoly whatever in the interstate trade or commerce of live stock, meat products, or so-called substitute foods; and deny that they have any instrumentalities, facilities, or advantages by which they could build up or perfect any monopoly of meats, meat food products, or substitutes for meats, or any other article or commodity.

Defendants aver that they have a perfect legal and moral right to deal in the so-called substitute foods or unrelated commodities, and that their dealing in such foods and commodities is sound economically and without question has been and is now of great benefit to the public.

THE NATURE OF THE BUSINESS AND METHOD BY WHICH IT IS HANDLED.

These defendants admit that the principal business of Morris & Co., of Maine, is the slaughter of live meat animals, the dressing of the carcasses, and the distribution of the dressed meat and the sale of such meat and meat food products to butchers, who in turn sell the same to the consumers.

These defendants admit that the large packers invented what is commonly known as the refrigerator car. By means of the refrigerator car the dressed meats can now be transported for long distances and delivered to the great consuming centers in the eastern part of this country in good condition. This is in the interest both of the producers of live meat animals and of the consumers of meats and meat food products. These cars make it possible for the packing houses to be located near the source of production of the live meat animals, which saves shrink and freight to the producer of such live stock and relieves the necessity of shipping anything to the consuming centers excepting meats, the rest of the carcass being manufactured into by-products. In this respect the refrigerator car has been of great benefit to the country as a whole. It has developed the live-stock industry and has cheapened meats to the consumer.

This very advantageous and economical way of transacting this business requires large units, because only with a large volume could the packer afford to own refrigerator and route cars and the branch houses necessary for the distribution of the meats and meat food products required in the great consuming centers of this country.

After inventing the refrigerator car the large packers were required to build, own, and operate their own cars, because the railroads refused to furnish such cars. These cars have been operated by the packers at a great loss and without any advantage over their competitors, because they pay the same rate on the product shipped in their own cars as that shipped in the cars of others and because the mileage rate paid to the packers for the use of their cars is fixed by the Interstate Commerce Commission.

STOCKYARDS.

The stockyard is a market place, where the live meat animals of this country are received, penned, rested, fed, watered, weighed, and sold. The stockyards of this country are absolutely essential not only to the live-stock industry but also in getting meat foods for the people. They are not only in theory but in fact public markets where all who wish to buy or sell have had and may have free access and right to trade. The present high state of efficiency in the stockyards of this country is almost entirely due to the packers. It is infinitely better that the control of these yards should be with people who are interested in the industry rather than with people who are interested only in their dividends.

The stockyards, as alleged in the bill of complaints, have always afforded to the cattle raiser the opportunity to speedily dispose of his live stock for an immediate cash price. This is because of the financial strength of the packers. In the past this has been done, regardless of panics, the financial condition of the country, or the number of animals offered for sale, which demonstrates that there must be large units in the packing business. If the borrowing power of the large packers is impaired through needless agitation, improper regulation, or unwise legislation, it may be that in the future all of the live stock offered for sale will not continue to be purchased each day for cash.

As alleged in the bill of complaint packing houses are naturally located at stockyards, because each is dependent upon the other. The stockyards furnish the raw material for the packer, and the packer furnishes a spot cash market for the live stock offered for sale in the stockyards. Consequently, the packer is directly and vitally interested in building up the yards and the live-stock market at all points where he may have a packing house. Originally many of the smaller yards near the source of production

were not efficiently or successfully conducted. This was the great underlying cause that influenced the packer to become interested in such yards.

The ownership of the capital stock of the stockyards company can not possibly exercise any control or influence over the prices obtained for live stock bought and sold in the yards, for the reason the yards are public and free for everybody to bid upon stock offered for sale therein.

It is natural and proper that there should be located at the stockyards commission men skilled in valuing, handling, buying, and selling of live stock and to look after the live stock intrusted to their care for sale and disposition at the yards.

The stockyards company very properly makes charges for services rendered, as alleged in the bill of complaint, and the stockyards company is entitled to fair and reasonable compensation for such services, and this regardless of the ownership of the capital stock of the company. The charges at the various yards in the past have been fair and reasonable for the services rendered.

These defendants, further answering, state that none of the Morris corporation defendants has any interest whatsoever in any of the stockyards of this country. The Morris individual defendants holding interest in the stockyards have been, and are, willing to dispose of such interest, providing a purchaser can be obtained therefor who will pay what said interests are fairly and reasonably worth and who at the same time will insure the future efficient operation of such yards.

PACKING-HOUSE SITES.

There has been no undue or improper tendency to "centralize" the live-stock markets of this country, and it was not on account of any such alleged "tendency" that packing houses were located at the stockyards, and vice versa, as intimated in the bill of complaint. The stockyards could not exist without packing houses, because the packers are the principal buyers at the yards. Neither could a packing house exist without a stockyard, unless the packer should buy his raw material in the country direct from the owners of the live stock, which policy, we submit, neither the producers nor the Government would favor.

These defendants deny that the stockyard companies generally own or control all of the packing-house sites at such yards; also deny that the owners of the stockyards are in a position to determine or do determine what packing companies and how many plants shall be established at the yards.

Further answering, these defendants say that it is to the decided advantage of the stockyards to have as many packing houses as possible located at such yards. Each additional packing plant builds up the live-stock market for yards company, as the yards company makes its money out of yardage and feedage charges. Therefore, the greater number of head passing through the yards will necessarily increase the receipts of the stockyard company. It has always been the fixed policy of the stockyard companies to secure additional packing plants at the respective yards. It is not a fact that there has been any discrimination whatever in that regard. On the contrary, the stockyard companies, regardless of their ownership or control, have always been anxious to get additional packing plants located at their respective stockyards.

SITES FOR STOCKYARDS BANKS AND CATTLE-LOAN ASSOCIATIONS.

These defendants admit that a very large amount of capital is required to finance the raising and preparing for market of live-meat animals, upon which the consumers of this country depend for their meat and meat-food products. It is not practicable for the banks of the country generally to loan this money, taking chattel mortgages on the cattle as security, which is ordinarily the only security offered, because of the character of security and the distant location of the banks therefrom. Accordingly there are a great many cattle-loan companies in this country which maintain offices and representatives in the locality of the cattle given in security for loans, and thus these cattle-loan companies are in a position to keep in touch with the loans and inspect the security from time to time. The majority of these cattle-loan companies have no packer interest in them whatsoever.

The mode of procedure is for the cattle loan companies to take the notes of the cattlemen, secured by chattel mortgages on the cattle, and then the cattle loan companies indorse and guarantee this paper to the banks scattered all over the country. Most of this paper goes to eastern banks. The banks take and pass this paper out to their customers, not upon the security of the mortgaged cattle, which are generally at a great distance from the banks, but upon the indorsement of the cattle loan company. For the inspection of the security and guarantee of the paper the cattle loan company gets a reasonable commission, generally the difference between the interest

which the borrower pays and the interest retained by the bank buying the paper. In this way it has been possible for the live-stock men of this country to borrow the required money to prepare the live stock for market, and the cattle loan company has in this way been of great benefit both to the producer and the consumer.

These defendants further state that the cattle loan companies controlled by the big packers have never required the live-stock man to market his live stock except when same is actually prepared and ready for the market. In not a single instance has the packer—controlled cattle loan companies—required prior marketing of live stock, even in case of droughts or other extremity beyond human control, unless, and except, it was in the best interest of the owner of such live stock. The packers, in fact, have had no advantage whatever through such cattle loan companies, except through the encouragement of production. The live-stock men have not to any extent been damaged by the interest of the packers in such cattle loan companies, but, on the contrary, have been greatly benefited.

It is in the interest of the live-stock men and of everybody else that these cattle loan companies and live-stock banks be located at or near the principal stockyards of this country.

These defendants deny that the owners of the stockyard companies in which they, or any of them, have any interest, have, at any time or place, designated how many, and which, banks or loan companies may establish themselves at the yards. But, on the contrary, there is in fact actual and active competition between the banks and cattle loan companies at all of the large stockyards of this country.

Morris & Co. has no stock or other interest in any bank or cattle loan company.

RENDERING PLANTS.

In the shipment of live meat animals to the market, naturally some of them die, either en route or after reaching the yards. There are not enough of these dead animals at any one stockyard to justify the investment, overhead, and expense incident to the operation of a rendering company. Accordingly, the rendering company that handles the dead animals at any one of the stockyards must and does have additional business, which is generally obtained in the way of dead animals collected from the streets of the city, under city contract. When a company has such a city contract it is enabled to handle the dead animals at the stockyards on better terms and to better advantage for the producers than otherwise could be done.

From the standpoint of health and sanitation these dead animals must be handled very expeditiously and on that account some one must be charged with the responsibility of their very prompt collection and disposition.

These defendants deny that there is any monopoly at any of the public stockyards of this country for the handling of dead animals at said yards, but state the fact to be that said animals are handled to the best possible advantage and in the interest of the owners of such animals.

Morris & Co. has no stock or other interest in any rendering company.

COMMISSION MEN'S OFFICE SPACE.

It is advisable for the commission men and traders at the stockyards to have offices in or near the yards, as alleged in the bill of complaint, otherwise they could not expeditiously transact the business at the yards for the producers of this country. In the orderly and efficient handling of live stock at the yards it is necessary to allot certain pens to the commission men in order to avoid confusion and delay. The renting of offices and the allotting of pens to commission men at the various stockyards have been done in the interest of the producers and of all concerned, and nothing is averred in the bill of complaint to the contrary. Generally the commission men and traders at the yards have a committee of their own to make these allotments of pens, as the interests of the yards and the commission men are absolutely mutual in this regard.

TERMINAL RAILWAYS.

These defendants state that it is in the interest of the live-stock producers that these terminal railways should be owned and operated independent of any one railroad system, because otherwise the railroad company controlling such terminals would use same to its own advantage and in the interest of its shippers and against the interest of shippers on other railroads. These stockyard terminals were originally brought into existence so that all shippers would be treated alike and so that there would be no discrimination in the handling of live stock into and at such yards. It is of the greatest importance that all live stock should reach the unloading chutes

and be unloaded as soon as possible, so as to be rested, fed, watered, and prepared for the early market.

While the bill of complaint does not charge the exercise of any discrimination on the part of the terminal railways at the different stockyards, it claims they have such power. These defendants state most positively that these terminal companies have not discriminated in the matter of sidings, spurs, or other accommodations which may be required by a packing house, and there has been no discrimination along this line against any packer or buyer in any manner whatsoever.

MARKET PAPERS AND JOURNALS.

As stated in the bill of complaint, the cattle raiser requires "full, accurate, and unbiased reports of the demand for live stock, the prices prevailing, and the character and kind of stock required," and such information is furnished by the market papers and journals specializing in intelligence of this kind. In years past the daily press printed more extensive, but still inadequate, reports than at the present time, the increased cost of print paper and the reduction in size forcing a curtailment of these reports. The burden of increased cost of production bears more heavily on the small publisher than the large. This situation endangers the future of these publications, and care should be taken that these market papers and journals are not required to abandon the field altogether.

Whatever financial aid or assistance which the packers have given these publications in the past has been done in the interest of the market and the producers got the benefits thereof. No market paper or journal could successfully falsify either prices or conditions. To do so would be to commit financial suicide, as its integrity and accuracy are the sole measures of its value to its subscribers.

These defendants have no advantage of any kind either over the producer of live stock or the purchaser of their finished products by or through the publication of market papers or journals. The fact is that both the people from whom the packers buy their raw materials and the people to whom they sell their product are fully and accurately advised concerning market conditions.

These defendants deny that they, or any of them, own any interest whatever in any of the market papers or journals at any of the stockyards in this country.

ALLEGED RESULTS FROM CONTROL OF STOCKYARDS.

These defendants deny that the control of the stockyards and of the other facilities at the yards would cause the results claimed in the bill of complaint, and with reference thereto would state:

(a) If the profits made by the stockyard company are reasonable (and there is no charge in the bill of complaint that they are unreasonable) then it is wholly and absolutely immaterial, both to the producer of live stock and the consumer of meat, who owns the capital stock in the stockyards so far as profits are concerned. Packer interest in stockyards does not add 1 cent to the cost of meat to the consuming public. On the contrary, if packer control of the yards means greater efficiency and saving of cost, it is to that extent a saving to the consumer. In other words, the elimination of the packers from interest in the yards would eliminate neither the yards nor the reasonable charges which the yards company is justified in making for its services.

(b) There is no power in a stockyard company to grant a monopoly either to banks, cattle loan institutions, rendering plants, or concerns supplying food for live stock and others, and no such monopoly has been granted or attempted in the past.

(c) The stockyard companies have no power to prevent the establishment of new packing plants at the respective yards or to hamper the growth of those in existence; but, on the contrary, it is to the direct and best interest of the stockyard company to induce the location of additional packing plants and to give such service as would encourage the growth of those in existence. The fact is that the building of additional packing plants has been encouraged by all of the yards.

(d) The present stockyard companies can not prevent the development and limit the number of new markets or centralize and restrict business to the present stockyards. The Morris interests have in the past established new markets in direct competition with the other large packers. In 1910 Morris built a packing plant and stockyards at Oklahoma City, in direct competition with Swift and Armour at Fort Worth and with Cudahy and Dold at Wichita, being less than 200 miles from each point, and even to the present time Morris must buy live meat animals in the leading markets of this country to sustain and keep its Oklahoma City packing plant in operation. To illustrate: Morris & Co. has purchased as high as 40,000 head of cattle in one year

at the stockyards in Fort Worth controlled by Armour and Swift. These cattle were purchased for slaughter at its packing plant in Oklahoma City, operated in active competition with the Swift and Armour plants at Fort Worth.

The South needs packer development and diversified industry, and especially in those sections where cotton can no longer be raised on account of the boll weevil. The climate and the soil both favor the raising of meat animals, and the large packers have been developing this section both with packing plants and stockyards. If the packer should be denied the privilege of being interested in stockyards, then this development, so much needed and desired, may be arrested and defeated.

(c) There has never been any exclusive access to information concerning receipts and sales of live stock and its disposition, either to the producer, the packer, or anyone else. This information has always been and is public and accessible to everybody alike.

The Bureau of Markets, under the Department of Agriculture, is maintained for the purpose of obtaining and disseminating this species of information to all concerned.

BRANCH HOUSES.

A branch house is primarily a market, or sales place, for the disposition of packing-house products at a distance from the packing plant. Branch houses are also frequently used for manufacturing purposes, such as the smoking of hams and bacon and the making of sausage and other similar products. The consuming public thus get the most wholesome product.

The branch house must have refrigeration, for meat is a very highly perishable product. Before we had refrigeration, beef was shipped to the eastern markets in box cars, when the weather was cold enough, and sold at auction on arrival. This costly, insanitary, wasteful, and extravagant method was soon discarded when the big packers invented and brought into use the refrigerator car and the branch house.

The branch house is ordinarily located on a switch track near the business center of the city, and is managed by experienced men who know the wants of their particular community. At first the branch house was a crude affair, but the modern branch house costs from \$75,000 to \$300,000.

The branch house is in the interest of both the producer and consumer, because, without the distributing facilities of the big packers, of which the branch house is a part, congestion would take place at the packing plant and the packer could not buy the live meat animals shipped to the yards. Consequently, it is in the interest of the producer that the packers have proper marketing facilities, so that the packing plant will not be congested with the finished product, and so that the packer, by not being a spasmodic buyer, can at all seasons of the year pay a fair price for the live meat animals offered for sale on the market. The branch house not only serves this purpose for the producer, but is also the source through which the butcher at all seasons of the year gets his meat and in turn is able to continually supply the consuming public.

With the large packing plants located near the source of production, as they should be (thus saving the producer shrinkage and freight), the branch house is an absolutely essential part of the distributing system of the packer. Meat is a highly perishable product and can only be kept in good condition for a limited number of days, even with refrigeration. Not only is the refrigerator car and the branch house an essential in the distributing system of the packers, but these facilities keep down the waste of meat to a minimum, and prevent the increase in price which waste would necessarily entail.

These defendants are not advised as to the number of branch houses maintained by the defendant parent companies, as alleged in the bill of complaint, but these defendants state the fact to be that Morris established its first branch houses in the East in the year 1885, and it now has 186 branch houses, with 2,850 employees.

These defendants further state that the distributing system of the large packers, including refrigerator cars and branch houses, does not give to them any monopoly in the sale of meats in the great consuming centers, or anywhere else. To illustrate the situation in that regard it may be stated that in New York City, in addition to the defendants, there are more than 75 wholesale dealers and slaughterers, and in Boston, besides the defendants, there are 13 large wholesale dealers and 15 houses that buy from local slaughterers. This is characteristic of all the large cities in the great consuming section along the Atlantic seaboard.

The meat sold through the branch houses must bear the expense of shipment from the packing plant to the branch house, in many instances being a great distance and a large expense. This meat comes in competition with the meat of numberless local slaughterers in all of the cities of this country, which latter meat has no expense whatever for transportation and is also free of the expense incident to Federal inspection.

Consequently, in the matter of competition the meat of the big packer sold through branch houses is at a decided disadvantage. The branch-houses maintained simply as a matter of necessity, and because no better distributing system has ever been suggested or adopted for the transportation of meat from the large packing-house centers, which should be near the source of production, to the great consuming centers, which are largely along the Atlantic seaboard.

These defendants further state that a perishable product like meat can not be handled through some common freight house, like farming implements, clothing, boots, and shoes, or other staple articles, which do not have to be sold quickly in order to prevent deterioration or complete loss.

ROUTE CARS.

As stated in the bill of complaint, route cars supplement the branch houses and serve the purposes of reaching the small communities where the trade is not sufficiently large to justify an investment in a branch house.

The route car does more than this, it brings to these smaller communities the Federal inspected, sanitary, and finely prepared products of the modern packing house. Through the efficiency of the large packers and the utilization by them of all by-products, these meats and meat food products can be supplied to these small distant communities at less cost than they are supplied through the local butcher. At the same time the Department of Agriculture has determined and reported "that farmers receive smaller relative returns from cattle marketed locally than from those that are shipped to centralized markets."

These defendants are not advised as to the number of route cars operated by the parent companies or the percentage which that number bears to the total number operated in the packing industry. These defendants state that Morris & Co. operates 265 car routes in this country, reaching 5,074 towns, and the business done from these route cars comes in direct and active competition not only with the products of the large packers, but also with the local butchers and slaughterers, many of whom are not Federal inspected and have no expense of shipment whatever. The percentage of route cars operated by the five large packers as compared with the number of route cars operated by the packing industry as a whole, does not begin to describe the amount of competition which the business done from these route cars comes in contact with. If these route cars were not in existence the strong probability is that the local butchers and slaughterers would increase the price of meat to the consuming public. These defendants maintain that these route cars are now operated, not only within the law and without any undue or improper advantage to the packers, but they are in fact operated to the great benefit and advantage to the consuming public in the towns and communities reached by them.

AUTO TRUCKS.

These defendants do not maintain any auto trucks that serve as route cars, but insist that the consuming public is entitled to the most efficient and best means of distribution of meats and meat food products that can be devised.

COLD-STORAGE WAREHOUSES.

The bill of complaint alleges that the cold-storage warehouse enables the packer to extend the volume of his business. Anything that extends volume in the meat-packing business is in the interest of the public generally, both producer and consumer, because a big volume enables the packer to utilize the by-products to the fullest possible extent. That is why the big packer has so many departments. That is why the big packer has a large force of chemists and highly-trained specialists who are constantly endeavoring to produce more and more by-products from the offal, the effect of which is to bring down the price of meats for human consumption. That is one important reason why this country must continue to have big units in the packing industry.

Generally speaking, the cold-storage warehouse enables full production in seasons of plenty to be carried over to seasons of scarcity; thus stabilizing the prices for the producer in seasons of plenty and at the same time making the prices lower to the consumer in seasons of scarcity.

The chief function of the cold-storage warehouse in the meat-packing business is to preserve the surplus meats until they can be advantageously marketed, which is in the interest of both the producer and the consumer. At times there are extraordinary runs of cattle, hogs, or sheep at the various yards. Sometimes this is due to

usual and normal causes, such as the end of the grass season for cattle, or in the fall for hogs; and at other times it is due to something unusual and out of the ordinary, as a drought in the Southwest or a cholera scare among the hog feeders. Under such circumstances if there were no cold-storage warehouses to take care of this temporary oversupply this live stock could not be marketed and would represent a clean waste in the food supply of the Nation, which in turn would enhance the price of meats to the consumer, not to mention the loss to the producer.

If it had not been for the cold-storage warehouses along the Atlantic seaboard our armies and the armies of our associates could not have been fed with American meat during the war, as these warehouses enabled us to store the meats at places reasonably accessible to seaboard while waiting for the ships.

Morris & Co. owns but one cold-storage warehouse, which is located in Chicago. This warehouse has a capacity of about 50,000,000 pounds, a large part of which is used for meats in process of curing. It is necessary for the company to store almost that amount in outside public warehouses, for which Morris & Co. pays the regular published rates regulated by the various State utility commissions where the different warehouses may be located. Morris & Co. has never had, or exercised, any control over public warehouses.

These defendants deny that they have any possible advantage over their competitors through the cold-storage warehouse: also deny that the cold-storage warehouse has ever been used by them, or any of them, as a means to control the price of meats and so-called substitute foods.

THE PARENT COMPANIES' ACQUISITION OF ABOVE-DESCRIBED FACILITIES AND THEIR PURPOSE IN DOING SO.

These defendants deny that they, or any of them, purchased or acquired any interest whatsoever in stock or the facilities pertaining thereto, the stockyards terminal railways or market papers in order to repress and discourage the development of other packers and slaughterhouses or to control the shipments of meat to the various markets.

These defendants state that there are more packers in competition with them than ever before in the history of the industry; that there are more than 300 meat packers doing an interstate business under Federal inspection, and there are more than 1,000 local slaughterers doing an intrastate business, all in keen and active competition with these defendants.

These defendants deny that they, or any of them, ever purchased or acquired any interest whatever in stockyards, terminal facilities, or market papers by concert of action and pursuant to a common understanding with the other defendants in this case, or with any other person or persons; and these defendants have never acquiesced in the acquisition of interest in or control over stockyards by any of the other defendants.

These defendants deny that, in pursuance of a common purpose, plan, and desire, outside investors and packers have gradually been forced out as dominating factors, both in the ownership and management of the most of the important stockyards, and have been replaced by the parent companies or their representatives. The fact is that none of the Morris corporations have any capital stock or other interest whatsoever in any stockyard in this country. The largest stockyard in the country—Chicago—is not controlled by the packers, but, on the contrary, only one individual packer has any interest therein, and that but 19 per cent. More than two-thirds of the capital stock of the second largest stockyard in the country—Kansas City—is owned by people wholly unconnected with the packing industry, and the capital stock of this company is dealt in very extensively on the stock exchange, and any person is privileged to buy a substantial interest therein. Large blocks of the capital stock of the Omaha yards, the third largest stockyard in this country, are owned by people wholly unconnected with the packing industry.

More than one-third of the capital stock of the East St. Louis yards, the fourth in size, is owned by people who are not connected with the packing industry. But the smaller yards, near the source of production, like the Denver, Fort Worth, Oklahoma City, and Wichita yards, which can scarcely support two packers and which render the great service to the producers, relieving them of both freight and shrink, are not so attractive to the investing public, and these are the yards which have been built up and are controlled by the packers.

These defendants further state that the interests acquired by the packers in the various stockyards of this country were generally acquired through necessity and in order that such yards might be built up and maintained efficiently, and this packer interest in these yards has resulted generally in the extension and building up of the market.

These defendants deny that they, or any of them, ever acquired any interest in any stockyard, stockyard terminal, or stockyard paper through any of the means or methods set out and described in the bill of complaint.

These defendants deny that the Morris parent company, charged in the bill of complaint, has granted any exclusive privileges, such as the right to purchase dead animals, the right to furnish supplies and facilities, and the location of cattle banks and cattle loan companies, to concerns and corporations in which those defendants, or any of them, were interested; also deny that they employed the powers and privileges more specifically set forth and discussed in the bill of complaint under the heading "Nature of the business and method by which it is conducted."

These defendants expressly and distinctly deny that they, or any of them, have done any of the things alleged in the bill of complaint for the purpose, or with the effect, of discouraging and suppressing the establishment of packing establishments and dwarfing the growth of any packing company whatsoever.

These defendants further deny that they, or any of them, have attempted to monopolize the meat industry of the country or to artificially control the ultimate price which the consumer pays for meat or meat products.

CONTRACTS IN RESTRAINT OF TRADE.

Defendants expressly and distinctly deny each and every allegation and averment in the bill of complaint under this heading.

Further answering this charge of an agreement as to percentage of purchase, these defendants deny that they, or any of them, have any agreement or understanding whatsoever with any person, firm, or corporation concerning or affecting its purchases of live stock, and in that connection state most positively that the business of Morris & Co. is regulated and controlled entirely and absolutely by the law of supply and demand, and that its purchases of live stock are not regulated or controlled, to any extent whatever, by the purchases of Swift & Co., Armour & Co., Wilson & Co., theudahy Packing Co., or any or either of them, or of any other person, firm, or corporation.

These defendants state that there is not the uniformity of purchase between the parent companies that is intimated in the bill of complaint, but an approximate uniformity of purchase between these companies is of no particular significance, as these businesses have been many years in developing, and each company now has its regular organization, its ordinary and usual trade, its plant capacity, and distributing system. Moreover, there has been a very determined fight for several years from certain quarters to hold these companies to their present volume and not to permit them to grow or extend, if not to disintegrate them altogether. All of this would tend to bring about even a greater uniformity of purchase than the law of general average.

The uniformity appears closer than it actually is because of the tremendous volume incident to the packing business. In the figures of percentage the difference of 1 per cent to the average mind would not appear great, and yet that 1 per cent may represent several hundred thousand head of cattle. The difference of 1 per cent in the Morris buy between the years 1915 and 1917, which is conceded by the Government, represents 76,000 cattle, which is approximately 10 weeks' kill in Chicago or 3 weeks' kill at all of the Morris plants.

Further answering, these defendant state that there is much more uniformity of purchase by the leading interests in any stabilized basic industry in this country having competition than there is in the packing industry, and that this alleged uniformity of purchase in the packing industry, whatever uniformity there may be, is due to healthy conditions and sound economic laws, except that brought about by forces and influences outside of the packing industry itself.

This identical charge of uniformity of purchase was made by the Government in a criminal case instituted by the Government in Chicago against certain of the officers of three of the defendant parent companies, and after hearing the testimony for several months, this precise question being gone into very fully, the jury, in March, 1912, returned a verdict in favor of the defendants, upon the testimony of the Government alone. The judgment based upon that verdict necessarily means that there was no undue uniformity of purchase by the packers and is, in fact, an adjudication on that point.

This Government suit of 1912 was on the theory that three of the parent companies in this case maintained a certain percentage as to buying of live stock, while this present suit is against five parent companies and their officers, and yet there is no allegation in the bill of complaint as to how, when, or why the Government changed its position from three to five or when the two additional parent companies became parties

to the present alleged agreement, or how, or to what extent, the two additional companies have affected the alleged percentage.

These defendants further state that during the war the Government ordered and directed the packers of the country generally, including the defendants, to maintain their respective volumes of business. The Government can not consistently order a certain thing done and then afterwards complain of its being done. Consequently, the allegations in the bill of complaint do not set up any facts constituting a violation of any law on this point within three years next preceding the filing of the bill of complaint.

CONTROL OF SUBSTITUTE FOODS.

The statement in the bill of complaint that defendants had eliminated competition in meat products is wholly without foundation in fact, as is also the statement that the packers commenced the handling of foods and products ordinarily handled by wholesale grocers and produce dealers in order to keep the price of meats from advancing out of proportion to these other foods.

The fact is, that Morris & Co. largely confined its activities to the production and handling of meat food products until the latter part of 1917. At that time the cost of live meat animals, labor, taxes, supplies, and everything entering into meat had advanced tremendously. The irregular receipts of cattle, sheep, and hogs due to shortage of live stock caused irregular markets. There are always slack seasons in the sale of the meats. Morris & Co. had fixed an overhead for the maintenance of its branch houses and the distributing system. During the war the meat that was furnished to our Government and the Governments of our associates did not pass through the branch houses, and as the Government discouraged the eating of meat by the civilian population in order that the armies and navies might be properly fed, the employees in the branch houses were not fully engaged and had plenty of time to handle additional lines. In order to meet these conditions and to keep down the expense of this distributing system, Morris & Co. began the handling of canned fruits and vegetables. The company had the branch houses, the sales organization, and delivery equipment, and expenses were going on whether the meat business was active or quiet. It was, therefore, decided that it was good business to keep all of these men and the equipment busy the year around, and in order to do so canned fruits and vegetables were added to the Morris lines.

In addition to the utilization of the entire organization to its full capacity, these added lines enabled Morris & Co. to make more frequent turnovers, smaller sales to the retailer, who ordered more frequently, reduced his investment in stock and gave the consumer a better product. Morris & Co. was often encouraged by retailers to add to its line as they appreciated the service and could save time in both purchasing and delivery.

In the handling of groceries Morris & Co. had no advantage whatever in freight rates over its competitors, and the only advantage which the packer had in handling groceries and so-called unrelated lines was the advantage due to his efficiency, and it is perfectly legitimate and proper that the consuming public should receive the benefit of such legitimate advantage.

These defendants deny that Morris & Co. fixed prices so low as to gradually eliminate competition and to exterminate the produce dealer and wholesale grocer. It is an admitted fact that the number of wholesale grocers and the volume of business done by them since Morris & Co. entered this field in the latter part of 1917 has increased more than 10 per cent. This conclusively demonstrates that, instead of eliminating competition, or even injuring the business, the competition of the packers has stimulated and been beneficial to the business.

The entire business done by Morris & Co. in the so-called unrelated lines, which consisted almost entirely of canned fruits and vegetables, amounted to less than 2 per cent of the total annual sales of the company. The total business done by all of the packers in lines unrelated to meats amounts to less than 3 per cent of the entire volume transacted by the wholesale grocers and packers.

In view of the substantial growth of the business of the wholesale grocers during the last few years, the statement in the bill of complaint to the effect that, unless prevented by a decree of this court, the defendants will, within the compass of a few years, control the quality and price of each article of food found on the American table, is nothing short of the ridiculous. On the contrary, these defendants insist that it is in the best interest of the consuming public that it should get the benefit of the distributing system and added competition of the packers in these so-called related lines. To eliminate the packers from this field would merely mean to cut down competition to that extent, to which the consuming public is entitled. The handling of groceries and foods other than meats by the packers has resulted in a better product and a saving of foods through

wastage and destruction. While the wholesale grocer has his place in the economic scheme of this country, still it would be to the interest of the people generally if the efficient competition of the packers would force the wholesale grocer to revise his business methods and cut down his costs.

All of the profits made by Morris & Co. in the handling of these so-called unrelated lines finally went into the packing house profits and, to that extent, enabled the packer to sell meat at a lower price. Consequently, the elimination of the packers from these so-called unrelated lines would naturally result either in lower prices for the live stock or higher prices for meats.

FINANCIAL GROWTH, PRESENT NET WORTH, AND VOLUME OF BUSINESS.

These defendants are not advised concerning the alleged growth, profits, sales, or net worth of Swift, Armour, Wilson, and Cudahy between the years 1904 and 1919, but these defendants do state that the total annual profits of Morris & Co., from every source whatsoever, for this period of 16 years was but 8.41 per cent on the capital and surplus invested. Out of these profits dividends have been paid to the stockholders representing but 1.71 per cent on the capital invested. The balance of profits, to wit, 6.70 per cent on the capital invested, has been added to surplus.

A table showing the capital stock, the surplus, and the profits of, and the dividends paid by, Morris & Co. for each of the years 1904 to 1919, both inclusive, is as follows:

Year.	Capital.	Surplus.	Profits.	Dividend paid.
1904.....	\$3,000,000.00	\$12,663,983.17	\$1,656,599.39	\$210,000.00
1905.....	3,000,000.00	14,080,582.56	2,023,643.80	240,000.00
1906.....	3,000,000.00	15,864,226.26	1,796,618.65	240,000.00
1907.....	3,000,000.00	17,420,844.91	2,251,673.39	1,800,000.00
1908.....	3,000,000.00	17,872,518.30	2,650,389.35	315,000.00
1909.....	3,000,000.00	20,207,907.65	2,069,578.36	450,000.00
1910.....	3,000,000.00	21,827,486.01	746,194.96	435,000.00
1911.....	3,000,000.00	22,138,680.97	1,034,851.64	180,000.00
1912.....	3,000,000.00	22,993,532.61	1,812,655.49	180,000.00
1913.....	3,000,000.00	24,626,186.10	1,916,996.94	360,000.00
1914.....	3,000,000.00	26,183,183.04	2,205,672.69	450,000.00
1915.....	3,000,000.00	27,938,855.73	2,321,414.78	750,000.00
1916.....	3,000,000.00	29,510,270.51	3,632,212.90	1,000,000.00
1917.....	3,000,000.00	32,142,483.41	5,301,071.47	150,000.00
1918.....	3,000,000.00	37,293,554.88	4,217,858.84	300,000.00
1919.....	3,000,000.00	41,211,413.72	703,641.00	300,000.00

The profit on each dollar of sales by Morris & Co. for the years 1910 to 1919, both inclusive, is as follows:

	Profit on each dollar of sales.		Profit on each dollar of sales.
1910.....	\$.0061	1915.....	\$.0129
1911.....	.0086	1916.....	.0170
1912.....	.0136	1917.....	.0181
1913.....	.0117	1918.....	.0106
1914.....	.0139	1919.....	.0016

These defendants are in no way connected with Swift, Armour, Wilson, or Cudahy, and are not in a position to state as to their profits, but these defendants are advised and verily believe that the profits made by the five big packers have been substantially less than the profits made by any other large basic industry in this country.

These defendants deny that the Government has not ascertained all of the profits made by the defendants, and state the fact to be that departments and representatives of the Government have been through their books and records very thoroughly and for many years, and are familiar therewith, and, under these circumstances, these defendants state that the petitioner is not justified in alleging that these are profits which have not been ascertained.

NUMBER OF CONTROLLED COMPANIES.

Unfortunately, the allegations in the bill of complaint under this heading are vague, indefinite, and uncertain. These defendants are not advised as to the number of corporations in which the Swift, Armour, Wilson, and Cudahy companies are interested; nor are these defendants advised as to what is included in the word "families" under the averment in this regard. These defendants do say that the Morris organi-

zation is interested, comparatively, in very few corporations, and if the petitioner would specifically allege or set out the names of the corporations in which it is claimed that any of the Morris defendants are interested, then these defendants would answer such an allegation with certainty and precision.

These defendants are absolutely certain, however, that the Morris organization has no greater number of corporations than is ordinarily identified with a business having the volume and magnitude of Morris & Co. The corporations which Morris & Co. do own or control were acquired and are held and controlled legally and not in violation of any law.

EXTENT OF INDUSTRIAL CONTROL IN THE SUBSTITUTE FOODS AND UNRELATED COMMODITIES.

It would not be an enormous undertaking to determine the degree of control exercised by the defendants in all of the various activities mentioned in the bill of complaint, and there is positively no truth in the statement that, if the growth is permitted to continue unchecked it will be complete within a few years. The fact is that it is now within the complete power of the petitioner to ascertain and determine, if that has not already been done, just to what extent Morris & Co. is engaged in any of these unrelated lines.

Of course, these defendants are not familiar with the alleged growth of the business of Armour & Co. in these unrelated lines, as alleged in the bill of complaint.

Morris & Co. disclaims any purpose whatever on its part to secure control of the market for so-called meat substitute foods or any portion thereof.

The parent companies do not control either the output or the price of products marketed through their distributing facilities, because they must pay exactly the same freight rate on goods shipped through these facilities as if they were shipped otherwise.

INDIVIDUAL DEFENDANTS.

The individual defendants are all members of the board of directors of Morris & Co. of Maine. Edward Morris is president, Nelson Morris is chairman of the board, L. H. Heymann is vice president, C. M. MacFarlane is vice president and treasurer, and H. A. Timmins is secretary and assistant treasurer of Morris & Co. of Maine.

The defendant, Nelson Morris, was not on the pay roll of Morris & Co. between March 1, 1918, and June 11, 1919, and took no part whatever in the affairs of the company during that time.

There is no foundation in fact for the statements in the bill of complaint that there is any effort or attempt on the part of these individual defendants, either for themselves, or for others, to control the meat products, or so-called substitute foods in the United States.

CORPORATION DEFENDANTS.

The history of the growth and development of the Morris organization is merely the recital of thrift, economy, efficiency, strict personal attention to business, and the leaving of the earnings in the business to accumulate: in another form, it is the tale of interest compounded. This organization has been three generations in the making. Nelson Morris, grandfather of the present heads of the business, was the original founder. More than 60 years ago he started in business as a sheep driver in the Chicago yards with a total capital of 50 cents. He became the largest feeder of cattle in the world, feeding as high as 60,000 head at one time, making big money in selling his cattle to the packers, and the money so made went into the packing business. The capital stock of Morris & Co. has always been closely held, and its legitimate growth, with increasing values in this country, can thus be easily understood.

The original corporate organization was the Fairbank Canning Co., but the business was in fact conducted as a partnership by Nelson Morris and his sons under the firm name of Nelson Morris & Co. until the present parent company, Morris & Co. of Maine, was organized.

It can be asserted with complete confidence that even during the period of business development in this new country of unparalleled natural resources and advantages that the packing industry was far above the average in business morals and that the industry continues to be conducted with honesty of purpose and scrupulous regard for the laws of the country and the equities of the producer and consumer.

There is a strong disposition in certain quarters of this country to have the Government interfere with private business by the creation of bureaus to control and run the business, which necessarily means inefficiency, politics, and added cost to the consuming public. This policy in its developed state would lead to paternalism and

nally Government operation, which would mean the destruction of private initiative and personal ambition, which has been the genius of American business.

In this country of shifting extremes the preservation of equal opportunity to all American youth, such as that possessed by the founder of the Morris organization, is of vastly more importance than everything else involved in this litigation.

These defendants state that Morris & Co., organized under the laws of the State of Maine on October 16, 1903, with a capital stock of \$3,000,000, is the company designated in the bill of complaint as the parent company in the Morris group, and said company has its principal place of business in the city of Chicago, Ill., and owns and operates a packing house in said city and also in the cities of East St. Louis, Ill.; St. Joseph, Mo.; Kansas City, Kans.; Omaha, Nebr.; and Oklahoma City, Okla. Its principal business is the purchase and slaughter of live meat animals and the sale of the finished products thereof, the said company, through its subsidiaries, maintaining selling branches in the principal cities of the United States.

The Morris subsidiary defendants mentioned in said bill of complaint are as follows:

The Morris Packing Co. was organized under the laws of the State of Maine on September 28, 1912, with a capital stock of \$25,000 and conducts branch houses at Little Rock and Helena, in the State of Arkansas, selling Morris products, all of the capital stock of said company being owned by Morris & Co., of Maine.

Morris & Co., the New Jersey corporation, was organized under the laws of New Jersey on December 27, 1902, and has a capital stock of \$100,000 and operates the selling branches for the Maine corporation in the United States, with the exception of those branches in the States of Texas, Louisiana, Pennsylvania, Maine, and Arkansas all of the capital stock of said company being owned by Morris & Co., of Maine.

Morris & Co., the Louisiana corporation, was organized under the laws of the State of Louisiana on October 11, 1910, with a capital stock of \$50,000, and conducts the Morris selling branches in the States of Louisiana and Texas, all of the capital stock of said company being owned by Morris & Co., of Maine.

Morris & Co., the Pennsylvania corporation, was organized under the laws of the State of Pennsylvania, on October 6, 1910, with a capital stock of \$50,000, and operates the Morris selling branches in the State of Pennsylvania, all of the stock of said company being owned by Morris & Co., of Maine.

Joseph Stern & Sons (Inc.) was incorporated under the laws of the State of New York in the spring of 1910, and has a present capital stock of \$2,000,000, and now operates a meat-packing plant in the city of New York, all of the capital stock being held by Morris & Co. of Maine.

The Brooklyn Beef & Provision Co. was incorporated under the laws of the State of New York on September 30, 1912, with a capital stock of \$5,000 and merely operates a branch house in the city of Brooklyn, N. Y., selling the Morris products, all of the capital stock of said company being owned by Morris & Co. of Maine.

The Condit Beef & Provision Co. is a corporation incorporated under the laws of the State of New Jersey in July, 1909, with a capital stock of \$5,000, and merely operates a branch house in East Orange, N. J., selling the Morris products, all of the capital stock being held by Morris & Co. of Maine.

The Corwin-Wilde Co. was incorporated under the laws of the State of Massachusetts on March 29, 1893, with a capital stock of \$50,000, and merely operates a branch house in the city of Boston, Mass., selling the Morris products, all of the stock being held by Morris & Co. of Maine.

Donnelly & Co. (Inc.), was incorporated under the laws of the State of Massachusetts in December, 1912, with a capital stock of \$50,000, and operates a branch house in the city of Boston, Mass., selling the Morris products, all of the capital stock of said company being held by Morris & Co. of Maine.

The National Hotel Supply Co. was incorporated under the laws of the State of Illinois on March 19, 1901, with a capital stock of \$5,000, and operates certain branch houses in the cities of New York and Philadelphia, selling the Morris products, all of the stock of said company being held by Morris & Co. of Maine.

Chamberlain & Co. (Inc.), was incorporated under the laws of the State of Massachusetts on February 27, 1907, and has a present capital stock of \$200,000, and operates certain manufacturing and selling branches in the city of Boston, Mass., 1,334 shares of the capital stock of said company being owned by Morris & Co. of Maine, the rest of said capital stock being owned by parties wholly unconnected with the Morris organization.

J. M. Wilson & Co. was incorporated under the laws of the State of Massachusetts on December 23, 1915, with a capital stock of \$12,000, and this company merely operates a wholesale meat market in Dover, N. H., Morris & Co. of Maine, owning capital stock of the par value of \$9,000 and the rest of the capital stock of said company being owned by parties wholly unconnected with the Morris organization.

The Middletown Beef & Provision Co. was incorporated under the laws of the State of Massachusetts on January 7, 1914, with a capital stock of \$12,000 and merely operates a wholesale meat market in Middletown, Conn., Morris & Co. of Maine, owning capital stock of the par value of \$8,000, the rest of the capital stock being owned by people wholly unconnected with the Morris organization.

Glenn & Anderson was incorporated under the laws of the State of Illinois on December 14, 1905, with an authorized capital stock of \$10,000, of which amount stock of the par value of \$8,750 has been issued, which company operates a wholesale meat market in the city of Chicago, Ill., Morris & Co. of Maine, owning 44½ shares of said capital stock, the rest owned by persons not connected with the Morris organization.

It is not the fact, as alleged in the bill of complaint, that only those subsidiaries which are substantially 100 per cent parent-company owned and which are engaged either in slaughtering, packing, or the selling of meats have been made parties defendant. On the contrary, it will be observed that the interest of Morris & Co. in several of the above corporations does not even approach 100 per cent.

Defendants deny that the Western Meat Co., Oakland Meat Packing Co., and the Nevada Packing Co. are subsidiaries of Morris & Co.

SOME PERTINENT FACTS AND SUGGESTIONS IN CONNECTION WITH THE PACKING INDUSTRY.

These defendants feel justified in this honorable court of equity in calling attention to some of the pertinent facts involved in this litigation and to some of the problems and difficulties which they encounter in endeavoring to do equity to all with whom they come in contact, and that means the whole population of the United States, for they deal in a necessity of life: Food.

Equity demands that the producer of live stock be paid a fair price for his animals. Equity also demands that the consumer be served with the packers' finished product at the lowest possible cost. Equity, however, in the view of the stock raiser means high prices for his cattle, while equity to the public means cheap meat on the table. It is practically impossible to please both, for there can not be cheap meat on the table of the consumer when the producer receives high prices for the live meat animal.

Between this Scylla and Charybdis the packing industry in the past has been tossed in all directions by angry winds, sometimes blowing from the ranges, sometimes from the combined kitchens of housewives, storm tossed themselves by the mounting waves of the cost of living, and sometimes from the cavernous mouths of politicians whose interest in the matter is distinctly less honest than that of the producer and consumer. Thus the packer has suffered from agitation and misrepresentation; he has been a tempting target for time-serving aspirants for public favor and he has furnished campaign shibboleths. While equity has been demanded of the packer, and to the best of his ability he has rendered it to all, still equity has seldom been conceded to him.

The packing business is so intimately interwoven in the daily existence of every man, woman, and child in the Nation, so identified with their welfare and health, that it is extremely sensitive to criticism, and doubly so because it deals in a highly perishable product. Those attacks cause not only moral but material damage.

The packing industry can not justly be blamed for the present high cost of living, because it gets less than 2 per cent profit out of its total sales (representing approximately one-fourth of 1 per cent per pound of dressed meat), while the producer gets 85 per cent, and the balance goes to labor, freight, and other expenses. In the last few years packing-house labor has advanced more than 150 per cent, and everything that goes into meat has advanced in proportion: and yet meat has not advanced in comparison with other necessities, and within the last six months meat at wholesale has declined 35 per cent.

We submit, in all candor, that we have reached the point where equity must be done to this vital industry, as well as to the producer and the consumer, because its future very closely affects the welfare and the happiness of all the people. It can only stand so much strain. It must not be torn down through prejudice or passion or even a misunderstanding of the great facts which point to the eternal justice of this controversy.

The large packers are perhaps the largest borrowers of money of any industry in the world, because large sums are required to buy for cash the live meat animals offered daily for sale in the stockyards. The large packers are expected to "clean up" the yards every night. It also takes large sums of money to carry the stocks, transport the meats to and distribute them in the great consuming centers at a distance from the packing houses, and to make a market for American meats in foreign countries. The export trade is in the interest both of the American live-stock producer and of American labor. If the borrowing power of the packer is destroyed, this complex industry

will be in a worse mess than the railroads; production will go down and the price of meats will necessarily go up. It is easier to tear down than to build up, as the world is now learning in this period of reconstruction.

It is but just and proper that this honorable court should know the great and controlling facts underlying this industry and the difficult and delicate problems with which it is constantly confronted. The packer is in the nature of a buffer between the producer and the consumer. He is the manufacturer and distributor of meats and meat-food products for the people. If he does his work efficiently and at a reasonable cost, if the toll he exacts for the manufacture and distribution is fair and reasonable, then he performs a great and vital work for the people generally, and the machinery and efficiency with which this work is done should never be destroyed or impaired. It is just as important that this vital industry should be treated fairly and justly by the public as that the public be treated fairly and justly by this industry.

These defendants have never attempted or desired any monopoly in foods. They have never taken a position of defiance to the Government. On the contrary, they have honestly tried to observe the laws governing their business, not only in letter but in spirit as well. They desire to cooperate with the producer and to treat the consumer fairly. They want to deserve the confidence of the people. The present efficiency and marketing system of the packing industry should be preserved to the people for all future time, but this industry can not survive constant agitation and criticism.

These defendants stand ready and willing to meet the views of the Government along fair lines that would tend to bring about a better and more equitable understanding between this industry and the public, to the end that the present efficiency and lasting benefits of this great industry may be preserved and perpetuated for the American people.

THE PRAYER.

These defendants say that the bill of complaint does not state a good cause of action and does not aver facts which would entitle the petitioner to any relief in a court of equity.

Further answering, these defendants deny that the petitioner is entitled to the relief, or any part thereof, in the said bill of complaint demanded, and pray the same advantage of this answer as if they had pleaded or demurred to the said bill of complaint; and pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Morris & Co. (Maine), Morris Packing Co. (Maine), Morris & Co. (New Jersey), Morris & Co. (Ltd.) (Louisiana), Morris & Co. (Pennsylvania), Joseph Stern & Sons (Inc.) (New York), Brooklyn Beef & Provision Co., Condit Beef & Provision Co., Corwin-Wilde Co., Chamberlain & Co. (Inc.), Donnelly & Co. (Inc.), National Hotel Supply Co., J. M. Wilson & Co., Middletown Beef & Provision Co., Glenn & Anderson Co., Edward Morris, Nelson Morris, L. H. Heymann, C. M. Macfarlane, H. A. Timmins, defendants; by M. W. Borders, solicitor for said defendants.

COPY OF REPORT MADE TO THE COURT ON MARCH 3, 1922.

in the Supreme Court of the District of Columbia. *United States of America v. Swift & Co., et al.* No. 67623, in equity.

Report by Morris & Co. (Maine), Morris Packing Co. (Maine), Morris & Co. (New Jersey), Morris & Co. (Louisiana), Morris & Co. of Pennsylvania (Pennsylvania), Joseph Stern & Sons (Inc.), Brooklyn Beef & Provision Co., Condit Beef & Provision Co., Corwin, Wilde Co., Donnelly & Co. (Inc.), National Hotel Supply Co., Chamberlain & Co. (Inc.), J. M. Wilson Co., Middletown Beef & Provision Co., Glenn & Anderson Co., Edward Morris, Nelson Morris, Louis H. Heymann, Charles M. Macfarlane, and H. A. Timmins of the disposition of properties by them under the consent decree entered in this cause on February 27, 1920; also report of reports made by said defendants to sell all of the properties to be disposed of by them under said decree; also application for extension of time in which to dispose of remaining properties, and petition for modifications of plan under which the remaining properties are to be disposed of.

To the said court, in chancery sitting:

Your petitioners would respectfully show unto the court:

(A) PROPERTIES DISPOSED OF.

1. That the following corporations, to wit: Morris Packing Co. (Maine), Morris & Co. (New Jersey), Morris & Co. (Louisiana), Morris & Co. of Pennsylvania (Pennsylvania), Joseph Stern & Sons (Inc.), Brooklyn Beef & Provision Co., Condit Beef & Provision Co., Corwin, Wilde Co., Donnelly & Co. (Inc.), National Hotel Supply Co. Chamberlain & Co. (Inc.), J. M. Wilson Co., Middletown Beef & Provision Co., and Glenn & Anderson Co., now have absolutely no property to be disposed of under the consent decree entered in this case on February 27, 1920.

2. *Groceries.*—When the consent decree in this case was entered, the so-called "unrelated lines," principally groceries, which were handled by Morris & Co., were not handled through any separate corporation, but were handled principally as a department of Morris & Co., of Maine, and in connection with the sale of the other products of Morris & Co. At the time that the consent decree was entered, inventory of Morris & Co. showed that they had groceries on hand amounting to \$3,256,000, and contracts for future delivery; that immediately upon the entry of said decree Morris & Co. commenced in good faith to dispose of these groceries in accordance with the terms and provisions of said decree.

These defendants now report to the court, under said decree, that all of said groceries have been sold and disposed of, which sale and disposition of said groceries resulted in a loss to Morris & Co. of \$1,025,000 and Morris & Co. now have absolutely no groceries on hand and are not engaged in the sale or disposition of any of the articles or products mentioned in paragraphs 4 and 5 of said consent decree.

3. *Eckerson Co.*—This company is a New Jersey corporation, with its principal place of business in Jersey City, N. J., with an authorized capital stock of \$200,000, divided into 1,750 shares of common stock and 250 shares of preferred stock. The preferred stock is nonvoting and the common stock is divided into classes A and B, class A being voting stock and class B nonvoting stock. All of said stock has been issued. The holdings of said stock were as follows: Morris & Co., class A, 417 shares; class B (nonvoting), 749.2 shares; preferred (nonvoting), 125 shares, the total shares issued of each class being as follows: Class A, 834 shares; class B (nonvoting) 916 shares; preferred (nonvoting) 250 shares, the balance of said stock being held as follows: Class A, T. H. Eckerson, 317 shares; A. A. Eckerson, jr., 100 shares; Class B (nonvoting) T. H. Eckerson, 126.8 shares; A. A. Eckerson, jr., 40 shares; preferred (nonvoting) T. H. Eckerson, 95 shares; J. L. Eckerson, 30 shares.

The stockholders, T. H. Eckerson, A. A. Eckerson, jr., and J. L. Eckerson have always been interested in said company in their own individual rights since the organization of the company. The Eckersons have absolutely no interests in Morris & Co., or, so far as these defendants are advised, in any other packing company in this country. In fact, this company was originally organized by the Eckersons, as the name will indicate, to do a general merchandise business, consisting principally of the handling of canned goods and oleomargarine, but it was found necessary, in order to keep down the overhead and profitably handled the business, to also carry some side lines. Consequently, its business has been the sale and distribution of oleomargarine and canned goods in approximately equal proportions, the total sales of the company being in the neighborhood of \$1,000,000 per year. Morris & Co. purchased into this company after its organization by the Eckersons.

The charter powers of this corporation are as follows: "To purchase, produce, sell, and deal in butter, cheese, eggs, milk, vegetables, poultry, and other farm. food, and dairy products, and the various materials entering into or used in the production thereof; to manufacture, sell, and otherwise deal in oleomargarine, bakers' supplies, condensed, preserved, and evaporated milk and all other manufactured forms of milk: to produce, purchase, and sell fresh milk and all the products of milk; to raise, purchase, and sell all garden products; to raise, purchase, sell, and otherwise deal in cattle and all other live stock; to manufacture, lease, purchase, and sell all machinery, tools, implements, apparatus, and all other articles and appliances used in connection with all or any of the purposes aforesaid or with selling and transporting the manufactured and other products of the company; to do any and all things connected with or incidental to the carrying on of said business or any branch or part thereof, to the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, maintain, work, develop, sell, convey, mortgage, or otherwise dispose of, without limit as to amount within or without of the State of New Jersey, and in any part of the world, real estate and real property, and any interest and rights therein. To carry on any other business (whether manufacturing or otherwise) which

may seem to the company capable of being conveniently carried on in connection with the above or calculated directly or indirectly to enhance the value of the company's property or rights. To acquire the good will, rights, property, and assets of all kinds and to undertake the whole or any part of the liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock, bonds, debentures, or other securities of this corporation or otherwise.

The present book value of this company is approximately \$12.50 per share.

These defendants, therefore, would report that the following disposition has been made of this matter subject to the approval of this honorable court; the capital stock of Eckerson Co., which was formerly held by Morris & Co., of Maine, has been sold to the stockholders of Morris & Co. in proportion to their holdings in Morris & Co., all subject to the approval of this honorable court. The only individual defendants who would then have any interest in this company would be Nelson Morris and Edward Morris and their combined holdings would be less than 4 per cent of the voting stock of the company, which is not only not in violation of the terms of this decree, but is authorized by the decree itself, if approved by this honorable court.

In view of the financial situation of the company and also of the independent holdings of the Eckerson stockholders, these defendants know of no better plan by which the prohibited holdings can be disposed of in accordance with the terms and provisions of the consent decree.

In connection with this matter this court should know that none of the products or goods of Eckerson Co. are sold through any of the instrumentalities of Morris & Co., and that the business of Eckerson Co. is conducted entirely separate from, and independent of, Morris & Co., the active officers and managers of the company being the Eckersons.

4. *Crescent City Stock Yards & Slaughter House Co. (Ltd.)*.—Some years prior to the entering of this decree and before the decree was contemplated, the boll weevil made the raising of cotton in large sections of the South impractical. It was then demonstrated that the South needed diversified industry. Both the climate and the soil were conducive to the raising of live stock. If course, the live-stock industry could not be conducted successfully in the South without a market, and this, necessarily, means packing houses and stockyards.

At that time Edward and Nelson Morris and others concluded to establish a packing house in the South and thus help to develop the live-stock industry in that section. Accordingly, in the year 1917 the Morris purchased a controlling interest in the above company, which had a capital stock of \$500,000. The company then owned a packing plant, located on the Mississippi River, in Arabi, which adjoins the city of New Orleans, and also a stockyards at the same location. There were no other packing plants contiguous to these yards.

After purchasing into this property, they spent much time and money in improving the property and in developing this new market, which always takes much time, attention, and money. It was their very serious desire and intention to give to the State of Louisiana and the South generally, a first-class market for live-meat animals and an up-to-date packing plant.

When this decree was entered, it thus became practically necessary for these defendants to dispose of both the packing plant and the stockyards because, naturally, they would not want one without the other, for the packing plant makes the market for the yards and the yards furnishes these defendants the raw material for the packing plant. In that connection these defendants were confronted with the fact that there were many independent stockholders in this company, and in the disposition of the property these defendants were confronted with the difficulty of finding purchasers for both the packing plant and the stockyards, who would coordinate and cooperate in the conduct and management of the two businesses.

In their efforts to sell and dispose of this property, these defendants sought to comply with the expressed desire of both this honorable court and the Government by offering this property to local parties. Much time and money were spent in that direction. Defendant L. H. Heymann made many trips to New Orleans in that connection and must have spent several weeks of his time in that city in an effort to dispose of this property. These defendants sent others to New Orleans at divers times to negotiate these sales.

Another difficulty encountered in the sale of these properties, in view of the financial stringency then and now existing, was to find a purchaser who had sufficient cash to handle the propositions. This is why the defendants were compelled to make the deferred payments so large in order to make the sale at all.

As a result of these efforts the packing plant was sold on April 30, 1921, and the stockyards were sold on June 1, 1921, and these sales were immediately reported to the Department of Justice.

These defendants would, therefore, report the following sales as to the property of the Crescent City Stock Yards & Slaughter House Co. (Ltd.): The physical abattoir property, by metes and bounds, was sold to the Arabi Packing Co. on April 30, 1921, for the consideration of \$350,000, payable as follows: \$25,000 at the time of execution of the contract; \$50,000 at the time of passing title; \$100,000 by assuming the bonded indebtedness: the balance of \$175,000 payable \$25,000 on July 1, 1921, and \$15,000 on April 30 of each year thereafter for a period of 10 years. The first three payments, aggregating \$100,000, have been made, leaving balance now due of \$150,000.

The stock of the Arabi Packing Co. (Inc.) is held exclusively by residents of the city of New Orleans, principally butchers, probably more than 100 in number, and they purchased this property in order that such butchers might do their own slaughtering at the plant. None of these defendants, and no one connected with Morris & Co., has any interest whatever, direct or indirect, in the Arabi Packing Co. (Inc.), or in the packing plant that was formerly owned by the Crescent City Stock Yards & Slaughter House Co. (Ltd.), outside of the remaining claims for purchase price.

These defendants further report that on June 1, 1921, the Crescent City Stock Yards & Slaughter House Co. (Ltd.) sold to the New Orleans Stock Yards (Inc.) the stockyards then owned by the Crescent City Stock Yards & Slaughter House Co. (Ltd.), by metes and bounds, the consideration for said sale being \$370,000, of which \$100,000 was paid in cash when the title passed, and the balance of \$270,000 is to be paid in annual installments of \$27,000 on the 10th day of June in each year, the first installment being due on June 10, 1921, having been paid. The New Orleans Stock Yards (Inc.) was organized by residents of the city of New Orleans, principally commission men then doing business at those yards, and none of these defendants, and no one connected with Morris & Co. has any interest whatever, either direct or indirect, in the purchase of said property or in the property itself.

After these sales and the Crescent City Stock Yards & Slaughter House Co. (Ltd.) changed its name to the Crescent City Investment Co. (Inc.), and now is in process of liquidation. The present assets of the Crescent City Investment Co. (Inc.) consists wholly of notes of the Arabi Packing Co. (Inc.) and the New Orleans Stock Yards Co. (Inc.) and stock of the Union Warehouse Co., property that is now occupied by a very large warehouse and which has been under lease to T. P. Cunningham, a local warehouseman, for a great many years and is now under option for sale, and these defendants have every assurance that it will be sold in the very near future. This warehouse property is not, and can not be, used in connection either with slaughtering of live meat animals or as a stockyards for the sale of live meat animals.

These defendants further report that in the sale of this property under the consent decree in this case the stockholders have lost a very substantial amount of money on account of the good will that has been built up in connection with this business and through profits that would come from a packing house and stockyards located as these properties were in the South.

Copies of the contracts of purchase of properties aforesaid are attached hereto, marked "Exhibits A and B," expressly referred to, and made a part hereof as fully as if copied herein.

5. *New York Stock Yards Co.*—This company is organized under the laws of the State of New York with an authorized and issued capital stock of \$500,000. Defendant Nelson Morris has 206 shares of the capital stock of this company; Edward Morris has 208 shares, and L. H. Heymann 50 shares. These three defendants have made a written proposition to the New York Stock Yards Co. that they will sell their stock aforesaid to the company for the sum of \$25 per share, ex-dividend, and the New York Stock Yards Co. (Inc.), in writing, accepted this proposition, subject to the approval of this honorable court, which written acceptances, signed by the president of the company, are attached hereto, expressly referred to, and made a part hereof as fully as if copied herein. The sale has been made on this basis simply because defendants could get no other bid for such stock.

6. *Union Stock Yards Co. of Baltimore.*—Defendants Nelson Morris and Edward Morris have sold to Alvin N. Bastable all of their capital stock in this company for the cash consideration of \$75 per share, and the purchaser has made and filed the affidavits required by the consent decree in this case, all in accordance with the terms and provisions of the said decree. This stock has always paid substantial dividends and, ordinarily, should easily be worth par, but owing to the present financial situation, defendants were unable to secure any other bid and sold on the aforesaid basis in order that the decree might be complied with.

7. *West Philadelphia Stock Yards Co.*—Defendants Nelson Morris and Edward Morris have sold to Mr. Joseph H. Harlan all of their capital stock in this company for the cash consideration of \$30 per share, and the purchaser has made and filed the affidavits required by the consent decree in this case.

8. *St. Louis National Stock Yards.*—These defendants have been in negotiation with various commission firms and brokerage houses in their effort to sell and dispose of the stock under the consent decree in this case. The defendant, C. M. Macfarlane, through the brokerage firm of Babcock, Rushton & Co., sold five shares of the capital stock of the St. Louis National Stock Yards to James H. Hewitt, who seems to live in the State of Arkansas. The seller, at the time of the transaction, did not know who the purchaser was, but he took the precaution to explain that the affidavit required by the plan approved by this honorable court would have to be made by the purchaser, and when this form of affidavit was admitted to purchaser he replied that he could not make the affidavit because he owned a few shares of Swift & Co. and also of Armour & Co. An affidavit was then prepared setting out the exact facts and the extent of his holdings, which affidavit is attached hereto, made "Exhibit C," and is hereby expressly referred to and made a part hereof as fully as if copied herein. It would seem that the affidavit complies with the terms and conditions of the decree, but does not comply with the form of affidavit in the plan approved for the sale of the prohibited holdings of these defendants, because of the small holdings of the purchaser of the stock of Swift & Co. and Armour & Co.

(B) EFFORTS MADE BY DEFENDANTS TO DISPOSE OF PROHIBITED HOLDINGS.

1. *Offers to live-stock producers.*—Immediately after the approval of the plan by this honorable court for the disposition of the prohibited holdings of these defendants, they, in good faith and diligently, set about to sell and dispose of all of their holdings to be disposed of under the consent decree in this case. As it appeared to be the desire of both this honorable court and the Government that the stockyards holdings should first be offered to live-stock producers, these defendants submitted the sale of their prohibited holdings to the live-stock producers generally and particularly to those live-stock producers who in the past had advocated that the packers should not be interested in the stockyards. During the months of May and June in the year 1921 these defendants corresponded with these producers, including all of the officers of the American National Livestock Association, and offered their capital stock holdings for sale and requesting such parties to assist these defendants in securing purchasers among the producers in case they did not want to purchase themselves.

These defendants report that from this extensive correspondence they did not receive a single offer for any of the capital stock to be disposed of under the consent decree in this case; and these defendants now have this correspondence ready to be produced in court and shown to the court if that is desired.

2. *Advertisements in newspapers.*—Not being able to dispose of these holdings through personal offerings and correspondence, these defendants placed in the Chicago Daily Tribune and the Daily Drivers Journal, of Chicago; the Globe Democrat and the National Live Stock Reporter, of St. Louis; the Daily Journal and the Gazette, of St. Joseph, Mo.; the Daily Record of the Drivers Telegram of Kansas City; the Oklahoman and the Livestock News, of Oklahoma City, an advertisement offering the prohibited capital stock holdings for sale, and particularly calling attention in each locality to the sale of the stock of the stockyards located in that vicinity, and although these advertisements were inserted in several different issues, these defendants have not received a single bid for any of the capital stock to be sold under the consent decree in this case, copies of such advertisements being ready to be produced in court for the inspection and satisfaction of this honorable court.

3. *El Paso Union Stock Yards Co.*—For a great many years the Morris family have been interested in stockyards in El Paso, Tex. Their thought in that connection was that there should be a market and stockyards in this southwestern country near the range and particularly at the gateway into Mexico whenever that country obtains a stable government and business relations on a normal scale are resumed between Mexico and the United States. The original yards were controlled by the Morris through a lease which expired many years ago. In the year 1914 Edward and Nelson Morris and others concluded to build new yards in El Paso, and the above company was organized with a capital stock of \$100,000.

The capital stock in this company to be disposed of in this case aggregates 461 shares, although the company is organized with a capital stock of \$100,000, represented by 1,000 shares.

These defendants have in good faith very diligently and persistently tried to negotiate a sale of these yards, going to the trouble and expense of sending parties to El Paso to negotiate a sale of the property, the desire being to comply with the wishes of this honorable court and the Government as to the purchaser.

These defendants would report that they have agreed upon the price for said property with O. R. Slavins, who is president of the Union Stock Yards Co., of Hutchinson,

Kans. The price and all the terms are fully agreed upon and the defendants are now waiting for Mr. Slavins to come to Chicago to sign the final papers. These defendants expect that this sale will be consummated and that in the near future they will be able to report to this honorable court a sale of this property to Mr. O. R. Slavins.

In connection with this property these defendants would state that they have never been able to conduct this property at a profit until last year, when the property did show a very small profit. This is due to the fact that other small yards in El Paso are located in the residential district on a lease, which soon expires. Consequently, there is every prospect that this property will soon be a very desirable and profitable investment. Notwithstanding this fact, and the further fact that these defendants have always held on to this investment because of its future, these defendants are going to sell this property to Mr. Slavins. When they resume the exporting of cattle from Mexico on a normal basis, this will become a very desirable property.

These defendants have in court the correspondence in connection with negotiations for the sale of this property for the inspection of this honorable court if that is desired.

4. *Oklahoma National Stock Yards and Oklahoma City Junction Railway Co.*—These defendants would show to the court that in the year 1910 the Morrisses located a packing plant adjacent to Oklahoma City, in the State of Oklahoma, and with others built the stockyards at such location. This was done in order to locate the market and the packing plant closer to production. The books of Morris & Co. will show that it cost a vast amount of money to build up this new market. There is grave doubt whether the stockyards at this point should be sold to anyone other than the parties who are interested in the packing plants, because each is dependent upon the other. Notwithstanding that fact, these defendants have made most strenuous and good-faith efforts to sell and dispose of their interests to be disposed of under this decree to parties living in the State of Oklahoma. Many trips to Oklahoma on this account have been made by very responsible parties under the direction of your petitioners, and much correspondence has been had with bankers and live-stock producers in the hope of selling and disposing of the holdings to be disposed of under this decree. Up to the present time no sale has been accomplished, but these defendants stand ready and willing and anxious to sell and dispose of their holdings at Oklahoma City to anyone upon fair and reasonable terms.

5. *Kansas City Stock Yards Co., St. Louis National Stock Yards Co., and St. Joseph Stock Yards Co.*—In addition to the correspondence and public advertisements above referred to, these defendants have been in touch with bankers, stock brokers, commission men, horse dealers, live-stock shippers, and other local parties in the locality of these three properties who would likely want to purchase stock of this character. There have been some negotiations, but these defendants have not been able to sell or dispose of their holdings in these three companies, although they state most positively and unqualifiedly that they have in good faith exercised due diligence to dispose of the same upon reasonable terms.

(c) CONTROL AND MANAGEMENT OF PROPERTIES COVERED BY THE CONSENT DECREE IN THIS CASE HAVE BEEN SURRENDERED BY DEFENDANTS.

1. *Deposit of stock.*—These defendants would report that they have deposited with the Munsey Trust Co., as trustee, under the plan approved by this honorable court, the following stock:

Kansas City Stock Yards Co., total 8,840 shares, as follows: Nelson Morris, 3,900 shares; Edward Morris, 4,610 shares; L. H. Heymann, 330 shares.

St. Joseph Stock Yards Co., total 380 shares, as follows: Nelson Morris, 250 shares; C. M. Macfarlane, 10 shares; L. H. Heymann, 120 shares.

St. Louis National Stock Yards Co., total 1,570 shares, as follows: Nelson Morris, 661 shares; Edward Morris, 651 shares; C. M. Macfarlane, 8 shares; L. H. Heymann, 192 shares; H. A. Timmins, 58 shares.

Oklahoma Stock Yards Co., total 658 shares, as follows: Nelson Morris, 273 shares; Edward Morris, 275 shares; L. H. Heymann, 100 shares; H. A. Timmins, 10 shares.

Oklahoma City Junction Railway Co., total 722 shares, as follows: Nelson Morris, 229 shares; Edward Morris, 233 shares; C. M. Macfarlane, 150 shares; L. H. Heymann, 100 shares; H. A. Timmins, 10 shares.

El Paso Union Stock Yards Co., total 461 shares, as follows: Edward Morris, 201 shares; Nelson Morris, 200 shares; L. H. Heymann, 50 shares; H. A. Timmins, 10 shares.

New York Stock Yards Co., total 464 shares, as follows: Edward Morris, 208; Nelson Morris, 206; L. H. Heymann, 50 shares.

West Philadelphia Stock Yards Co., total 13 shares, as follows: Edward Morris, 7 shares; Nelson Morris, 6 shares.

Union Stock Yards Co., of Baltimore, total 18 shares, as follows: Edward Morris, 9 shares; Nelson Morris, 9 shares.

Under such plan, the Munsey Trust Co. has the unconditional and unqualified right to vote this stock under the order and direction of the court.

2. *Resignation of officers.*—Under the plan approved by this honorable court, the defendants have resigned from the following positions:

Edward Morris as director of the St. Louis National Stock Yards Co.

C. M. Macfarlane as director of the St. Louis National Stock Yards Co.

L. H. Heymann as director of the St. Louis National Stock Yards Co.

Edward Morris as director of the Oklahoma National Stock Yards Co.

C. M. Macfarlane as director of the St. Joseph Stock Yards Co.

H. A. Timmins as president and director of the New York Stock Yards Co.

H. A. Timmins as treasurer and director of the El Paso Union Stock Yards Co.

Nelson Morris as president and director of the East St. Louis Junction Railroad Co.

Edward Morris as director of the East St. Louis Junction Railroad Co.

L. H. Heymann as director of the East St. Louis Junction Railroad Co.

C. M. Macfarlane as director of the East St. Louis Railroad Co.

C. M. Macfarlane as secretary and director of the Oklahoma City Junction Railroad Co.

From the above the court will observe that whatever control and management these defendants ever had of the properties covered by the consent decree in this case, that control and management have passed absolutely from the hands of these defendants or any of them.

(D) DECREE OTHERWISE COMPLIED WITH.

These defendants would respectfully report that they have in good faith, fully and completely, complied with all of the terms and conditions of the consent decree entered in this cause, excepting only that the individual defendants have been unable, despite due diligence, to sell and dispose of their holdings in five stockyards companies and one terminal company as herein set out, and would specifically report as follows:

1. That these defendants have not entered into any contract, combination, or conspiracy in restraint of trade in violation of paragraph 1 of said consent decree.

2. That the distributive system and facilities of these defendants have not been, and are not now being used in violation of paragraph 3 of said consent decree.

3. That none of these defendants are now conducting any retail meat markets in violation of the terms of paragraph 6 of the consent decree entered in above-entitled case.

4. That none of these defendants own or conduct any cold-storage warehouses in violation of paragraph 7 of the consent decree aforesaid.

5. That none of these defendants buy, collect, sell, distribute, or deal in milk or cream in violation of paragraph 8 of the consent decree aforesaid.

6. That these defendants have in good faith diligently attempted to dispose of all property which they are required to dispose of under the consent decree aforesaid and have disposed of all of such prohibited holdings excepting only the capital stock held by the individual defendants in the stockyards at Kansas City, East St. Louis, St. Joseph, Oklahoma City, and El Paso (the latter property being practically sold), and the combined holdings of said individual defendants in said four yards are wholly inconsequential when it comes to the question of management or control of the properties, their highest combined holdings in any one of these yards being 6.8 per cent of the whole and in others as low as 1.52 per cent of the whole.

(E) PETITION FOR MODIFICATION OF PLAN.

These defendants would respectfully represent that the surrender of the cash dividends declared on the capital stock to be disposed of by them in this case works an unnecessary and unjust hardship upon them and in that connection these defendants would show to the court:

1. There is now no real cause for this provision, because whatever control and management these defendants had over the properties to be disposed of, have been unequivocally surrendered and given up.

2. In these days of financial stress and uncertainty these defendants, who are engaged in an essential industry, actually need and should have the money in their business.

3. It will accomplish nothing and do no one any good to take this money out the active channels of commerce and trade and lock it up with a trust company in the city of Washington.

4. Since the approval of the plan for the disposition of this property by this honorable court Congress has enacted and put into effect a law, packers and stockyards act, 1921, which controls and regulates very fully the business and activity of the various stockyards involved, and under that law the Secretary of Agriculture has passed and adopted very stringent and far-reaching rules and regulations in the conduct of the business at these yards; so that the people doing business at such yards and the public generally are very fully protected, and under these circumstances it is wholly unnecessary to take this money from these defendants and deposit it with a trust company until these stocks are sold.

5. It is clearly demonstrated that the surrender of these cash dividends is not necessary to conserve the interests of the Government or protect the interests of the public generally, because other defendants having incomparably larger holdings under this decree are permitted to collect their dividends, the approval by this honorable court of plans for other defendants, which authorized them to collect their cash dividends being entirely right, just, and proper.

6. That the remaining holdings of these defendants do not constitute a control of any of the properties involved. In fact, the combined holdings of these defendants in the Kansas City Stockyards Co. amount to 6.8 per cent of the capital stock of that company, and 2.146 per cent of the capital stock of the St. Louis National Stockyards, and 1.52 per cent of the capital stock of the St. Joseph Stockyards Co., and besides 7.22 per cent of the Oklahoma City Junction Railway Co. Also 6.58 per cent of the Oklahoma City National Stockyards Co.

In view of these changed conditions since this plan was approved by this honorable court and also the efforts by these defendants in good faith to comply with the terms and conditions of this decree, as shown by this report, these defendants would respectfully request this honorable court to modify the plan merely to the extent that they be permitted to collect the dividends on this stock until same can be disposed of under this decree.

PRAYER.

In view of the foregoing these defendants respectfully pray this honorable court to approve each and all of the sales aforesaid and to grant an extension of one year in which to sell and dispose of the other properties to be disposed of under said decree, providing that additional time may be granted by this honorable court if the defendants, despite due diligence, have been able to dispose of same upon reasonable terms, and that the plan be modified so that defendants will have the right to collect the cash dividends on such stock until same is disposed of under the terms and conditions of the decree aforesaid.

All of which is respectfully submitted.

Morris & Co. (Maine), Morris Packing Co. (Maine), Morris & Co. (New Jersey), Morris & Co. (Ltd.) (Louisiana), Morris & Co. (Pennsylvania), Joseph Sterns & Sons (Inc.) (New York), Brooklyn Beef & Provision Co., Condit Beef & Provision Co., Corwin-Wilde Co., Chamberlain & Co. (Inc.), Donnelly & Co. (Inc.), National Hotel Supply Co., J. M. Wilson & Co., Middletown Beef & Provision Co., Glenn & Anderson Co., Edward Morris, Nelson Morris, L. H. Heymann, C. M. Macfarlane, H. A. Timmins, defendants; by ———, solicitor for said defendants.

STATE OF ILLINOIS,

Cook County, ss:

Edward Morris, being first duly sworn, on oath, states that he has read the above and foregoing report and is familiar with the facts and statements therein contained, and states, under oath, that the foregoing report and petition is true in substance and in fact.

Subscribed and sworn to before me, a notary public, in and for the county and State aforesaid, this 1st day of March, A. D. 1922.

Notary Public.

Mr. HOGAN. Mr. Borders, before you sit down, will you object to one question?

Mr. BORDERS. Not at all.

Mr. HOGAN. Is it not a fact that the Morris defendants—I take it we can designate your clients by that term—that the only objection that the Morris defendants have, and the only objection which you have, to a vacation and modification of this decree is this, that if the vacating or modifying of that decree permits the others to go into the

business of distributing groceries, that you will have to do so also in order to meet that competition?

Mr. BORDERS. I can answer that directly, and, of course, you like a direct answer [am sure. You have put your finger on the most important—I would not say that, but there is a great deal involved in this, Mr. Hogan. We are dealing in a necessity of life, a food product. Here is the trouble in this whole proposition. We are between the producer and the consumer. When you put that question, you are asking a great big question and one that requires a great deal to answer.

But I will say this: We have—when I say “we” I mean the Morris defendants—gone out of that business. Now, if the decree is modified or set aside and our larger competitors go into the grocery business again—answering your question directly—well, I am not going to say that we would be forced into it, because we are not going into the grocery business unless we are forced into it. But here is the point you have in mind in that. Take all the cities where these five large packers do business; probably they will all be on the same switch track. Now, if the customers come along and can walk into Swift's or Armour's and get canned goods and groceries, and they walk next door into Morris & Co.'s and find they can only get meat, we can not hold that business. That is why we would be forced into the grocery business: that is one of the reasons.

I do not want to take the time of the court on that; it is a big proposition; but I would like to answer that. Of course the war had something to do with forcing us into it, but your honor can see at a glance that if our competitors handle these so-called side lines and groceries we are at a tremendous disadvantage if we sell only meats right beside them.

Mr. HOGAN. I am going to ask you only one other question. You personally signed, for the Morris defendants, in December, 1919, the memorandum agreement with the Attorney General providing for this suit?

Mr. BORDERS. Oh, yes. If there is any other question any of you gentlemen want to ask, it is all right. Our position has, I think, been consistent all along in this matter, and we stand now where we stood before.

The COURT. Does anyone else wish to be heard?

Mr. BORDERS. Of course, if your honor will permit me, when the question was put to me as to whether this was the only reason, it is a question of continuing a business, unfortunately, because it deals with foods and the public are interested in it. This is an essential industry. We stand between the producer and the consumer. We transmute the live meat animals into meat for the table of the American people. When we do that work efficiently and economically we are doing an essential work for the people. But there is wrapped up in this and involved in it a public question, and that has influenced us to some extent, because in this vital industry, and especially since the foreign markets are now denied to us on account of the exchange and the conditions resulting from the war, there ought to be peace here in this country so far as the packing industry is concerned.

Mr. BREED. Might I ask, Mr. Borders, if representing the Morris defendants, you were opposed to the proposed intervention for the purpose of vacating this decree?

Mr. BORDERS. I think we have said so. We are opposed to the modification of this decree.

Mr. BREED. Or the vacating of it?

Mr. BORDERS. Or the vacating of it. That is our position.

The COURT. Does anyone else wish to be heard?

Mr. WATKINS. We wish to present an argument, if your honor please.

The COURT. Very well. I will hear you at 1.30.

(Whereupon, at 12.40 o'clock p. m., a recess was taken until 1.30 o'clock p. m.)

AFTER RECESS.

The court reconvened at 1.30 o'clock p. m. pursuant to recess.

ARGUMENT BY HON. PEYTON GORDON, UNITED STATES ATTORNEY FOR THE DISTRICT OF COLUMBIA.

Mr. GORDON. If your honor please, during Mr. Galloway's argument your honor announced that the decision of Mr. Justice Stafford would be the law in this case. I assume that means so far as applicable to the facts.

I want to point out the difference between the situation of the intervenor or the persons who sought to intervene on which Judge Stafford ruled and in this case.

In the case in which Judge Stafford announced his decision the intervenor sought to intervene for the purpose of upholding and maintaining the decree and opposing

any modification of that decree which would deprive petitioner or intervenor of the rights and privileges that were secured under that decree.

In this case the petitioner seeks to intervene, under the guise of a friend of the court, for the purpose of taking entire control of the case, and urges that the court hold that the decree of an associate of the court in a former case was improvidently entered and invalid.

I would like to read a statement made by Mr. Justice Stafford of what he had in mind when he declined to strike out the order allowing intervention:

"It is considered that upon the facts alleged their petition is fair and just and that they should be allowed to intervene, not to take control of plaintiff's side of the proceedings, but for the limited purpose stated in their petition, namely, to be heard in opposition to any modification of the decree that would deprive them of the protection now secured by it."

And then the last paragraph:

"This decision must not be considered as opening the door to all would-be interveners who may consider themselves interested in the decree or any change therein, but as strictly limited to the facts alleged in their petition which are in law admitted by the motion to strike out."

The sole purpose announced by this petitioner, as I understand it, is that this court shall hold invalid a decree signed by an associate two years ago, a decree that has been in effect two years, on the assertion in the petition that it was improvidently entered or that the court was imposed upon.

If your honor please, what valid or legal right has petitioner in the case? What relief can be granted petitioner in this proceeding? He asserts that he had a contract with one of the parties to the decree, and that that contract has been breached; that there should be equitable relief in this case, because one of the parties to the suit which he is not a party to has violated or breached a contract entered into between the two of them.

Further, suppose the California Cooperative Canneries were permitted to intervene, has this court any right to compel Armour & Co. to perform or to carry into effect the contract made between the two of them? It has no rights whatsoever. Whatever right petitioner may have against Armour & Co. must be proceeded on in a suit in a law court for damages.

As to whether or not this petitioner can come in save through the Attorney General, the Sherman antitrust law provides that the district attorney, at the direction of the Attorney General, in these proceedings shall institute suit, and so on.

It is a criminal as well as a civil statute. A petitioner or any member of a community has as much right to go into a criminal court and seek to have some one indicted for violating the Sherman antitrust law—I say, has as much right to go into court other than through the district attorney's office—as he would to come into this court except through the office of the Attorney General and seek relief through an equity proceeding.

The court might permit them to come in as a friend of the court, to advise the court, but he asks the court to permit him to take the all-important part—that is, to vacate and declare invalid a decree that has been signed by another member of the court. In other words, to ask this court two years after a decree has been signed by an associate to sit as a court of appeals on that decree, and to hold that that court had no jurisdiction to sign it or that the court was imposed upon when the decree was considered and entered. I respectfully submit to your honor that it is not proper for this court sitting at this time to assume that position or to permit petitioner to come in.

ARGUMENT BY THOMAS CREIGH, ESQ., ATTORNEY FOR CUDAHY PACKING CO.

MR. CREIGH. Your honor, in this proceeding I represent the Cudahy Packing Co. I expect at this time to take but a very few moments, and by way of supplementing, in large measure, I might say, what Mr. Borders has said on behalf of his client.

During the very excellent argument this morning of our friend, Mr. Hogan, I was impressed with one sentence where he criticized the proceedings here up to the time of the entry of the decree as being one quite extraordinary, perhaps exceptional, under the Sherman antitrust law, as consent-decree practice. Of course the items to which he sought to call the court's attention were stated correctly by him, but certainly the proceeding in which we are engaged at the present time partakes of what might be called an extraordinary situation and puts it into an almost unlimited exception, namely: That some two years or more after the entry of the consent decree, under which the packing industry, if I may say it, or the Big Five packers so-called, both principals and subsidiary companies, desired for the good of their industry and in what they believed sincerely to be for the benefit of the general public, entered

into an understanding with the Government by which certain complaints and alleged grievances should be remedied, and here, after all the defendants so far as the financial season has permitted, have gone ahead and complied with the terms of the decree, and at some serious inconvenience and at some substantial loss in many cases I may say as shown within the record here—I say, after all those things we are met by a motion on the part of our friend, the California Cooperative Canneries, for leave to intervene, with the suggestion made that their rights have been jeopardized, that they too have suffered losses by what has been accomplished, and yet that the decree should be set aside.

Now, certainly there are some equities in the case at the present time on the part of those defendants who have proceeded under this decree. Of course at the present time we are working from a narrow motion, one as to which I understand Mr. Hogan, and in which I agree, simply appeals to the discretionary power of the court to permit a party to take some part in the proceedings, and for further argument in event a preliminary showing has been made.

But as I understand the cases cited by Mr. Hogan, and the position taken by him, to the effect that the decree is fundamentally invalid, for whatever reasons stated therein, it does seem to me that even those very authorities show that the client has no collateral right to an attack upon the decree if it has any rights whatsoever.

Without having taken time previously to analyze those decisions or wishing to discuss that point now—and as I understand your honor's statement to us, we may brief it later—I want simply to suggest to your mind at this time that if it will very clearly appear from this that the decree is invalid, then the appeal is not made by the California Cooperative Canneries to the discretion of your honor to permit them to come into the case at this time, and particularly in view of the fact that the decree has been here now for more than two years and no contest about a knowledge everyone has had about the situation.

I had, previously to coming into court, your honor, prepared the objections of the Cudahy Packing Co., but I did not file them, and if I may I will file this copy which I now offer. I shall be glad.

The COURT. That may be filed.

(The paper offered by Mr. Creigh is here copied in full in the record as follows:)

In the Supreme Court of the District of Columbia. United States of America. v. Swift & Co., Armour & Co., Morris & Co., Wilson & Co., Cudahy Packing Co., et al. Equity, No. 37623.

Comes now the defendant, the Cudahy Packing Co., by its attorney, Thomas Creigh, and objects to the granting by this honorable court of the motion filed herein by the California Cooperative Canneries, asking for leave to intervene for the purposes set forth in the intervening petition thereto attached and shows the court that such intervention should not be allowed or granted for the following reasons:

1. The decree having been entered by the consent of all parties thereto, it is equally necessary that the consent of all parties be given before intervention is allowed. This defendant objects.

2. Under paragraph VI of the intervening petition tendered with said motion it appears that the California Cooperative Canneries claim that such decree is void for want of jurisdiction and certain other reasons.

In such case said California Cooperative Canneries have a remedy otherwise than by being made a party intervenor herein, and to permit them to be made such party intervenor for the purpose of attacking said consent decree would be unwarranted and inconsistent with proper procedure.

3. Said decree was entered February 27, 1920, and has therefore been in force and effect for more than two years and the several defendants in such time have in good faith been proceeding in all respects to carry out its terms.

Said California Cooperative Canneries has been fully advised at all times of the entry of said decree and of such steps and procedure, and failure on its part earlier to file its application constitutes laches and estops it from now asserting any right if ever it had any, to seek to vacate or modify the terms of said decree.

THE CUDAHY PACKING CO.,
By THOS. CREIGH, Its Attorney.

Mr. CREIGH. If I might have a few moments more I will say that, of course, I recognize we have a rather narrow proposition for presentation to your honor at this time. On the other hand I do think that I will crave your indulgence to venture just one little statement: The proposition here is perfectly obvious and is one which we ought to consider as a matter of law, and which I have no doubt will be considered as a matter of law, nevertheless the great thing about it all is a matter of economics, and largely a matter of politics. And I think your honor must bear in mind some of the considera-

tions brought about by that condition. The whole business situation is a matter of uncertainty. It is probably bettering at the present time, but the packing industry, unfortunately for itself, has been, if I may say it, the football of politics for 20 years. That does no one any good. Sincerely on the part of defendants in this case was this decree entered into, in absolute good faith, if I may say it, and there was manifested the greatest expectation that there would come to pass out of it such a settling of conditions and removal of friction and argument and dispute and contention and misrepresentation that we would be able, in the adjustment following the war, to get ahead; and up to the time that the later arguments that are finally crystallized here began, I do think progress along that line was being made.

It is a very serious thing. There are many, many equities inside the present situation, if your honor please; not only those that may perhaps be presented by the petitioning parties here for intervention, but for all those other parties who have gone ahead.

Of course, some questions were asked here this morning, and I feel somewhat embarrassed in getting into the thing, for the realm of politics is not for your honor, but from my standpoint I think you will pardon me if I say that I can figure in these times no greater calamity to the packing industry than having something happen to this decree here and subject us to the contention of politics and legislation and argument back and forth and the conflicting interests that can not possibly be harmonized because economically they have to be worked out in the great course of time.

I thank you.

Mr. WILLIAM C. BREED. Mr. Creigh, do I understand that in the particular memorandum you have filed in behalf of the Cudahy Packing Co., one of the defendants in this cause, you are opposed to this application to intervene for the purpose of setting aside the decree?

Mr. CREIGH. The statement I have filed contains such a statement.

ARGUMENT BY EDGAR WATKINS, ESQ., ATTORNEY FOR AMERICAN WHOLESALE GROCERS' ASSOCIATION.

Mr. WATKINS. If your honor please, there is one point in the petition for intervention that was not discussed in the opening argument of Mr. Hogan, but as to which I wish to say just a few words.

It is contended in paragraph 6 of the petition to intervene that the decree of February 27, 1920, was nothing but an interlocutory decree, and that contention is based upon the concluding paragraph of the decree; that paragraph permits additions necessary at the foot of the decree. The provision is for the purpose of—

"Taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree."

That is not an unusual provision in a decree. Mr. Daniel, in his work on "Equity, pleading and practice," gives the history of what he calls these ulterior provisions. They were used originally in cases in which there were foreclosure and sale, and it was necessary to reserve at the foot of the decree the right to distribute the proceeds of sale. But it was gradually increased and equity courts generally adopted it.

There is a case in which the United States Supreme Court has held a decree final which follows almost the language of this decree, in substance I think it does follow the language, being the case of the Winthrop Iron Co. v. Meeker (109 U. S. 180). In that case suit had been brought to cancel a lease claimed to have been fraudulently made. The lease was declared canceled. A receiver was appointed and the court retained jurisdiction to determine the value of the use of the lease prior to its valuation, and used this language:

"And the court reserves to itself such further directions as may be necessary to carry this decree into effect, concerning costs or as may be equitable and just."

The Supreme Court said that that decree was final and determined all the litigated questions.

All litigated questions were determined here. This reservation does not make the decree interlocutory. This petition is a supplemental bill in the nature of a bill of review. It seeks to set aside what has heretofore been done in the case. It seeks to review the original decree, and although it is called a petition in intervention it is as described by Mr. Justice Story, in *Whiting v. Bank* (13 Peters), nothing but a supplemental bill in the nature of a bill of review seeking to set aside a decree for error apparent on the face of the decree.

A bill of review is there described, and the power of the court over such bill is stated as follows—

The Court (interposing). A bill of review can be filed only by one of the original parties or one of the successors in interest, can it not?

Mr. WATKINS. I believe so, but under equity rule No. 37 of the Supreme Court of the United States an intervenor who had the right to intervene might for the purpose of filing a bill of review be considered a party.

I am arguing the case on that theory. But assuming that this proposed intervenor had the right to come in, then my contention is that this bill of review was filed too late. The purpose of a bill of review of course I need not stop to state, but is twofold. There are only two things a court can do on a bill of review—set aside the decree for error apparent on the face of the decree, or set aside the decree for facts that have happened since the entry of the decree and which of course were not known at the time of its entry.

In the case of *Whiting v. Bank*, which I have just cited, there was filed by a party—and for the purposes of this argument I am conceding that this proposed intervenor would have similar rights—a bill to set aside a decree. Mr. Justice Story, who perhaps knew more about equity pleading than anybody who ever lived in America, in discussing that bill said:

"It is plain that this bill of review is not maintainable for two reasons, each of which is equally conclusive. The first is, that no error is shown in the original decree, for the only pretended error is in the sale under the decree."

I shall leave to Mr. Breed the discussion of the validity of the original decree, and discuss only the second ground stated by Mr. Justice Story. [Continuing reading:]

"The second is that this bill of review was not brought within five years (two years by equity rule 62 of this court) after the original decree was rendered."

In the court from which that appeal was taken there was a rule permitting bills of review within five years. Equity rule 62 of this court prohibits the filing of a bill of review after two years. In England and in most of the courts of the United States the courts have held that a bill of review can be filed only within the time prescribed to take an appeal, and in the absence of a special rule or a special statute no bill of review can be filed at a date later than an appeal can be taken. But this court and some other courts have adopted a rule by which the time is fixed for the filing of a bill of review, and that time in this court is two years.

This petition was filed just 28 months after the decree was originally entered.

Mr. Justice Story in his work, speaking generally, where there was no rule, said:

"If there be any laches or negligence that destroys the title to the relief"—by a bill of review.

In the case of *National Brake & Electric Co. v. Christensen* (278 Fed. 490, 494)—I have given my brother Hogan the list of authorities, so I need not always read the pages—the court said:

"Bills of review are allowed for the purpose either of correcting errors of law apparent on the face of the record or of admitting new evidence which has come into being since the decree or was not shown or knowable at the time of the trial. Not only will the appeal to equitable discretion fail if the new evidence or the errors of law are not presented at the earliest practicable moment, but also if the errors of law or the new evidence would not change the substantial equities between the parties."

Simkins, in his "Federal suit in equity," which is one of the most useful practice books in equity, lays down the rule that the bill can not be filed unless filed within time for appeal, which is the rule almost universally—it is not universally applied—where there is no rule of the courts to the contrary. He says:

"The time within which a bill of review should be filed is not fixed by statute or rule, but the courts, by analogy, require the bill to be filed within the time allowed by the statute for appeals, and not after. * * * When it affirmatively appears that the bill was not filed within the period limited for appeals, it is subject to a demurrer; otherwise the issue must be raised by answer to the bill. * * * The rule as above stated applies, without exception, where errors appear in the decree or proceedings, because it should be brought within the time in which error could be appealed from."

So it is too late to file this bill of review. The court has deprived itself of jurisdiction to consider it by equity rule 62.

The rule of this court permitting interventions, rule 15, provides that intervention may be had by anyone claiming an interest in the litigation. Of course, that means legally.

The proposed intervenor recognizes that obligation, and in paragraph III says that he is interested in this litigation because of an alleged contract with Armour & Co., and that contract is set out in Paragraph II of the proposed intervention. That is not a contract. It is unilateral in that there is no promise on the part of Armour & Co., and in that there is no fixed price and no obligation on the part of Armour & Co.

to take any goods unless it desires. And it is void for the reasons that Mr. Galloway argued, that it has been interfered with by governmental action.

Let me just a moment, if your honor please, call your attention to the goods that were sold. The California Canneries, then known as the Producers' Warehouse Co., "agrees to sell and deliver to second party, and second party agrees to purchase and receive from first party, all the California canned fruits required by the business of second party and Armour & Co." That is probably a misprint; "second party, Armour & Co." That is the amount there stated. All the goods required by Armour & Co.

Of course your honor is familiar with requirement contracts. A contract to furnish a manufacturer all the lumber he may need in the production of certain commodities is a valid contract, but the requirement contracts are not valid when they apply to a dealer, because a dealer has no certain requirements. He buys only such goods as he may sell. He does not know how many he may sell. He does not know how active his salesman will be. He does not know the condition of the market. And in the case of *Crane v. Crane & Co.* (105 Fed.), the circuit court of appeals, I think for the eighth circuit, held specifically that a requirement contract was not valid when made with a dealer, a middleman. It may be valid with a manufacturer.

So if we stop there, there is no obligation to furnish any definite amount of goods or to take any definite amount of goods.

But the contract does not stop there. After stating that it shall sell and buy the requirements of California canned fruit of Armour & Co., it says: "Except that purchased by second party"—that is Armour & Co.—"from the California Growers' Association under its contract with that association, dated May 7, 1919, limited by the capacity of the factories operated by first party." It is not certain who "first party" is there, but probably the California Growers' Association. So not only is there a defect in the contract by making there the requirements of the dealers, but those requirements are lessened in certainty by saying: Except such parts as may be bought from some one else under another contract. So it seems, if your honor please, that there is no obligation to take any definite amount of goods, or to sell any definite amount of goods. But the price must also be fixed.

This court has held in the case cited in the brief that the minds of the parties must meet on every material part. That, of course, is general contract law. The price is left entirely at the discretion of the buyer.

Paragraph III of this alleged contract says:

"The price to be paid by second party for said goods delivered as aforesaid during any year shall be the prices used by the California Packing Corporation"—which is not a party to the contract—"in confirming its sales to the trade generally, provided, however, that first party shall not be required to sell any particular grade of goods to second party at prices which, less the discounts mentioned below in this paragraph and paragraph 4 hereof, are less than the fair value of the fruit plus its actual cost of manufacture."

The price is, first, that which the California Fruit Growers' Association fixed, but that is limited by the fair value of the fruit, plus the actual cost of the manufacture. But that is not all, if your honor please, "and in case the parties are unable to agree upon a price to be paid for such grades, second party"—that is, Armour & Co.—"shall not be required to accept the same." So it is purely a discretionary matter with Armour & Co. as to whether they shall accept any goods, and if they are not satisfied with the prices arrived at in those devious ways they are not compelled to accept any.

Then as Mr. Galloway said, this case itself, by the very terms of the contract, terminated the contract, and the allegations of the petition to file an intervention here shows that it was actually terminated here by Armour & Co. after this decree was entered. So the proposed intervenor has no interest here. He has got no rights in this case.

The COURT. On what page is that contract?

Mr. WATKINS. It is in Paragraph II of the petition, if your honor please.

Mr. HOGAN. It begins on page 2, about the middle of the page, if your honor please, and runs over to page 6, in Paragraph II of the intervening petition.

Mr. WATKINS. If the cannery had any valid contract, if your honor please—

The COURT. Well, where is the statement in regard to the termination of it?

Mr. WATKINS. That is over in Paragraphs IX and XI.

Mr. HOGAN. On page 6.

Mr. WATKINS. It starts at the bottom of page 5: "And in case governmental action materially interferes with the performance of this contract by second party, then in that case it shall have the right to cancel and terminate this agreement," etc., at the top of page 6.

The COURT. Now, do you call it "governmental action interfering" when there is by consent of the parties an agreement, not by an order but by consent, without any adjudication?

Mr. WATKINS. It is none the less governmental action because of the fact that it was consented to. The Government was prosecuting, as this record shows—

The COURT (interposing). Had begun, but you do not contend that to be sufficient?

Mr. WATKINS. As I was going to say, the Government had begun prosecutions before grand juries and was threatening the filing of injunction suits. The Federal Trade Commission had reported that these defendants were violating the law, and this consent was not a consent that did not have force back of it. It was a consent to prevent probably a worse fate. It was an agreement of the parties, that instead of going on with this litigation, as Mr. Creigh said, "We will have peace here." And this was governmental action, although it was governmental action consented to.

If the canneries had any legal interest in this case—that is, if they had any valid contract—they would have no right in this court and in this cause. What do they claim? They claim that they had a contract to sell certain goods, canned fruits, and that Armour & Co. had breached that contract. That is, he had put himself where he can not perform it by virtue of this decree. Assuming that that were true, what would be the remedy of the canneries? They could not enforce specific performance of this kind of a contract. They can not come into a court of equity, in this court or any other court, and compel Armour & Co. to perform that contract. Their remedy is purely one at law in a suit for damages.

That was decided by the circuit court of appeals, in the case of Consolidated Fuel Co. v. Railroad (250 Fed. 395). In that case the fuel company had agreed to sell certain coal during the war to the railroad. The fuel company breached its contract. The railroad alleged in a bill for specific performance that if it did not get that coal it would have to shut down its operations. That the railroad would suffer incalculable damages, and that the people along its line would suffer great damages. But the court said that the remedy was in a suit for damages, the coal having a market value, and equity having no jurisdiction over the subject matter.

There is quite a difference, if your honor please, in the arguments that I made when I was insisting that the grocers had a right to intervene, and the argument I am making now.

The COURT. I imagine so.

Mr. WATKINS. Because the question is not the same, but the two arguments are entirely inconsistent. I have referred already to equity rule 15, and I will make another reference to that, and in connection with that to equity rule 37, which is the same rule passed by the Supreme Court of the United States. The only difference in the two rules is that the last paragraph of equity rule 37 is omitted from equity rule 15 of this court. The last paragraph of equity rule 37 says:

"Intervention shall be in subordination to, and in recognition of, the propriety of the main proceedings."

When Mr. Justice Hoehling granted the right to intervene in this case, he specifically made the order in subordination to and in recognition of the propriety of the proceeding theretofore had. That language is not in the rule of this court, but it is not necessary that it should be, because it is a universal rule of equity practice. Interventions did not exist in the English courts of chancery, and they have grown up in this country, but they have grown up with the idea that the intervener was not to take charge of the litigation.

The COURT. Well, it was the rule of this court to enlarge that power of intervention, and for that reason they omitted the provision in the rule of the Supreme Court of the United States.

Mr. HOGAN. Our rule was passed subsequent to that of the Supreme Court.

Mr. WATKINS. I know it was subsequently passed, but I assume that you did not repeal or intend to repeal by that rule the general principles of equity universally applied, although you did not go as far as the Supreme Court. There was no necessity of announcing, I am assuming, a principle that would apply in all the courts, including this court.

In section 1640 of the Code of the District it is specifically stated that the equitable principles of the United States are retained, and are not repealed by that general repealing section.

The COURT. What section is that?

Mr. WATKINS. Code, section 1640 of the District court.

The COURT. I did not understand what you said about that, Mr. Watkins.

Mr. WATKINS. That the equitable principles of the United States are retained in the District, the general principles of equity. You will find it down at the latter part of the section.

The COURT. I had always had an idea that that referred to principles of equity—
 Mr. WATKINS. The point I am making is that this right of intervention was one of the principles of equity that has been adapted to the equity courts of this country. As Mr. Justice Lamar said in one case: "An intervener took the suit as it found it." That is a Georgia case (*Charleston Ry. Co. v. Pope*, 122 Ga. 577; 579), when Mr. Justice Lamar was on the bench in Georgia, before he became a justice of the Supreme Court. The office of an intervention was stated in *Seaboard Air Line Ry. v. Trust Co.* (125 Ga. 463, 465) as follows:

"The office of an intervention is to cause a party to be made to a pending proceeding, not to establish that the proceeding should not exist."

And in *Consolidated Gas Co. v. Newton* (256 Fed. 238, 244), which was later affirmed by the Supreme Court in discussing this point it was said:

"The long-settled practice in equity is that a person can not be made a party defendant on his own application, unless so required by statute." And the reason given in the discussion of it was that he could not come in and fight the proceedings; that the position of the defendant made him in opposition to the proceedings, and that he had to be in subordination to those proceedings.

The case referred to by Mr. Hogan this morning discusses that rule in the 279 Fed., at page 365. And points out just what the equitable principle is. The contention was made in this case that the intervener had no right to come in because he must recognize the propriety of the decree. And this is what the court says:

"We see no force in the criticism that the petition states no cause of action. It does not contravene equity rule 37 that an intervention must be in subordination to and in recognition of the propriety of the main proceeding. It recognizes the propriety of the main proceeding. It merely asks in effect that the decree be construed."

So, properly understood, that case is really authority for the contention here that nobody can intervene in a case except in subordination to the general purposes of the original bill.

There is nothing here pending for an intervention to take hold of. When the grocers asked to intervene it was alleged, and the allegation was accepted as true, that there was then threatened an intention to set aside the decree by consent. And the application of the grocers was to come in to protect the decree, not to destroy it. This application is presented at a time when nothing is threatened, when the decree has become final, when more than two years has expired, and we contend that this court now has no jurisdiction to set aside this decree.

The case of the *United States v. Mayer* (235 U. S.) was a criminal case, but it seems to me the principles would apply. There had been a conviction in a Federal court and the district attorney agreed that the judge might set aside the conviction, the time having expired for appeal, and the Supreme Court said that the court had no jurisdiction to enter a judgment setting aside its former judgment, and that the consent of the district attorney in that case did not give it any such power.

In that case Mr. Justice Hughes, citing many authorities, said:

"As the district court was without power to entertain the application, the consent of the United States attorney was unavailing. * * * In a Federal court of competent jurisdiction, final judgment of conviction had been entered and sentence had been imposed. The judgment was subject to review in the appellate court but, so far as the trial court was concerned, it was a finality; the subsequent proceeding was, in effect, a new proceeding, which, by reason of its character, invoked an authority not possessed. In these circumstances it would seem to be clear that the consent of the prosecuting officer could not alter the case; he was not a dispensing power to give or withhold jurisdiction. The established rule embodies the policy of the law that litigation be finally terminated, and when the matter is thus placed placed beyond the discretion of the court, it is not confided to the discretion of the prosecutor."

The right of this court to alter or set aside its judgment of February 27, 1920 has expired. The term has expired, the time of appeal has expired, and the time for a bill of review has expired, and there is no jurisdiction and can be no jurisdiction to change that decree at this time.

It is contended that the decree is a nullity. If it is, there is no use of this proceeding, so far as this intervener is concerned. He can sue *Armour & Co.* in any court that has jurisdiction of the matter, and in either branch of the court, law or equity, as he may be entitled to go—I think only at law—and if the decree is a nullity it would not be a defense to that suit.

If the decree is valid it would be a good defense to that suit, and a good defense to this intervention, so it does not make any difference which way you consider it good or bad, there is no right of action on the part of the proposed intervener here.

As to the validity of the decree, as I stated, Mr. Breed will discuss that somewhat at length.

There is one case that I wish to call to the attention of the court on this question of validity, and that is the case of *Thompson v. Maxwell Land Grant & R. Co.*, and another case, the *Nashville, Chattanooga & St. Louis Railroad v. the United States*. In the first case, *Thompson v. Maxwell Land Grant & R. Co.*, there was a consent decree. That, as found by the Supreme Court, went beyond the pleadings. There were no pleadings justifying the extent of the decree, yet the decree was sustained.

In *Nashville, Chattanooga & St. Louis Railroad v. United States*, suit was brought by the United States against the railroad for a large sum of money, and at that time the railroad had a claim against the United States growing out of the war—the Civil War. But under a statute then existing the railroad could not maintain that claim, because anybody that had given aid or comfort to the Rebellion could not sue the United States at that time. A consent decree was entered in favor of the United States deciding that all mutual accounts of the parties were settled thereby. Later Congress authorized suits under circumstances controlling the claim of the railroad against the United States. The railroad brought suit in the Court of Claims against the United States on the only item which could not have been sued on, and could not have been included in a set-off in the original suit, but because of that broad language stating that all the mutual accounts of the parties were settled by this decree, the Supreme Court of the United States held that the consent decree was binding, and although they could not have gotten anything other than they did get at the time, and although the law had been changed giving them the right to sue, the court held that the consent decree terminated the litigation, and that the right of the railroad did not any longer exist.

The Court. Now did they hold that that was so by reason of its being a decree, or simply by reason of it being an agreement between the parties?

Mr. WATKINS. This sentence from the opinion will show it:

"But the insurmountable difficulty is that the former decree appears upon its face to have been rendered by consent of the parties, and could not therefore be reversed, even on appeal."

A consent decree is something more than a decree. It is a contract. And having consented that all mutual accounts were determined, although they did not have in mind at this time this particular item, the court said that it had no jurisdiction to go back of that consent.

Mr. Creigh pointed out some of the reasons which constitute an estoppel in this case, an estoppel as to which any party to the case might take advantage. At the time this decree was entered, as shown by the record in this case, each of these five packers was engaged in the sale of what is called unrelated items. They were prohibited from continuing in that business. The scope of that business was reduced. They thought it was a treaty of peace between them and the United States, and they then acted in good faith on that treaty.

At that time there was pending in Congress a bill to regulate the packers, "the packers control act." In that bill they defined packers, but they defined them as limited by the decree in this case. They defined them as engaged in the slaughter of animals, and the sale of meat products, and the sale of dairy products. Your honor will recall that dairy products were permitted to them by the decree in this case. In specifying the businesses that they could do they do not mention these unrelated items. And the reason they do not is because this court had put them out of that business. There was before Congress at that time this particular decree, as the reports filed in this court show.

A very similar situation in principle arose in the case of *Parish v. McGowan*, 39 Appeals of this court, and there this court held that even an interlocutory decree would estop the parties, an interlocutory decree made by consent. The case went to the Supreme Court of the United States, and although reversed, that part of the decree was affirmed, and the Supreme Court said this:

"The consent decree not only amounted to a clear and express waiver of jurisdictional objections, but it rendered irrelevant, so far as the present parties are concerned, all questions as to the effect of the contracts in creating a lien upon the proceeds of the ice claim."

Whatever the contract was the Supreme Court said did not make any difference, because the consent decree made that irrelevant.

The Court. Well, can a consent decree be perfectly valid as an agreement between the parties, and yet be void as to the court?

Mr. WATKINS. I think it can.

The COURT. In other words, the court might not enforce it by contempt proceedings, and yet it might be a perfectly valid agreement between the parties themselves?

Mr. WATKINS. It can be a valid contract as between the parties themselves, although not a valid decree, although in this case we contend that it is both a valid contract and a valid decree. But I can conceive of a case where parties might make a contract, make it a matter of judgment, and still the court have no power to do that.

Another very interesting discussion of the question of estoppel is the case of Johnson v. The Washington Loan & Trust Co., decided by this court, and later affirmed by the Supreme Court of the United States, and there the parties were estopped to deny the validity. Of course, if the parties are estopped the privies of the parties are estopped. The canners here can have no greater rights than Armour can have. Whatever right they have is dependent upon a contract they have with Armour, and if Armour is estopped his privies are estopped.

It is contended, though not discussed in the argument, that the Webb Export Act makes void this decree. The Webb Export Act was in force at the time this decree was entered and must have been in the mind of the court at the time this decree was entered, and that act by its very terms excludes corporations similar to what these were alleged to be in this petition. That is, no corporation that in any way violated the antitrust laws can claim any rights under the Webb Export Act.

It is claimed in the petition that the public interest is injured by the decree. Perhaps that is not directly involved in this discussion, but it seems to me that it is rather directly involved for this reason. If it would be futile to grant this petition, that alone would be an answer to the claim that it ought to be granted. The courts do not do things that way—useless things.

Now, in order to make this petition effective at all, it would have to be carried to its ultimate conclusion. They would have to get the thing they ask for, and the thing they ask for is that this court shall declare void the decree of February 27, 1920, or modify it to the extent of these unrelated items. Unless the court can go to that extent there is no reason for granting any intervention whatever. They have contended that these five packers can better distribute the commodities of the grocer than can the five or six thousand wholesale grocers.

It is contended in the same argument that the five packers do a very small business and they are very insignificant in comparison with the grocers in these unrelated items. There may have been, probably has been, a lessened distribution of the commodities manufactured by these canners. That is true of all other luxuries and semi-luxuries. It is true of a great many things that are absolute necessities. The report of the Joint Commission on Agricultural Inquiry shows that the live stock which was continued in the hands of the packers has depreciated in value, and the cheese which was continued in the packers' control has depreciated in value. Pages 36 and 137 of Part I of the report of the Joint Commission on Agricultural Inquiry show that there has been practically the same depreciation in distribution and value of the commodities continued to be handled by the packers as those that they were deprived of handling by the decree in this case. So there can not be anything in the contention that the public has been hurt.

Mr. Galloway pointed out many of the inconveniences and difficulties that would result from attempting to retry this case. An argument of inconvenience is not always a sound argument, but it seems to me that it is one that should in this kind of a case be given consideration.

It is believed, and I think Mr. Breed will be able to demonstrate, that the decree is a valid decree, but it is questioned. It would be beneficial to all of us to know whether or not it is valid. If this proposed intervention is denied, the right of appeal exists without the long expense and delay of a trial. If that appeal is taken, the question of the validity of this decree would be determined. And the legal questions could be settled that way, and much more quickly and cheaply than in any other way.

The COURT. Do you wish to say anything, Mr. Breed?

Mr. BREED. Yes, your honor.

ARGUMENT BY MR. WILLIAM C. BREED, ATTORNEY FOR THE NATIONAL WHOLESALE GROCERS ASSOCIATION OF THE UNITED STATES.

Mr. BREED. I know this argument has been somewhat prolonged, but if the court please, this is not the first time that the matter has been brought up, and I would like the opportunity of making a few statements with respect to the argument that has been presented.

In the first place, I appear for the National Wholesale Grocers Association, which organization this court allowed to intervene in November last year. As has been stated by the district attorney, the reason that this association, as well the Southern

Wholesale Grocers Association, was allowed to intervene, as stated by Judge Stafford, was for a specific purpose, a limited purpose, and the verbiage is:

"That the petition is fair and just. That they should be allowed to intervene, not to take control of the plaintiff's side of the proceedings, but for the limited purpose stated in their petition, namely, to be heard in opposition to any modification of the decree that would deprive them of the protection now secured by it."

Characterizing that type of order, I should say that it was hardly to be dignified with a statement that it was an order for intervention, full and complete, in the action. The court must bear in mind that the action has ended and resulted in a final judgment or decree by the court, and that the order that was made by this court was made upon a petition setting up facts indicating that the parties themselves to the final judgment were considering a modification or vacating of that decree. Therefore the court allowed parties having or showing an interest to come in for the limited and specific purpose of opposing a modification, or presenting their views in opposition to a vacating of the decree. In other words, the court had the specific power to allow that limited right to an outsider not a party to the suit, because the court has absolutely the power and the duty to see that this decree, its own decree, is carried out and not changed or modified.

Now in order to clear the record with respect to our position—and I think it ought to be the position of the Government, the district attorney, the packers, and others—we have no objection whatever to an order being made by this court allowing these petitioners to come in on exactly the same terms that the Government authorized the Southern Wholesale Grocers and the National Wholesale Grocers Association, not parties to the action. That may clear up a question that was asked by the court with respect to the distinctions.

A little later I wish to discuss the distinctions between the order allowed by Judge Stafford and the order sought for here.

I should now like to call the court's attention to the fact that we have filed an answer to the petition for leave to intervene, in which answer we have taken issue with a great many of the facts alleged in the petition, and to all of the facts that constitute or must be set up to show any right in this petitioner or interest in the petitioner which a court of equity might recognize in order to allow it to intervene, so that the rights or the interests that they allege with respect to their contract are challenged by our answer before this court.

We believe the contract is not a valid contract, as stated in the previous argument, both because of the fact that no price is named, that no quantity is named, no obligation on the part of Armour & Co. to take anything at any price, and that the contract contains a provision at the end authorizing Armour to cancel.

Mr. CREIGH. Would you pardon me one second there? With regard to this statement or brief that you are about to file—is that the status of it, that you are about to file it, or what is the status of it?

Mr. BREED. The answer has been filed.

Mr. CREIGH. It has been?

Mr. BREED. Yes.

Mr. CREIGH. It contains the general denials of the intervening petition?

Mr. BREED. It contains general denials specifically taking up each allegation of the intervener's petition.

Mr. CREIGH. Nothing in the world, however, in the way of evidentiary discussion that might meet with a challenge from our side?

Mr. BREED. No; I think not.

Mr. HOGAN. It says that you are a set of monopolies and a bunch of high-binders in business.

Mr. BREED. Of course I would be glad to have the answer speak for itself.

Now, we were discussing very briefly the contract which is alleged as a matter of interest, and I would like to add for the court's information this one interesting fact. The last clause of the contract gives the right to Armour & Co. to cancel the contract in the event of governmental interference.

Now, it is interesting to this court, and the court must have these facts, that this contract is dated May 9, 1919. That prior to that time and on July 3, 1918, the Federal Trade Commission, upon the request of the President of the United States, had filed a very extensive report in which it held that the doing of the very kind of business called for under the contract between Armour & Co. and the California Canneries was within the prohibitions of the Sherman antitrust law. Therefore at the time that the two parties entered into the contract they both knew of the fact that the Government, who is the plaintiff in this case, challenged the validity and legality of such a contract.

In addition to that hearings had been begun before the House Committee on Agriculture on the same and allied questions in December, and in January hearings were

begun before the Senate Committee on Agriculture and Forestry on a bill to regulate the packers, which also involved the same situation.

Therefore when two parties entered into a contract and put a clause in it that it may be canceled by either in the event of governmental interference with the performance of the contract, the conditions prevailing at the time and explaining why that clause is put in have a direct bearing upon the character of the contract and the interests alleged by this petition.

If the court please, we also file and have filed with the clerk as a part of our papers the record of the hearings before the interdepartmental committee, which was referred to by Mr. Hogan, and which has been printed by the Committee on Agriculture and Forestry, United States Senate, in connection with the full report of the Attorney General. I hand a copy to the court.

Mr. HOGAN. I trust you do not expect the court to read it?

Mr. BREED. I would only add that if I were asked as a court to decide this question which relates to this decree, which involves a matter of 30 years of trouble between Government and packers, that I, as the court, would have to read some of the literature on the subject before the court sets aside the one—the one and only accomplishment of Government in the matter of prosecuting under the Sherman antitrust law and regulating and controlling the packers, which they themselves, I wish to say, entered into as I fully believe, as stated by counsel for two of the packers here, in all full and complete sincerity, with the desire to meet the Government in connection with these very perplexing questions between Government and packers arising under the Sherman antitrust law.

It seems to me, in answer to Mr. Hogan, that for an outsider with no interest whatever shown in its petition, to drop into this court and ask this court to vacate and set aside a decree two years and more after the decree was entered by this court, which decree is the result of many years of uncertain dealings between the Government and a great interest, calls for some kind of serious consideration, and is a very great act of presumption on the part of the third party who comes and asks the court to set aside its own decree.

Mr. CREIGH. If your honor please, may I make an inquiry here as to the status, perhaps, of this pamphlet of these hearings that contains a whole lot of very exhaustive stuff. Of course it seems to me that it is quite beyond the narrow issues we have here. If this becomes a part of the record it seems to me that a very wide field is opened up again, in fairness to all the parties here.

The COURT. Yes; I hardly understood in what capacity this was offered—as testimony?

Mr. BREED. Well, if the court please, we refer to it in our answer, and we have filed it with the court for such use as the court sees fit to make of it.

Mr. HOGAN. Do you mean in exhibit form? I have not had your answer, Mr. Breed, served on me until this morning, and I admit that I have not had time to read it, except that I did read enough of it to be able to answer Mr. Creigh's question in regard to the attack on the packers. But is that an exhibit of your answer?

Mr. BREED. Yes.

Mr. HOGAN. And made a part of your answer?

Mr. BREED. Yes.

Mr. HOGAN. Perhaps in that way it gets in.

Mr. BREED. Perhaps I might answer the question that has been asked by saying that this is not the first time that this so-called outsider has appeared before tribunals of the Government for the purpose of asking that this decree be set aside. According to the testimony of the California Cooperative Canneries, through Mr. Campbell, who is also present in court to-day, contained in that very record, he shows that he went before a committee of Congress within a few months after the consent decree was entered by this court, and called to the attention of Congress the errors with respect to this consent decree, and asked Congress to insert in the proposed bill with respect to the regulation of packers, a provision that nothing herein contained should prohibit the packers from engaging in the very business that they had agreed under the consent decree they would not engage. Congress refused to act upon Mr. Campbell's application, and the bill, the packers' control bill, was passed without that.

Again, Mr. Campbell, as stated by Mr. Hogan, and as shown in this record which I have filed with the court, appeared before the Attorney General, and he says that he was engaged from May, 1921, on in an effort to persuade the Attorney General that the decree should be set aside and that the Attorney General should consent to the modification of the decree.

The Attorney General then, in a spirit of fairness to all parties, caused this interdepartmental committee to be appointed for the very purpose of listening to Mr. Campbell, he being then practically the only complainant. He says he was the orig-

inator of the idea, and swears to that. And brought people from all over the United States to testify in a three and a half weeks trial before this interdepartmental committee, in which every one of the questions argued by Mr. Hogan to-day was presented and thoroughly discussed, and the points of view and points of law also presented and discussed. As a conclusion to those four weeks of sessions together with a day and a half of arguments and presentation of briefs, the Attorney General concluded that he would not consent to a modification of the decree.

Now, if the court please, no one of the packers, although the evidence in that proceeding shows that they had notice of these hearings, appeared, and have never consented or stated that they were in favor of modifying or vacating this decree. And that has a very important bearing upon the argument now made before this court upon the third application that the California Canneries has made. First to Congress, and second to the Attorney General, and when the Attorney General refuses to consent, then to this court. For what end? For the purpose of asking this court to set aside, vacate, or modify in a material way the decree of the court.

Now, this is a court of equity, and the claims brought to your attention by the Government are vastly important, namely, the fact that for two years this court has been passing upon orders in the enforcement and carrying out of the terms of that decree. That for two years the Attorney General has been actively and energetically performing and attempting to perform his duty put upon him by the Sherman anti-trust law and under the terms of this decree.

That in addition, the position of the packers themselves is entirely changed. Their legal position, their rightful position before this court is to call to its attention the fact that they had something which they have not now by reason of their agreeing earnestly and honestly to carry out the terms of this decree, so that any modification of this decree, which is all that this proposed intervenor seeks, upsets all of those equities that must certainly appeal to the court.

Now, what is the application? It is not merely an application that appeals to the discretion of the court to intervene, but it is an application directed to the court to intervene for a specific purpose, namely, to move to vacate or modify in essential particulars this decree.

Now, what sort of an intervention is that in law? If it means anything to me it means that the party whom this court allowed to intervene for that specific purpose is allowed practically, after final judgment, to come into an action to open it up, and to ask this court to set aside the judgment that was obtained in that action.

Now, the argument of Mr. Hogan was most interesting on the facts, but it entirely disregarded the law, and did not even attempt to enter into a discussion as to what was the legal effect of a consent decree or a judgment of the court.

All through these hearings, if the court please, the implication was carried by the California Canneries and those that spoke for it that a consent decree was a sort of a mongrel thing that was unique in history; that this consent decree was something that nobody had ever heard of before and was to be regarded with the greatest of suspicion. For that reason in this brief which I propose to file with the court I show and refer to the fact that consent decrees go back even to the very origin of disputes which are settled by courts of law and in England are recognized and were recognized to be solemn contracts having force and effect even beyond judgments and decrees of courts that were not obtained by consent.

I shall only refer to one or two of those decisions, because your honor will wish to go into them at length. But let me read this: In 2 Street, Federal Equity Practice, paragraph 1957, it is said:

"Where the parties have composed their troubles and arrived at a settlement satisfactory to themselves, the court will not inquire into its merits or into the equities settled by the decree. The only question for the court to determine is whether the parties have mutually bound themselves by the consent decree that is proposed to be entered. Such a decree is in the nature of a solemn contract."

In *Karnes v. Black* (185 Ky., 410) the court said, at page 414:

"Where a decree is made by the consent of the parties, the court does not inquire into the merits or equities of the case. The only questions to be determined by it are whether the parties are capable of binding themselves by consent and have actually done so. If these two facts appear the court orders a decree to be entered, and when thus entered, showing on its face that it is by consent, it is conclusive upon the consenting parties."

As I go on reading some of these citations, if the court please, they are directed somewhat to the charge made by counsel for the petitioner that this court was imposed upon; that this court had no power to allow this decree to be entered, and your honor will notice how limited is the discretion that the court is called upon to exercise when two parties come before it and consent to the entry of a decree.

In *Edney v. Edney*, 81 N. C. 1, the court said at page 3:

"* * * But a decree by consent is the decree of the parties, put on file with the sanction and permission of the court; and in such decrees, the parties acting for themselves may provide as to them seems best concerning the subject matter of the litigation, and with the like sanction of the court they may alter or amend from time to time with the assent of all."

In *Harniska v. Dolph*, 133 Fed. 158 (C. C. A. 9th Cir.), the court said at page 160:

"The consent of the plaintiffs on the trial of the cause in open court to the judgment so entered against them dispensed with the necessity of filing separate findings of fact or conclusions of law. The consent of the parties relieved the court of the necessity of finding the facts."

There are innumerable cases along this line, and I shall only read one more, because it is so pertinent. It is the case of *Karnes against Black*, 185 Kentucky, 410, in which the court says, at page 415:

"A judgment by consent of parties is a judgment the provisions and terms of which are settled and agreed to by the parties to the action to be affected by it, and it is placed upon, and becomes of record, by the consent and sanction of the court."

Now note:

"The court does not settle the grounds or the terms of it; it is not the judgment of the court, except in the sense that the court allows it to go upon the record and have the force and effect of a judgment; and, therefore, the court can not amend, modify, or correct it except by the consent of all the parties to it. It is essentially in its provisions the agreement of the parties, and if the court should change it in any respect without consent, it would cease at once to be the judgment agreed upon by the parties; and such exercise of judicial power would be a practical denial of the right of the party prejudiced or supposing himself prejudiced to be heard according to law." (citing cases.)

Now, if the court please, the reason for ascertaining and going deeply into the question of what is a consent decree is because it leads to the other line of decisions which hold, without practically any dissent, that a consent decree of this character entered into between the parties can not be vacated or modified except by and with the consent of the parties themselves. I doubt whether there is any lawyer in this room that will challenge that as a correct statement of the law with respect to consent decrees.

Now, if the court please, that being the law and applying it to this case, your honor is confronted with an application, by a third party after final judgment, to come into this action for the purpose of moving to set aside a consent decree, and your honor has notice that the law is that this consent decree, and the very thing that this petitioner seeks to do, can not be done unless the Government, the party plaintiff, and the packers, the parties defendant to this action, and who consented to this decree, give their consent to the vacating or modifying of that decree.

Now, on the other hand, in my answer you will see that we set up—referring also to statements made before this interdepartmental committee, and to public statements made by Swift, and Cudahy, and Morris, and others of the packers, that they themselves are opposed to a modification of the decree. You have two of the packers who have come into this court, all of them having received notice, and have stated to your honor that they are opposed to the vacating or modifying of this decree. The Government of the United States, for three and a half weeks, held hearings, and after that three and a half weeks of hearings, brought about by the California Cooperative Canneries, the petitioner before this court, decided that it would not consent to a vacating or modifying of this decree. Therefore, we have two parties to the decree, whose consent is necessary to its being vacated or modified, stating their position to this court.

What is the conclusion, as applied to this application? If your honor granted the application to intervene for this purpose—and that is what their order says—the order allowing this entry is for the purpose of vacating it, and your honor has notice that that is what they propose to do, and yet your honor also has notice that this court can not enter an order to carry out the thing if you allow the intervenor to come in to seek to accomplish it without the consent of the Government and the packers.

I think this has a very material bearing upon just what the court's action should be. For a moment let us look at the mechanics, or we will say the procedure involved. Suppose, if the court please, that you should for some reason decide to grant the application to intervene. Now, that would be an interlocutory order. Neither the Government of the United States nor the packers, and of course not ourselves, as we are not really parties to the action, could appeal from that interlocutory order. Therefore, it would follow that the next step would be the application by these intervenors to set aside the decree and vacate it. Now, before your honor could pass upon the

question as to whether or not this decree should be set aside or vacated, you would have to call upon the Government, and the Government would be required to come before you and practically try again, or begin again the trial of the case that originally came before this court, to determine whether the decree was or was not an improper decree. As stated by Mr. Galloway, testimony would have to be taken all over the United States with respect to the question of this decree.

Why, take for example the matter that was argued before this interdepartmental committee, if the court please, as to whether this decree went a little too far with respect to its prohibition against the packers, with respect to unrelated lines—setting aside for the moment the consent. That is raised, and will be raised by the California Cooperative Canneries, that the jurisdiction of the court, as distinguished from the exercise of jurisdiction, was exercised too broadly. We argued that before the interdepartmental committee, and cited cases in which it was held, in the Standard Oil case and other cases, in which it was held that this court has the power to adapt provisions of the decree in an antitrust prosecution to the result sought to be accomplished, and even go so far as to dissolve the corporation itself and put it entirely out of business, if that is necessary to prevent the future or present violations of the law.

Well, if the court please, if those decisions, which are controlling on this court, are as I have recited them, then the prohibition contained in this decree with respect to the packers being prohibited from extending their monopoly into unrelated lines, certainly is far less an exercise of jurisdiction than the complete dissolution of the corporation itself. So all that was argued, has been argued, and would necessarily be argued before any referee that your honor would appoint, or before this court when you were called upon to pass upon the question of whether you should vacate it.

Again, let me call your honor's attention to the fact that you would be putting the Government in the position of having to prove facts with respect to violations of the law by the defendant packers which occurred three, four, and five years ago, which at the time were available to the Attorney General and were in his hands, but which now may have passed away and become impossible of proof through the witnesses being scattered and data being scattered. Some of the very acts—isolated acts that it was claimed by the Attorney General at the time that he, under the authority of the Sherman law, decided to bring this equity proceeding—some of those very acts are to-day—assuming they were illegal, for the moment—are to-day barred by the statute of limitations. This court would be putting up to the Government an almost impossible procedure to make proof of facts of three or four years ago, which were presented to the Attorney General and to those that were interested in the enforcement of the antitrust law at the time that they came before this court and asked for this decree.

Now, just for a moment let us see how this decree has been regarded. Has it been accepted in any way which should be called to the attention of this court? And these facts all appeared in this interdepartmental hearing.

Why, if the court please, when the decree was consented to by the packers and the Government, on February 27, 1920, immediately this consent decree was taken by the packers over to the Interstate Commerce Commission, where a proceeding was pending, brought by the National Wholesale Grocers' Association, alleging that the packers were obtaining unfair advantages in the handling of perishable products in refrigerator cars. And that consent decree was presented to the Interstate Commerce Commission and practically made the issues in that case lifeless, because, if they were going out of the business of handling perishable food products, then there wasn't any further need for the prosecution of that case.

Again, this consent decree was taken by the packers, and they brought it over to the Houses of Congress, where a bill was pending for the purpose of regulating the packers, known as the packers and stockyards control bill, and there the consent decree was called to the attention of the committees of both Houses of Congress, discussed, and in the conference committee itself, in its report, provisions that were considered and that were to be put in those bills were discarded and eliminated, and not put into those bills for the very reason that the consent decree regulated and practically settled and disposed of those provisions.

Now, this was not an improper thing for the packers to do. It was a part of the reason why the packers were willing to consent, and did not want to work out these manifold problems. And yet your honor must take into consideration the fact that this decree which is sought to be set aside by able counsel who comes in two and a quarter years after the decree has been in force and effect, and after parties' rights have been affected, and after it has been acted upon, and after Congress recognized it as a valid decree and has acted also, and after the Interstate Commerce Commission has acted also, you must take those things into consideration when such a party comes in, two and a quarter years afterwards, and asks you to undo the very decree that this court has entered by consent of the parties, which this court can not modify or vacate,

and the decisions will support that, without the consent of the parties themselves, except upon proof of fraud or mistake. There is no fraud alleged by this petitioner, and he hasn't any standing to allege fraud, anyway, and there is no claim on the part of the defendant packers of any fraud or mistake, nor on the part of the Government is there any fraud or mistake called to your honor's attention, and never has been.

In addition, this decree has been recognized by the United States Supreme Court itself, in the very recent decision in *Stafford v. Wallace*, in which the validity of the packers and stockyards act of 1921 came before the Supreme Court. Chief Justice Taft refers to this decree and to the very provision that counsel criticizes and says amounted to an imposition upon the court, or in the exercise of a jurisdiction which the court did not have, in these words:

"Following the report of the Federal Trade Commission, and before the passage of this act, a bill in equity for injunction was filed in 1920, in the Supreme Court of the District of Columbia, in which, on February 27 of that year, was entered a decree against the same Big Five packers consented to by them"—

Now note:

"with the saving clause that it should not be considered as an admission that they had been guilty of violations of law. The decree enjoined the packers from doing many acts in pursuance of a combination to monopolize the purchase and control the price of live stock, and the sale and distribution of meat products and of many by-products in preparation of meats and in unrelated lines, not here relevant," and so forth.

So, if the court please, this very decree which this third party is making his third attempt before a branch of the Government to set aside without any interest, is valid and legal, is even commented on, and the very term that he refers to in aspersion has been referred to by the Chief Justice of the Supreme Court of the United States.

Now, I wandered just a bit from the discussion of the procedure or mechanics, and I wish to return to that. And my point is this: That if the court should grant this petition to intervene, the Government and the packers could not appeal; it would not be a final order; it would be an interlocutory order. On the other hand, if the court denied the application to intervene, it seems to me that would be a final order, assuming that what they say is correct, that the decree is invalid, void, and a nullity, and so forth. It is such a final order as would be appealable to the higher courts and to the United States Supreme Court. And a decision could be arrived at which could settle and dispose of the question of law that is involved in this case, without the necessity of forcing the Government and the others that are interested here into going off into a year's trial and the taking of evidence, and after which—at the end of the taking of that evidence, what would be the question of law to be brought before your honor and to go up on appeal? The very same question, only we could not raise it on the order allowing intervention, but we could raise it when the final order was made in connection with this application. If it was favorable to them, we could appeal; if it was favorable to us, they could appeal. And, in other words, we would have the same question of law at the end of one year of opportunity and trial—the Government's opportunity, I mean—that would be now presented by the denial of this motion.

In connection with the decree itself, I would wish to call to your honor's attention that if this intervention is allowed and for the purpose of moving to set aside this decree, you must bear in mind that it takes the whole decree; that is, it takes all of these provisions consented to by the packers; that they go out of the stock-yards business; that they go out of the retail meat business; that they go out of the use of their transportation lines, other than for their own express purposes; that they go out of the cold-storage and warehouse business, and that they go out of these unrelated lines. It will all go, and I don't think there is anyone here present—parties to the action or otherwise—that believes that that would be a wise thing, especially when this decree is the result of an understanding and solemn contract entered into between the Government of the United States acting under the authority of the Sherman antitrust law, through the Attorney General and the district attorney, and the packers, both parties agreeing.

Now, as to the clause about which so much argument was made, and which it was contended shut out the fundamentals upon which the court could exercise its jurisdiction. Why, it seems to me that that presents no real difficulty to this court which would call upon the court to vacate this decree by its merely calling it to the attention of the court by this would-be intervener.

If the court please, why was the clause put in? What does the Sherman antitrust law provide? It provides, does it not, that a decree of this sort, in an antitrust case, may, if finally adjudicated, be the basis for damage suits running up to triple damages on the part of parties who may have been injured by the acts or alleged acts of the defendant packers.

If your honor please, can you imagine for one moment that the packers made an improper request of the Attorney General when they said to him: "If we consent to this decree, which has to do and relates to our future action with respect to this alleged monopoly and intent to monopolize, we do not propose to save you the trouble and annoyance of litigation and the proof of all these facts if you are going to put us in a position where any third party among all those in the United States who do not love us can sue us for triple damages."

Now, furthermore, what does the Sherman law give the court the right to do? There isn't any question—it was conceded by counsel that this court has jurisdiction of the subject matter; it was also conceded by him that it has jurisdiction of the persons because the defendants came in and submitted themselves to the jurisdiction, if for no other reason. But what is the jurisdiction—that is, the exercise of jurisdiction? And there is a vast difference in law between jurisdiction and the exercise of jurisdiction. There is no question at all about this court having jurisdiction. What does the Sherman law provide or attempt to provide against? Isn't it future violations of law as well as past violations of law? The Sherman law provides that the several circuit courts of the United States "are hereby invested with jurisdiction to prevent"—now, if you are going to prevent something, it is something that has not already happened, is it not?—"to prevent and restrain violations of this act, and it shall be the duty of the several district attorneys," and so forth.

Now, if the court please, what is the principal instrument of equity and an equity court? Is it not the injunction order? Is this decree not an injunction order relating to specific things? And isn't that the very primal function of an equity court—to receive a set of facts and to act by an injunction to prevent something being done in the future?

Now, that is all that is involved in this thing. This decree does, of course, relate to the future actions of the defendant packers. It enjoins them and restrains them in the future from continuing the stockyards business after a certain period of time; from going, in the future, into the retail meat business; from going on in the future in the sale and distribution of unrelated products. It does not in fact relate to the past. And all with that qualification that is contained in this decree, that it shall not relate to the past acts—that they are not guilty of any past acts, but yet anybody that wants to sue them may come in—it is an open invitation to come in, because they said they violated the law. Do you think the packers were going to give the Government what it was trying for 30 years to obtain, and at the same time sign their death warrant with respect to past acts?

Now, one further point: The court should realize that the packers were at that time under the injunction order obtained in 1902 or 1903, which original injunction order prohibited them from entering into combinations in restraint of trade, and so forth. That order was in existence at the time the Attorney General acted. That provision is the first provision in this order.

Now, again, why were not the packers justified in asking this and the court in approving it? The court got a decree, and the Government obtained a decree which protected the interests of the people, whom the Attorney General is directed to represent under the Sherman law, as to all future acts. That was a great accomplishment. And all honor and respect to the packers, themselves, who recognized the situation by honestly and openly entering into that consent, and cooperating with the Government to work out this problem. Why, it would be a crime not only on the Government and the packers but on the people to have this great decree vacated or upset, and to do that for a third party two and a quarter years after the decree is entered seems to me unthinkable. To think that a third party should come in two and a quarter years after the decree is entered and ask this court to allow it to intervene for the purpose of modifying or vacating this great decree, it seems to me it is almost a travesty on justice; to call us down here for a month, we who are merchants, to come here for a month, and give our time to these hearings, and now if this intervention is granted, it will be a year that merchants all over the United States will have to come in and testify. It does not seem to me to be equity or justice, or in the interests of the enforcement of the Sherman law.

The COURT. How much longer time do you wish to argue, Mr. Breed?

MR. BREED. I am practically through, if the court please. I think that is all, your honor.

CLOSING ARGUMENT OF MR. FRANK J. HOGAN, REPRESENTING THE PETITIONER.

MR. HOGAN. Your honor has heard from only two of the five packers, from the Government, and from two wholesale grocers' associations. I take it Mr. Gordon's and Mr. Galloway's contentions are the contentions of the Government together. Mr. Galloway says we stand here simply as one of the public; that the grocers represent

one class of the public and we represent the other. That overlooks entirely the fact that Mr. Galloway should have been informed of, that we come here representing rights that are based on a contract, and a contract which nobody denies has, under the present circumstances, been not merely affected but has been entirely destroyed as a result, and only as a result of this decree.

The COURT. Mr. Hogan, how do you explain your delay in this proceeding?

Mr. HOGAN. I am going to do that, your honor. I am going to show that the gentlemen who are now talking about delay overlook the fact that they have at other times complained of our persistence; that in one breath they talk about delay and in the other breath they talk about our persistent effort to get this question properly before the court.

Mr. Galloway overlooks the fact that we had no day in court. We would have been and could have been, and had there been any desire to do justice to all concerned, should have been, a party to these original proceedings, as we very properly might.

Your honor, it is a little galling at times to sit quietly by and listen to language such as Mr. Breed uses when he says he does not think any lawyer within the sound of his voice would challenge such and such a position. I have found that almost any lawyer at times challenges any proposition.

Mr. BREED. Do you challenge that position?

Mr. HOGAN. I challenge almost every proposition you made.

Mr. BREED. Good. That makes your position all the more clear.

Mr. HOGAN. I do not think it could be said we would not have been proper parties to this original proceeding.

Mr. Galloway's second point is that the Attorney General and he alone is authorized by law to make the point. That, to say the least, my Celtic friend, is ungracious and ungenerous because your own report to the Attorney General and the Attorney General's own solemn report to the Congress of the United States stated that the Attorney General did not—

The COURT (interposing). Mr. Reporter, just read back what Mr. Hogan has said since the last interruption.

(The reporter read as follows:)

"I do not think it could be said we would not have been proper parties to this original proceeding:

"Mr. Galloway's second point is that the Attorney General and he alone is authorized by law to make the point. That, to say the least, my Celtic friend, is ungracious and ungenerous because your own report to the Attorney General and the Attorney General's own solemn report to the Congress of the United States stated that the Attorney General did not"—

The COURT. I misunderstood Mr. Hogan. He may now proceed.

Mr. HOGAN. Because, as I say, it was a very ungracious thing for Mr. Galloway to say, as he in his committee report to the Attorney General said, these are very grave and far-reaching questions. They were there presented as they are here presented, in good faith, and very much more serious questions which this committee recites *seriatim* for the Attorney General, and because of the importance of them and because of the facts that the interdepartmental committee thought the California canneries and those in like situation have not had their day in court, we recommended that the Attorney General do not, as Mr. Breed said he did, refuse to take this step, do not prejudge their rights. But they say to the canneries, the way is now open for you to go into court in the first instance rather than go to the Attorney General. And the Attorney General adopted that language *verbatim* *seriatim* in his reply to the Senate resolution.

So I say my friend is not very consistent in saying, after having announced to the world for the first time in January, 1922, that petitioners must go to court, after they were led to believe what my friend from the South and my friend from the North asserted was about to be done, last September; after petitioner was lulled into a feeling of security that the matter was going to be taken up by the Government, as it should do as the representative of the people, at its expense; I say it does not come with good grace for him now to say that we are going to be pushed out of court when they had said that was the proper thing to do.

The Assistant Attorney General says if you go into the merits of this case—and I am going to briefly touch that because I am going to come back later when I come to Mr. Breed's extended argument—if you come to the merits of this case—that is, if you get back to the bill and answer—you will have to go to Bar Harbor in the summer and to San Francisco in the winter to get at something.

Is that any argument? That it would be inconvenient for the attorneys representing the Government to get any time off—and I will not say anything about *per diem* in this connection—for the attorneys for the Government and counsel for defendants

to produce a proper record on which the court could act, is certainly no argument against this matter. Of course, that is not argument; it is not sound argument, though sometimes it might appeal to a court.

And, lastly, if your honor please, Mr. Galloway, this time very generously, admits that he did not have a thing to bring forward here; that he did not bring forward a thing new; that his argument now was the argument then; that his charges now were the charges then.

And what did Mr. Gordon say? Mr. Gordon says we want to come in and take control of this case. I deny that. I have no such brash desire. To have this decree modified as it should be done under the law is all we ask, and there would be no trouble with the case. You can run the case as you like, and I do not think you will have much running to do.

The next question Mr. Gordon asked was: What relief can be granted? I wish again to call to your honor's attention the case of Terminal Railroad Co. v. United States, 236 United States. The exact relief, my dear Mr. District Attorney, would flow here that flowed there. The modification of the antitrust decree there opened up the way for the Terminal Railroad Co. and the big companies to do business. It opened up the way for the Terminal Railroad Co. to put its transportation facilities at the use of the big companies. That was the only relief that could be granted there. The argument there made is the argument that you made here. The Supreme Court of the United States—and I use the Supreme Court's words, and therefore they can not be offensive to you—stated of that argument: There is nothing the argument could give for his contention.

The contract is breached, Mr. Gordon said. Can this court compel Mr. Armour to carry out the contract? We do not ask that. The cancellation of this contract was based expressly and specifically on this decree, on the injunctive power of this court—nothing else. If Armour & Co., not thus fettered, should refuse to carry out this contract, then in an appropriate proceeding the California Cooperative Canneries may be depended upon to endeavor to enforce its rights.

We would have as much right, Mr. Gordon says, in enforcing this criminal and civil statute, to go into a criminal court and intervene and invoke the court's power with respect to the enforcement of the Sherman Antitrust Act without coming to the district attorney's office, as we have to come in here. There are two answers to that: (1) Mr. Justice Stafford's decision. Do you think that Mr. Justice Stafford would have said they had a right to intervene there? That is the law in this case; and (2) next is the decision of the United States Supreme Court in the Terminal Railroad Co. case.

As to Mr. Borders, I merely call attention to the fact that he is one gentleman, and I say this with great deference, you understand, who signed that remarkable contract. He asserts here that he stands on his answer. If your honor only does get the time, we hope you will not fail to read Mr. Borders's answer. None of the other answers has the teeth and fire that his has. He not only says there was no possible foundation for this decree, but he completes the picture by denying that there was any combination among any of the packers, and, on the other hand, insists that it was the most beneficial food producing and distributing corporation in all this country.

Mr. BORDERS. And that is literally true.

Mr. HOGAN. All right. "But," says Mr. Borders, hesitatingly and somewhat embarrassed but nevertheless frankly; and I put my finger right on the point when I stated that his position—and I may deferentially also include Mr. Creigh's position—was just this: They do not want competition. They will have to improve and expand their facilities to meet competition of these noncombined but competing other packers. That is the whole story.

I tell you that you can not read the record in this case without realizing that this court on the 27th of February, 1920, was inadvertently led into entering that thing which has turned out to be, and which ought to have been foreseen, a contract in restraint of trade more harmful to the country and to the consuming public than any contract in restraint of trade ever denounced by the Sherman and Clayton Acts. That is the kind of decree that was.

What did Mr. Creigh say—and that brings me, because other gentlemen have mentioned it, to the point your honor asked me about. Your honor is requested to note that very dignified and splendid statement that Mr. Creigh made, and the burden of his talk was, two years have passed.

Your honor, time can not make valid what is invalid. If this decree was in excess of the jurisdiction of this court upon the record presented, and was void on February 27, 1920, it is void to-day. Neither laches nor limitations can possibly give validity to the invalid. You can not breathe life in the evening into that which was dead in the morning. That has been held times without number, and if it had never been held it would be so sound in the light of reason as to be unchallengeable here.

But in addition to that your honor has seen the situation. It may be these gentlemen overlooked that point in grasping for another point, but Mr. Breed made my answer for me, and Mr. Breed said this was not our first attempt—and I am sure he will say the attempt has been made vigorously and persistently, to have this thing opened up. We undertook the matter through other channels, by endeavoring to get Governmental representatives, who ought to speak for us and not put the expense on us—in fact we have been at work almost from the time the harm began to be done to our clients, we have been trying to move the parties who ought to have moved to undue the wrong that had been done and all that time; from the time when we first began, shortly after the harm came to us first, down to when the Attorney General determined he would not prejudge our action, he would not refuse our position, but said: "You go to the court and get this; we have been at work, and that action by him was just two months before we filed here. We have been moving all the time, unfortunately ineffectually, but time can not give validity to this thing, which I again repeat, was invalid at its very inception."

In September, 1921, these gentlemen—Mr. Watkins's clients specifically—filed a petition in this court, and the Government admitted by its motion to Mr. Justice Stafford, and in fact of course admitted that the statement was true, and at that time there was in contemplation, if indeed there had not already been a petition prepared by which this court was going to be appealed to by the Government or the packers or some of them, to modify this decree so as to strike our article 4 thereof, which restricted the doing by the packers of the grocery and canned fruit business; and you gentlemen will remember how you complained here, bitterly, that when you went to the Department of Justice and asked to be allowed to see those modifying papers, which lulled us into a sense of security, if your honor please, which made us believe that action was then imminent, just as it made you, Mr. Watkins, believe that action was then threatened, just as you were frightened by the contemplated action, so we were assured of its imminence, and for that reason, naturally, we sat back, and it was not until later, if your honor please, in view of some public agitation, not until within two months' time after the Government decided it would let us move first, did we act in this course. But that is the reason.

Mr. Creigh's only other point is, and I merely touch it because it answers itself, that it would not be good policy for anybody to disturb this decree now. Mr. Creigh recognizing your situation, said to your honor of course that possibly would not affect you, but that it did weigh very heavily with him.

The next point, and this is made both by Mr. Creigh and Mr. Borders, was on the point made by my friends Gordon and Galloway, and it is this: That this being a consent decree it requires the consent of all the parties to have it set aside. That overlooks the whole thing we are here talking about. Can you by consent confer jurisdiction on the court to do what the court had no right to do? Can you by consent make valid an invalid decree so as to require the consent of the persons who perpetrated the thing to have it set aside? If this is a valid decree, I am through, and in the language of another forum I have taken the count; but if it is an invalid decree, then all this talk about consent in the first instance and consent in this instance absolutely does not amount to anything meritorious or necessary, and I say that in no scornful language unless I have fallen into the habit of my friend from New York.

What does Mr. Watkins say? Mr. Watkins says this is a supplemental bill in the nature of a bill of review. Mr. Watkins was characteristically frank when he was asked the question if it was not a fact elemental in jurisprudence that a bill of review could be filed only by the original parties. Of course it can. But if the decree—and I know this is tiresome reiteration, your honor—was void, if the mandatory record did not exist when the court signed the decree and upon which it might be validly founded, no time runs against it. No bill of review is necessary, by whomsoever raised and whenever raised, so long as there comes to the attention of the court the fact that it exercised beyond its jurisdictional power, for that must be taken cognizance of and be acted upon.

Second, said Mr. Watkins and Mr. Breed, the contract is unilateral. Do not think I am offensive when I ask: Whose business is that if true? If these parties go ahead and carry out this contract, what possible business could it be to you people? But that it is not unilateral is manifest by the most cursory examination of it.

What did we do under this unilateral contract, so called? Did anybody refuse to carry it out? Was any advantage taken by any one of these so-called nonobligatory clauses?

It can not be denied that over \$2,000,000 annual business was being done; that by virtue of its terms this industry, representing the fruit growers of California, was selling 52 per cent of its canned fruits. That is what they say, and nobody denies it.

But, of course, it is not unilateral. I recently had occasion in trying, before the United States Court for the Eastern District of Virginia, in representing a plaintiff, a suit for breach of contract of sale of oil, to examine very exhaustively the authorities on that question of lack of mutuality. It is perfectly surprising, but nevertheless true, that a sale contract hardly ever, almost never, comes before a court without that point, and in 95 per cent of the cases the point is shown to be of no value.

The COURT. I may say that I hardly ever have a case of specific performance before me in which that question is not raised.

Mr. HOGAN. It is raised almost constantly.

The COURT. But I did not mean in this case.

Mr. HOGAN. I am surprised that Mr. Watkins did not make it at first. It is the one that is usually brought to the bar first when one of these contracts is brought up. I venture to say that in your honor's experience it is the rarest case that you find the point well taken.

This contract by its terms is a specific contract of purchase and sale. It being for 10 years it necessarily had to have protective clauses. The rates are fixed just as well as you can fix the rental of a hotel when you provide that the rental shall be based upon a percentage of the receipts. No man can tell by looking at such a contract whether he will get \$5,000 or \$100,000 from the hotel. Does that make it unilateral? There is a yardstick and a scale, both, for quantities and prices. Suppose it were to provide that instead of certain prices fixed by the California association some other prices should be the governing prices? Suppose it should be provided that sale should be made at prices of sales made at the present time? Would there be any doubt in your mind? This contract provides that the packer shall on the 1st of January each year give to the seller, the California Cooperative Canneries, a schedule of its requirements for that year. There is no doubt about it being a good contract, but if there is lack of mutuality of obligation of this contract and it should be taken advantage of by either one of the parties to the contract, I respectfully submit that my friends have nothing in the world to do with that and it is not usable here; that the contract was a valuable, subsisting, existing property right, under which there was flowing into our coffers around \$2,000,000 of revenue a year, which ought to be all sufficient with respect to our special interest in this case.

Now, about requirement contracts, if your honor please, as to whether or not contracts for requirements are enforceable, the Supreme Court brushed that aside in the paper and envelope case, reported in 249 U. S., where the Government had breached a contract, based merely on letters, for its requirements in post cards and envelopes for a period of four years and when the same might be called for by the Postmaster General. It was said the Postmaster General might never call upon that contractor for anything, and therefore they could not enforce the contract at all. The Supreme Court brushed aside that contention as being without merit. And so here, there is not any demand at all, but if Armour had bought one bit of fruit in addition to that which they took from the one accepted source, that would have been a breach of the contract and would have laid them open to our appropriate legal remedy.

Mr. Watkins says—and here he made a point that really requires answer—that we have an adequate remedy at law. The answer to that is that the remedy at law must be as adequate, as plain, as efficient to all purposes, and as effective to grant the relief that ought to be granted as the one in equity. Nobody would attempt to say that with a contract running for 10 years we have any remedy at law that would be as efficient as rehabilitating our contract rights. And it was there that Mr. Watkins, or his associate, the Hon. Hoke Smith, when Mr. Galloway made that point before Mr. Justice Stafford, said that the damages over the years that would be suffered by the grocers would be so unascertainable and so difficult of proof as to render the action at law which the grocers might otherwise have, even under the antitrust act, for damages not as efficient as the action in equity.

I submit, if your honor please, that damages would not move our fruit. Damages would not take care of these fruit growers out there in California during the next 10 years. There is no procedure known to law or that can be thought of to-day by the mind of man in the present stage of inventive genius that would give us the extent of the damages that is caused by the loss of the market for these fruits.

All I have to say about Mr. Watkins's fifth point, in regard to the Supreme Court rule 37 and our equity rule 15 is this: This court appointed a committee to revise its equity rules about 1910 or 1911. Before that committee had made its report a committee of three justices of the United States Supreme Court undertook to revise the rules of that body, and after informal conference with the justices of this court our committee suspended its work on the equity rules until they have such assistance as would come from the revised equity rules of the United States Supreme Court, which were adopted in 1913.

About a year or two thereafter our committee was appointed, and our committee deliberately left out the restrictive clause in our rule 15, which is found in Supreme Court equity rule 37. And our code provides, if your honor please, in section 65, in section 85—and the same subject is touched upon in section 1061—that this court shall prescribe its rules at law and in equity. That is the statutory law under which we move, and you can not read rule 15 of our equity rules without seeing that it is broader—and again I recall with unfeigned pleasure that my friend said, in his argument before Mr. Justice Stafford, that it was hard to imagine a wider rule to permit the coming in of an intervener than that which was represented by rule 15.

Not only that, if your honor please, but I come to the next point that my friend Mr. Watkins makes. This time he says we should come in subordination to and in recognition of the propriety of the action, and that even though equity rule No. 37 is not the rule of this court, it is a general rule of practice in equity and that it ought to be recognized.

Now, on page 34 of Mr. Watkins's argument before Mr. Justice Stafford—and Mr. Watkins there made a better argument than he made here to-day, able as was his argument to-day—he referred to the Terminal Railroad case in 236 U. S., and he said:

"When the case reached the Supreme Court of the United States they asked to intervene in that court there as here. The Attorney General represented the decree there as here. There were individuals with some special interests there as here. Intervention was asked, and the Supreme Court said:

"'In this court the Howard Firebrick Co. and the United States Sand & Material Co. have filed petitions praying to be allowed to intervene to ask a modification of the decree.'

"Practically the only difference is that there they ask a modification of the decree. and here we are opposing a modification of the decree."

That is the only difference. Here we are asking for a vacation of the decree: you are opposing a modification of the decree. And then my friend goes on and says:

"That is all the interveners are asking here, and that they may be here to participate in the settlement of a proposed modification of the decree in so far as it may affect their particular individual rights."

So that my friend spoke correctly when he said that you can not find any difference in principle—the Supreme Court in 236 U. S. was talking after rule 37 was passed, you will remember—and that what was authority for letting in an intervener to propose a modification and a change in a decree in an antitrust suit was authority for letting in interveners who proposed to oppose a modification of the decree in an antitrust case.

There are several other statements that are just as pertinent but which I shall not stop to read. If your honor finds it necessary at any time to consider a real argument on that point, I trust that you will read those arguments by Mr. Watkins and Mr. Hoke Smith.

The next point my friend offers is the question of the right to alter or set aside this decree in another term of court. When has it ever been imagined that the expiration of a term of court deprives the court of the right to set aside an invalid judgment and decree? Time or term does not run against nor cure the invalidity of that which is void. Over and over it has been held here that courts long after the term not only have the undeniable right but are in duty bound to set aside and eradicate from their records that which it is pointed out to them was void and invalid, not merely erroneous, in the beginning.

And the last thing my friend Mr. Watkins says is that we are estopped. Estopped by what? I understand the doctrine of estoppel to be that if I do something that leads some one else to act in a way in which he would not otherwise act I am thereafter estopped to undo that thing. But, says my friend—and knowing his sense of humor, I am sure he must have had his risibles stirred by the assertion—"Estoppel operates against both parties and privies, and we being in contractual relation with Armour & Co., are privy."

We do not claim under Armour & Co. Armour & Co. are the other parties to the contract. He who stands as heir to A is not in privy of estate with A. If the California Cooperative Canneries had assigned this contract, if they had any successor in their contractual rights, that successor would be a privy. But will my learned friend kindly include in his brief, which he is to file for the enlightenment of this court, something which holds that the party of the first part is privy to the party of the second part in a contract within the meaning of the rule under the doctrine of estoppel? He will not.

And then my friend said that while he did not think the argument of inconvenience was very strong, still he repeated it to the court. And that brings me to Mr. Breed.

Mr. Breed, who calls me a presumptuous interloper, would be—

Mr. BREED. Not you; your client.

Mr. HOGAN. First, said Mr. Breed—and it is strange how these gentlemen run along the same track so often—one should only be allowed to intervene to uphold a decree. I answer him by reference to the Circuit Court of Appeals for the Third Circuit. I answer him by the repeatedly cited case of *United States v. Terminal Railroad Co.*, 236 U. S. 687. And the answer is complete.

Second, says Mr. Breed, "We have no objection"—oh, yes; he startled me for a moment when he said he had no objection to our being allowed—he would waive all that; he would eliminate a good deal of argument at the outset; that we might be allowed to intervene; but as in a case that your honor heard a year or two ago, which was settled before you had a chance to work on the record, there was a string attached to that consent. So I got up to ask Mr. Breed, before I knew that he objected to interruptions, if he was going to consent to our being allowed to intervene, and then I really caught the point, which was this: He has no objection to anyone coming in here and being allowed to intervene on his side of the case, but he is unalterably opposed to anybody being allowed to come in here to oppose him. So the principle does not apply both ways; the principle only applies on his side. And he calls that the principle running through this case.

Mr. Breed next comes in and says, following Mr. Watkins, that neither quantity nor price is fixed in our contract. I have answered that.

Then he says that this presumptuous outsider went to Congress and endeavored to get Congress to assist him. The facts are these: The so-called packers' bill, which now give the Department of Agriculture the regulation and supervision and takes away from the court that which, of course, you should never have been asked to do, the regulation and supervision of business in interstate commerce—in that bill as it was intended to be reported to the House of Representatives there had been gotten—and far be it from me to say that these wholesale grocers had anybody buzzing around when that legislation was about to be enacted—there has been put a clause which would have given legislative recognition to paragraph 4 of the consent decree in this case. And the force of Mr. Campbell, the active officer of the Cooperative Canneries, and of Mr. Creigh, the representative of the State of California, was such that the House committee struck out that provision which would have given that legislative recognition to this thing, being convinced that it was not a wise thing to recognize in that way, and being convinced, I am informed, that the passage by a court of an injunctive order to prevent the doing of lawful business in a lawful way was not entitled to recognition and was not a good thing for the country. That is the history of that.

He says I seemed to consider it something remarkable that a consent decree had been entered. I did not. I have known consent decrees since first I went to the little red brick schoolhouse. We have had them frequently. Your honor has signed them daily here. I simply say that this court did not have a right to stretch out the injunctive power of the chancellor to inhibit the then threatened violations of a public act for the public good, with its withheld power to punish for contempt; to reach out the strong hand of the equity court and bring the violators of that injunction before it, for fine in their corporate capacity or for incarceration in jail in their individual capacity, upon a record that did not, by admission or by proof, give it jurisdiction to issue such a decree. This was not any private matter. Just think what would happen, if your honor please, if this thing were allowed to stand, this thing which it would be a crime for even the court to place an impious hand upon. If this thing were allowed to stand, then all that is necessary for parties to do is to slip in the back door of the court and, by getting this kind of a decree, strike down all contractual obligations and deprive those who have not had their day in court of their vital and contractual and property rights.

I am an outsider, a would-be intervener, and yet the gentlemen who use that language come here representing nothing that has any direct interest: they come here representing collectively an organized body of wholesale grocers, and make it impossible to escape the conclusion that they fear the court might do something that will loosen the American public's grip over the concerted action which they constantly take with respect to the so-called unrelated food commodities, and which they are enabled the better to take by having removed from them the competition of the distributing facilities of the five big packers, or three of them—because it is quite evident that three of them do not object to going back into the business, and it is quite evident that the other two fear they will have to meet that competition if the three do go back.

Again, this is an agreement between the packers, and they say it would be in violation of law. This contract was not between the canneries and Cudahy or Morris.

We are entitled to our showing, regardless of what these gentlemen want. We do not have to get their consent. I again repeat, the Government does not say that it refused to ask for a modification of this decree. The Attorney General said he would not refuse, because that might be prejudging the case. The Attorney General said it ought to be done here in court if at all.

I now come to my friend's mechanical argument—the mechanics of the thing. I call that the passing-the-buck argument. And Mr. Galloway seems to think it a pretty broad subject, and that if your honor gave me leave to come into court, if you granted my present pending motion and did no more, right away that would open this veritable Pandora's box of difficulties. If you deny it, you dodge your duty, said Mr. Breed. I am not going to address myself to that. But, he says, a lot of testimony would have to be taken before you could do anything more. Why? The mechanics of this thing, if your honor please, is on this record. The mechanical questions are established. You would not have to hear a witness, because if you are convinced that we are right—as upon this record I, with an abiding confidence, believe you will be convinced—you do not dismiss the bill, you do not strike out the answers, but you do cut down this decree. When you do that thing—

Mr. BREED. May I ask if you mean "vacate" the decree?

Mr. HOGAN. Yes.

Mr. BREED. In other words, the court would have to sign an order vacating the decree in order to raise these questions?

Mr. HOGAN. I think that is what the court should do. Then, my friend, when that is done you and I go our several ways. Then it will be for the Government to say how, if at all, it wants to move. It may be that the Government will never take another step. It may be that they will find that those packers are not doing anything as to which public policy or law requires them to take a step. It may be they are entirely satisfied with the status quo.

I pass over that argument that your honor referred to a moment ago. My friend says, finally, "What does the Sherman Act do?" It is an act to authorize a court to prevent violations of the law. It is, but it is not an act to authorize any court to foundation a decree to enjoin the lawful doing of a lawful business. And when he read that clause he said afterwards, "It is a law to prevent the doing of something." That is not what it is. It is a law to authorize the courts, upon a proper presentation of a proper record, to issue their injunction to prevent the violation of that law.

And that brings me to the final thing in this case. I say that upon this record—and when I say it with that positiveness I am asserting it subject to your honor's judicial judgment in the matter—upon this record this decree as a whole must fall. There is no mandatory record that permits any part of it. But if I am wrong, if your honor should take another view of that, then I say it will be your bounden duty upon looking at this record to strike from it that clause which says to these people, without allegation, without proof, without any law from the Congress or from any other lawgiving source, "You shall not sell canned fruits; you shall not transport canned fruits. We do not charge, we do not prove, you do not admit that you have any contract in restraint of trade, that you have any combination violative of law; we do not even suggest that there is or has been any present or threatened monopoly in that respect, but we say, simply because you consent to it, that a court of the United States shall by its solemn decree say to you people that you, whom we do not charge constitute unlawfully organized corporations, shall not do this lawful business in a lawful way."

I say, if your honor please, there is no escape from that so far as the business of my client is concerned.

In conclusion let me say, if your honor please, that you need give yourself no concern with regard to whether or not it would be a good thing to dissolve those corporations. There is no prayer in this bill asking for a decree dissolving any of the five packers. There is no allegation in the bill that would call for that. There is no claim that these parties were combined in one monopolistic concern, such as was the Standard Oil and similar companies whose dissolution was sought.

I do not think, if your honor please, that I shall burden you with a brief upon this. I will let the oral argument which I have made to-day—a copy of which will be sent to you—stand as my brief, with a list of the authorities.

The COURT. When can you gentlemen furnish me your briefs?

Mr. BREED. Ours is ready now.

Mr. WATKINS. My brief has been filed with the clerk, if your honor please.

Mr. GORDON. We will furnish one this week.

The COURT. I would like to have them as quickly as possible, and I would like to dispose of this matter.

Mr. BREED. If the court please, on the subject last referred to, the question of the extent of the exercise of this jurisdiction, the brief that I filed before the interdepart-

mental committee contains a rather more extensive argument, and that I shall hand you also. The reason that I also hand you the other reference is the fact that all the cases hold it is quite impossible to determine whether the exercise of this jurisdiction should go to the extent of prohibiting of what is individually lawful or not, without getting all the facts before the court. All the cases, the Standard Oil case and all of them, hold that. That is why in this record there was so much testimony taken that it showed quite conclusively, along with the report of the Federal Trade Commission, that all of these allegations in the Government's bill taken together showed the creation of a monopoly and an attempt to restrain trade, even going on into the unrelated lines. The Federal Trade Commission brings these facts together, with their testimony. You know, the Federal Trade Commission appeared before this committee,

Mr. HOGAN. Yes; I read to the court this morning the admission they made about the unrelated lines.

(Whereupon, at 4.15 o'clock p. m., the further hearing of the argument in this cause was adjourned.)

**MEMORANDUM OF AUTHORITIES SUBMITTED BY ATTORNEY
FOR CALIFORNIA COOPERATIVE CANNERIES, DATED JUNE 21,
1922.**

IN RE UNITED STATES V. SWIFT & CO., ET AL.

JUNE 21, 1922.

Hon. JENNINGS BAILEY,
Associate Justice, Supreme Court of the District of Columbia,
Washington, D. C.

DEAR MR. JUSTICE BAILEY: Upon the hearing of the motion of the California Cooperative Canneries in the above case I stated that "I will let the oral argument which I have made to-day—a copy of which will be sent to you—stand as my brief, with a list of the authorities." Herewith I am transmitting to you (a) stenographic report of the oral argument and (b) memorandum of authorities with one or two brief notes relating particularly to the subject matter of some of your questions propounded during the argument. I am, of course, sending copy of this memorandum and letter to opposing counsel.

I am sure you will not overlook, but out of abundance of caution repeat, what I said upon the argument, in response to one of your questions, to the effect that the canneries had been endeavoring to get the parties, particularly the United States, to act, and had, as charged by the grocers in their petitions and admitted by the Government, been lulled into inactivity on their own part by the fact that the parties had consented to seek a modification of the consent decree and the matter had gone so far that the papers therefor had actually been prepared and were substantially in shape in the Attorney General's office for filing in court last fall. The canneries only learned that the Government expected it to proceed directly when the Attorney General responded to the Senate resolution in March last, and we promptly followed that by filing our petition and motion herein.

Yours very respectfully,

FRANK J. HOGAN.

In the Supreme Court of the District of Columbia. *United States of America v. Swift & Company et al.* Equity No. 37623. Memorandum of authorities cited by Frank J. Hogan in behalf of California Cooperative Canneries during oral argument on motion for leave to intervene.

1. On right to intervene: *Gainves v. Clark*, 275 Fed. 1018 (Court of Appeals, D. C.); *United States Trust Co. v. Chicago Terminal T. R. Co.*, 188 Fed. 292; *United States v. Terminal Railroad Association*, 236 U. S. 194; *Cincinnati, I. & W. R. Co. v. Indianapolis Union Railway Co. et al.*, 279 Fed. 356; *Weeks v. Heurich*, 40 App. D. C. 56, 64; in re *Columbia Real Estate Company*, 101 Fed. 965; *Kreider v. Cole*, 149 Fed. 647; equity rule 15 (secs. 65, 85, and 1061, Code, D. C.); Federal equity rule 37.

2. On want of jurisdiction to enter decree: *Palmer v. Fleming*, 1 App. D. C. 533; *United States v. Walker*, 109 U. S. 258; in re *Columbia Real Estate Company*, 101 Fed. 965; *Wetmore v. Rymer*, 169 U. S. 120; *Metcalf v. City of Watertown*, 120 U. S. 587; *Hartog v. Memory*, 116 U. S. 588; *Kreider v. Cole*, 149 Fed. 647.

3. On validity of contract between California Cooperative Canneries and Armour & Company: *United States v. Purcell Envelope Co.*, 249 U. S. 313, 322.

NOTES.—(a) That Armour & Co.'s consent to decree breached the contract with canneries, see *Gray v. Cavalliotis* (276 Fed. 565).

(b) If a bill is filed by A against B for specific performance of a contract and B files an answer denying all the allegations of the bill, and then comes into court and consents to a decree for specific performance, such consent is in effect a withdrawal of B's denial and is a formal admission of the truth of the allegations of the bill, and in such a case the consent decree would be valid and binding if the mandatory record were perfect in all other respects.

(c) There is no laches on the part of the California Cooperative Canneries, as a matter of fact; any delay on the part of the canneries has not injured any of the parties to this suit, and therefore intervention is not barred by laches (*Rhinehart v. Victor Talking Machine Co.*, 261 Fed. 651). And the intervener's delay in filing its peti-

tion for intervention is not laches as a matter of law. (Gilbert v. David, 235 U. S. 561, in which a delay of several years occurred, and as to which the court said (p. 568): "It is urged that the delay in making the issue and bringing it to a hearing was such laches upon the part of the defendants as to preclude the consideration of the question. The issue was made when the answer was filed, but for some reason neither party forced the case to trial. Apart from the imperative duty of the court to dismiss the action under the statute, when it appears that the case is not within the jurisdiction of the court, we find nothing in the conduct of the parties to support the suggestion of laches. If it be true that the statute of limitations would prevent the beginning of a new action in the state court, that fact can not confer jurisdiction upon a court of the United States in the absence of showing of diverse citizenship.")

(d) During the oral argument, counsel for the National Wholesale Grocers' Association handed the court a large volume containing the testimony taken before the interdepartmental committee. There is nothing whatever in that report which needs now be considered by the court, in connection with the motion of the California Cooperative Canneries for leave to intervene, or in connection with the question of vacating or modifying the decree for want of a sufficient mandatory record to support it. If the court should vacate the decree, and hear evidence on the facts alleged in the bill and answers, it may then become useful to refer to the testimony taken before the interdepartmental committee. At this time, however, there is nothing in that testimony which has the slightest bearing upon the single question now before the court.

(e) Opposing counsel stated at the bar that the reservations in the stipulation and decree were inserted to protect the defendants from three-fold damage suits under the antitrust statutes, but this can not be true, because section 5 of the Clayton Act of October 15, 1914, chapter 323 (38 Stat. L. 730), provides "that a final judgment or decree hereafter rendered in any criminal prosecution of in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken." The Clayton Act was passed about four and one-half years before the consent decree in this suit was entered.

(f) During the oral argument, the court said to Mr. Hogan: "You mean that it put this court in the position of acting in an administrative way rather than discharging a judicial function?" Mr. Hogan replied as follows: "Yes; having nothing justiciable before it, really nothing to judicially act upon." Of course, Federal courts do not sit to perform administrative functions, but they can act only judicially and in justiciable matters. Not even the Congress itself can confer on Federal courts any jurisdiction over nonjusticiable matters, or empower the court to sit as an administrative body. The court can not act without a case or controversy to which, under the Federal Constitution, the judicial power alone extends. (*Muskat v. United States*, 219 U. S. 346, in which the court said (p. 361): "That judicial power, as we have seen, is the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction.") The court further said (p. 363): "For the reasons we have stated, we are constrained to hold that these actions present no justiciable controversy within the authority of the court, acting within the limitation of the Constitution under which it was created." The same principle was reiterated and followed in *Fairchild v. Hughes*, decided by the Supreme Court of the United States February 27, 1922, and reported in the *Lawyers' Cooperative Co.'s Advance Opinions* of the Supreme Court of April 1, 1922, No. 10, page 260. And yet in the instant case the anteligation contract between the Government and the packers left nothing for the court to judicially act upon but sought to impose upon it a purely administrative function.

Respectfully submitted.

FRANK J. HOGAN,
Attorney for California Cooperative Canneries.

JUNE 21, 1922.

BRIEF ON BEHALF OF THE UNITED STATES OF AMERICA IN OPPOSITION TO THE INTERVENTION OF CALIFORNIA COOPERATIVE CANNERIES.

In the Supreme Court of the District of Columbia. United States of America v. Swift & Co. and others. In Equity, No. 37623. Brief on behalf of the United States of America on the motion of the California Cooperative Canneries for leave to intervene.

This motion is a request for leave to intervene and to file a proposed intervening petition which is attached to such motion. The proposed petition shows the purpose of such intervention to be for one of two things: First, to set aside and vacate the decree in its entirety; or, second, to so modify the decree as to permit the defendants herein to manufacture, deal in, handle, etc., the so-called "unrelated commodities," more especially canned fruits and vegetables, which such defendants are prohibited from doing by said decree.

The primary question is, Has the California Cooperative Canneries sufficient interest, as shown by the petition accompanying this motion, to entitle it to intervene and raise the questions above mentioned? The interest alleged is based upon a contract which contract provides that for a period of 10 years Armour & Co., one of the defendants, will take its requirements of the products of the California Cooperative Canneries. The agreement is set out in the proposed petition and shows that the amount to be so taken under this agreement, the time of delivery, as well as the price to be paid therefor, are all uncertain, indefinite, and contingent. The quantity depends upon how much of such products Armour & Co. needs. The time of delivery depends upon the wishes and convenience of Armour & Co. in this respect, and the price to be paid depends upon the ruling market price which is to be ascertained at the time that Armour & Co. needs such products. It can with considerable force be argued that such contract is so uncertain and indefinite as to not be binding on Armour & Co. and is, therefore, unilateral and is of no force or effect whatever. (See *Pittsburgh Plate Glass Co. v. H. Neuer Glass Co.*, 253 Fed. 161.)

However, without deciding such question, the contract itself contains a provision which entirely removes any peculiar interest of the California Cooperative Canneries to intervene herein as distinguished from an interest which it, as part of the public, has. Such provision is as follows:

"In case governmental action materially interferes with the performance of this contract by second party, then and in that case it shall have the right to cancel and terminate this agreement by giving 60 days' written notice to first party of its intention to do and shall not be held liable for any loss resulting therefrom."

This provision contemplated just such a decree as was here entered, and the proposed petition of the California Cooperative Canneries shows that Armour & Co. in accordance with such provision of the contract did, after the entry of this decree cancel and terminate this contract. Therefore, the interest of the California Cooperative Canneries in this controversy is no more and no different than that of any other member of that class of the public which, prior to the entry of this decree, had been using the distributive facilities of the meat packers in the distribution of their products.

This suit is one brought by the Attorney General, representing the United States, under the provisions of the antitrust laws, to enjoin an alleged violation of such laws and to protect the public interest. The suits brought by the Government as authorized by the Sherman antitrust laws are to protect the public as a whole and not to single out for representation or vindication the rights or welfare of any particular or special interest. The Sherman law makes special provisions for suits for damages because of injuries to special interests by acts in violation of the antitrust laws, and the Clayton Act gives to these same interests injunctive relief in equity, thus making clear the distinction between this sort of a suit brought by the Attorney General to protect the public interest and those brought to represent or protect any special interest. That such is the nature of the suit has been decided in many cases, the leading one being *Minnesota v. Northern Securities Co.*, 194 U. S. 48, at p. 71. (See also *United States v. Northern Securities Co.*, 128 Fed. 809 at 812; *Ketchum v. D. & R. G. R. Co.*, 245 Fed. 106 at 111; *Venner v. Penna. Steel Co.*, 250 Fed. 292 at 296.)

Thus we believe it is clearly shown that the petitioner for leave to intervene has no interest other than that had by any member of the public using the meat packers' distributive facilities; that the Attorney General alone is authorized to bring such

suits as this, and the United States of America as plaintiff, through the Attorney General, represents the public interest and all such interest as the petitioner for leave to intervene really has in this matter.

Intervention in ordinary suits is permitted in two different situations: (1) Where the party asking leave to intervene has an interest in the subject matter and has no other remedy; and (2) where the party has an interest but has other remedy. In the latter class of cases it is discretionary with the court to permit the intervention. (*Gaines v. Clark*, 275 Fed. 1017, at 1019; *United States Trust Co. v. Chicago Terminal Tr. Co.*, 188 Fed. 292, at 296; *Credits Commutation Co. v. United States*, 177 U. S. 311, at 316.)

As before stated, we believe we have shown that the California Cooperative Canneries has no right here such as will entitle it to intervene even in an ordinary suit, and especially no such right as will entitle it to intervene in an antitrust suit, but should it be conceived that it has an interest here it would certainly have a remedy at law for damages for violation of this contract, if such contract gives it any right, and that is the only basis upon which it could claim a special interest as distinguished from that of the public. Therefore, if this view is taken of the situation, and the granting of intervention is discretionary with the court, it is doubted if the court will exercise its discretion to grant such intervention in view of the facts that the decree has been entered for more than two years; the Government has expended a great amount of time, money, and energy in procuring the decree and in attempting to enforce it and carry it out, and many of the parties defendant have carried out all or part of the provisions of this decree, and in so doing have in many instances materially changed their position, and in some instances they alleged they have suffered serious injury and financial loss, and in view of the further fact that to permit this intervention would open the door to a great host of interests, claiming alleged grievances because of this decree, to come in and perhaps even to present collateral issues, as well as establishing a precedent which might affect the hundreds of other consent decrees entered in antitrust cases all over these United States, and thus make uncertain and insecure such decrees and render them susceptible to attack at any time by almost any person.

But let us go a step further and concede for the purpose of argument that the California Cooperative Canneries has a substantial interest and one which entitles it to intervene, and that an antitrust case is one in which such interest may intervene. Still, if we look to the purpose, as expressed in the petition attached to the motion for leave to intervene, we find it is for one of two things, namely, a modification of the decree or an entire setting aside of the decree. The modification of the decree depends upon the economic propriety thereof and involves a question of fact. The entire setting aside or vacating of the decree depends upon a question of law as to the jurisdiction of the court or the exercise of its jurisdiction. We wish to discuss the possibility of both of these theories because if neither of them is sound or will attain the relief prayed and desired by the California Cooperative Canneries the court should not do a useless thing and grant this intervention.

This is a consent decree and it is in the nature of a contract given sanction by the court. (*Hodgson v. Vroom*, 266 Fed. 267; *C. G. A.*, Second Circuit.) Such decree can be modified only by consent of the parties. *City of Des Moines v. Des Moines Water Co.*, 218 Fed. 939, at 943. As yet neither the Government nor any of the defendants has consented in court to this modification, and as a matter of fact two groups of defendants, namely, the Morris and Cudahy groups, have filed or made in court statement expressly objecting to any such modification. It seems, therefore, that to permit an intervention for the purpose of raising the questions of fact as to the economic propriety of this decree, looking toward a modification thereof, would be futile as the door to any such a modification has now been closed.

The remaining question is as to the court's jurisdiction. That the court has jurisdiction of suits to enjoin violations of the antitrust laws is clear and is not questioned by opposing counsel. Such jurisdiction arises from the Sherman law and the Clayton Act, together with the laws giving the Supreme Court of the District of Columbia the same jurisdiction as the district courts of the United States in such suits. It is further submitted that the original bill herein alleges violations of the antitrust laws and upon such allegations being made the jurisdiction of this court over this suit attaches. (*Thomas v. Board of Trustees*, 195 U. S. 207, at 210.)

Can it be well argued that the subsequent acts in this case remove the jurisdiction of the court when the act complained of was an assertion in the stipulation and the decree that the entry of this decree should not be considered as an admission by the defendants or an adjudication by the court of any violation of law? There is no finding that there was no violation of law, and consent takes the place of evidence upon which to base a decree, and does away with the necessity of findings of fact. (*Harniska v. Dolph*, 133 Fed. 158.)

It should also be borne in mind that this clause complained of and criticized is merely a statement of the provisions of section 5 of the Clayton Act with reference to consent decrees, which section expressly recognizes that consent decrees are not adjudications of the existence of a violation of law and recognizes the truth of the statements inserted in this decree of which complaint is made.

It is further complained that the court exceeded its jurisdiction or authority in rendering this particular decree. The general rule that the relief must be within the pleadings does not apply with full force to consent decrees. Ordinarily, all that will be required is that the agreement shall come within the general scope of the case made by the pleadings. (*Nashville Railroad Co. v. United States*, 113 U. S. 261; *Pacific Railroad Co. v. Ketchum*, 101 U. S. 289, at 297.)

Thus it may be asked again, Will the court do a futile thing and permit intervention to raise these questions as to this court's jurisdiction or exercise of its jurisdiction?

In argument opposing counsel saw fit to term certain acts of the Attorney General and of the Department of Justice as an invitation to his client to come into this court by intervention. In the first place, no such action by the Government or any department or officer thereof could in any way affect or change its right to intervene. Either it has such a right or it has not such a right, and whether it has it is a question of law which, as before stated, can not be changed or affected in the manner suggested. Further than that the action by the department, as stated in oral argument, was simply this. The situation at the time of the rendition of the recommendations of the inter-departmental committee, which were adopted by the Attorney General was that even though this is a consent decree and had all the parties consented to a modification or a change, the court had then indicated in its memorandum decision that, regardless of what the parties agreed to or did, the court was going to permit the Wholesale Grocers to intervene and to hear them upon this question of modification and determine that question for itself. In view of that situation we do not feel that it would have been the proper thing for the Attorney General to prejudge the case, either of the California Cooperative Canneries or the Wholesale Grocers, by saying they should have a modification, or, on the other hand, they should not have a modification; that if the question was to be decided by the court it should be decided there without in any way being decided in advance thereof by the Attorney General.

AUTHORITIES CITED BY OPPOSING COUNSEL.

The case of *Gaines v. Clark*, 275 Fed. 1017, being a recent decision by the Court of Appeals of the District of Columbia, is cited. That this case, as well as the case of *U. S. Trust Co. v. Chicago Terminal Tr. Co.*, 188 Fed. 292, also cited, correctly states the general law in ordinary cases upon intervention is not questioned. Both of these cases have been referred to and discussed above, so a repetition here is unnecessary.

The case of *United States v. St. Louis Terminal Association*, 236 U. S. 194, is also cited. This case should be considered in connection with the case immediately following, namely, *Evans & Howard Fire Brick Co. v. United States*, 236 U. S. 210. From an examination of both of these cases, together with the record therein, it appears that the defendants had filed a motion for a modification after a final decree had been entered. There was an appeal. After such appeal had been perfected the petitioners filed a motion for leave to intervene, asking the same modification as the defendants had asked. The lower court denied the intervention. The same proposed interveners then filed a motion in the Supreme Court asking leave to intervene or to appear as *amicus curie*.

The Supreme Court decided that upon the peculiar and special interest alleged in such petition these people should be heard in that court but that they were properly denied intervention in the lower court. A distinction will be noted between the interest alleged in the case cited and the interest in the case at bar; also in the lack of other remedy in the case cited and the other adequate remedy in the case at bar as well as the fact that the defendants in the case cited had already asked for the same modification as that asked in the intervening petition, while in the case at bar there is no request by any of the parties for a modification. With these distinctions the case cited is no precedent for intervention here.

In the case of *C. I. & W. R. Co. v. Indianapolis Ry. Co.*, 279 Fed. 356, which was also cited, the facts are so different from those in the present case that it can not be considered as an authority here. In the case cited there was no question as to whether the intervener had any contract rights. Also the question arose over the construction and carrying out of a decree, and not upon a request to modify or set aside such decree. These distinctions are very material as well as is the fact the case at bar is one under the antitrust laws and not between private interests as in the case cited. When the case cited is carefully examined it will be found not to sustain the contention of the California Cooperative Canneries.

The next case cited is the case of *Weeks v. Henricks* (14 Appeals D. C. 46). This case does not sustain the contention made here, but merely holds that a private person may maintain an original suit to enjoin the erection of a building in violation of law, where he can show special damage to himself as distinguished from the injury to the public generally. The court, at page 59, says:

"We are familiar with the doctrine of the cases cited by the defendants to the effect that a person will not be permitted to enjoin the erection of a building in violation of law unless he can show some special damage peculiar to himself as distinguished from the general public * * *. We think the admitted averments in the bill are sufficient to distinguish plaintiff's damages from that which would be sustained by the general public."

This sustains the contention of the Government more than that of the California Cooperative Canneries.

The case of *Palmer v. Fleming* (1 Appeals D. C. 528), cited by opposing counsel, holds that consent of the parties can not give a court of equity jurisdiction of a case properly triable at law. The court, at page 533, says:

"Consent can not give jurisdiction and the allegation of fraud and collusion in the bill unsubstantiated by proof can not give jurisdiction."

This decision is not applicable, as there is no contention but that this court has jurisdiction generally of suits to enjoin violations of the antitrust laws and, as shown above, consent takes the place of proof. (*Harniska v. Dolphe*, supra.) Also it must be remembered that there is no contention but that the original petition stated a cause of action in equity based upon the antitrust laws.

We can see no possible analogy between the case of *United States v. Walker* (109 U. S. 258), which is cited by opposing counsel, and the case at bar and do not see how it can be considered as a precedent in any questions now being considered by this court. Therefore, we shall not discuss it further.

The cases *In re Columbia Real Estate Co.* (101 Fed. 965, at 970), and *Wetmore v. Rymer* (169 U. S. 115, at 120), hold that, regardless of how the question is presented, when the lack of jurisdiction is called to the attention of the court it is the duty of the court to at once consider and decide such question. We do not contend but that this rule laid down in these cases cited by opposing counsel is the law, but the Government contends that no such question of jurisdiction exists here. If there is any such question, of course it should at once be decided and disposed of by the court, as a prompt and proper decision of the same will be best for the court, the Government, the meat packers and everyone else concerned. The case of *Metcalf v. City of Watertown* (128 U. S. 587), cited by opposing counsel, merely announces the same rule as the cases last above discussed. Therefore, further comment upon that case would be unnecessary.

The case of *Hartog v. Memory* (116 U. S. 588), is also cited. In that case the court says that if the court is led to suspect that its jurisdiction has been imposed upon by collusion of the parties, or in any other way, it may of its own motion cause the necessary inquiry to be made and act for its own protection against fraud and imposition. No charge of fraud or imposition is made in the case at bar, and even in the case cited the defendant himself raised the question of the court's jurisdiction, but the Supreme Court over ruled the same because it was raised too late and in an improper manner. Therefore, this case is not applicable.

Opposing counsel also cites the case of *Kreider v. Cole* (149 Fed. 647). The facts in that case are so different from the case at bar as to make it clearly distinguishable.

There an effort was made by arrangement between the parties to give the Federal court jurisdiction because of diversity of citizenship of a suit of which it would not otherwise have jurisdiction. The court permitted this question to be raised and decided against its own jurisdiction in order to protect itself from being imposed upon in such a manner contrary to the provisions of the statute. It should also be noted that the interest of the persons who suggested this question of jurisdiction to the court considerably differs from that of the California Cooperative Canneries in this case. In the case cited those raising the question were creditors and bondholders of the corporation for which a receiver had been appointed in the very case in which the jurisdictional question was raised, and it should also be borne in mind that the Government contends that no question of jurisdiction is raised in the case at bar.

Respectfully submitted.

PEYTON GORDON,
United States Attorney.

HERMAN J. GALLOWAY,
Special Assistant to the Attorney General.

BRIEF ON BEHALF OF NATIONAL WHOLESALE GROCERS' ASSOCIATION OF THE UNITED STATES IN OPPOSITION TO INTERVENTION OF CALIFORNIA COOPERATIVE CANNERIES.

In the Supreme Court of the District of Columbia. United States of America v. Swift & Co., et al. In equity, No. 37623.

This memorandum is submitted on behalf of the National Wholesale Grocers' Association of the United States, in opposition to the petition of California Cooperative Canneries praying that it be allowed to intervene for the purpose of moving to vacate or modify the decree of this court entered herein on February 27, 1920, on application of the United States of America and on consent of the defendant "packers."

The association obtains a status in this proceeding not by virtue of being an original party, but only by virtue of an order entered herein on November 5, 1921, permitting intervention "for the limited purpose of being heard in opposition to any proposed change in the decree, which would deprive the said association of the protection now secured by the decree."

The reason for the application of the association to intervene was a report which had become current in August and September, 1921, to the effect that the defendant packers were prepared to consent to a modification of the decree, with the approval of the United States Government, to conform with the demand of one, Vernon Campbell, president of the California Cooperative Canneries, the petitioner herein.

That this report was correct and fully justified by the facts, appears from the testimony of Mr. Campbell before the interdepartmental committee and statements of the representative of the Attorney General (hearings before subcommittee of the Senate Committee on Agriculture, pp. 922, 923, 924) to the effect that Mr. Campbell, together with his former attorney, Congressman Free, of California, an attorney for Armour & Co., and a representative of the Attorney General's office, in the summer of 1921 appeared before Mr. Justice Stafford of the Supreme Court of the District of Columbia, at his summer home in Vermont, for the purpose of asking him to consider the modification of the decree herein.

The application of the petitioner is to intervene, as a preliminary to a succeeding application to vacate the decree entirely or modify it in the particulars set forth in the petition.

If the application for intervention be granted, it therefore follows that this court will be obliged to enter upon a long and extensive trial of the facts, which are necessarily involved in determining the question as to whether the decree, as entered by the court, upon the consent of the Government and the packers, was in fact justified by violations of the law by the packers, and whether the terms of said decree were broader than they should be, in order to properly enforce as against the packers, the provisions of the antitrust laws of the United States, in the protection of the public interest.

A trial of these issues, at a time more than two years after the entry of the decree and more than three or four years after much of the evidence was gathered through the instrumentalities of the Federal Trade Commission and investigations conducted by or under the authority of the Attorney General, is not an easy or short task, and this court must be prepared, if intervention is allowed, to give the Government a full opportunity, by proper hearings, to prove that the decree, consented to by the defendants, was justified, under all the facts then existing and that those facts brought the defendants within the prohibitions of the various antitrust laws.

The court in entering upon consideration of this motion, should also have brought to its attention the fact that a hearing has recently been had before a committee appointed by the Attorney General known as the interdepartmental committee, for the purpose of passing upon the very contentions now presented to this court by the petitioner, California Cooperative Canneries, and that the hearings before said committee were carried on continuously for a period of more than three weeks, that is, from November 28 to and including December 15, with subsequent opportunity for argument and submission of briefs before said committee, by all parties who desired to be heard.

The said hearings were attended by the petitioner, represented by its president, Mr. Vernon Campbell, as the chief proponent of vacating and modifying the consent decree and by representatives of a number of trades throughout the United States affected by the terms of the said decree and numerous other citizens who were opposed to modification.

The record of these proceedings called for by the Committee on Agriculture and Forestry of the United States Senate, under a resolution of the Senate, is now in printed form, and appears as a document entitled:

"Packers' consent decree. Hearings before a subcommittee of the Committee on Agriculture and Forestry, United States Senate, Sixty-seventh Congress, second session. Pursuant to Senate resolution 211 to investigate matters concerning the consent decree entered in the Supreme Court of the District of Columbia in the case of the United States of America, plaintiff, *v. Swift & Co. et al.*, defendants. March 23 and April 21, 1922."

This document contains all of the testimony, exhibits, arguments, and briefs of counsel and covers 1,035 pages of printed matter. We respectfully submit that this court should examine the record of these hearings in passing upon this application for intervention and we beg leave to refer to the same and will submit a copy on the argument.

This testimony discloses no fraud or mistake of fact in connection with the entry of this decree; that the decree, in all of its terms, was consented to by all of the defendant packers, and that they have in large measure complied with the terms of said decree. The testimony also shows that the public, at the time of the entry of the decree, in February, 1920, regarded the same as the only real effective and practical accomplishment obtained by the United States Government in its various efforts to enforce the antitrust laws of the United States against the growing monopoly of the packers, which efforts have extended over a period of more than 30 years.

We also request that the court examine the following public documents which were before the Attorney General at the time of the bringing of this action:

Report of the Federal Trade Commission to the President of the United States, dated July 3, 1918, covering the meat-packing industry.

Hearings before House Committee on Interstate and Foreign Commerce on H. R. 13324, a bill to regulate the packers, held in December, 1918.

Hearings before Senate Committee on Agriculture on Senate bill 5305, designed to regulate the production, sale, and distribution of live stock, held January, 1919.

In considering the application of the California Cooperative Canneries to intervene for the purpose of vacating this decree, the court is also asked to give due weight to the following facts in the history of the efforts of the United States Government to curb the attempts of the Big Five packers to create a monopoly in violation of the laws of the United States and the interests of the public:

1. The passage of the original antitrust act of July 2, 1890, known as the "Sherman Antitrust Act," closely followed the investigation of the packers' monopoly by Congress in 1890, by the Vest committee, which made its report May 1, 1890.

2. In 1903 the United States courts issued an injunction in an action of the United States against Swift & Co. and the other large meat packers, restraining them from engaging in combination and conspiracy in restraint of trade. This injunction, sustained by the United States Supreme Court, in *Swift v. United States*, 196 U. S. 375, is still in force and effect. In the same year the National Packing Co., whose stock was owned and controlled by the Big Five packers, was organized.

3. In 1905, in a further action by the United States, indictments were returned by a United States grand jury against Armour & Co. and certain other large packers, the indictments against the individual defendants being later dismissed on the plea of immunity, by reason of said individuals having given testimony against themselves under authority of existing law.

4. In 1912 the National Packing Co., following prosecution by the Government, was dissolved by the consent of the packers.

5. As found by the Federal Trade Commission's report, it was not until the war period, 1914 to 1917, that the packers began to extend their operations into foods other than meats known as "unrelated lines," at first largely as a speculative matter, then later developing into larger operations so as to control the substitutes which the people might seek when meat prices became too high.

6. In 1917 the President of the United States, acting in pursuance of a public demand and having before him resolutions previously introduced in Congress, directed the Federal Trade Commission to make a full investigation and report regarding the packing industry and the activities of the Big Five packers.

7. On July 3, 1918, the Federal Trade Commission made its summary report to the President of the United States, condemning the operations of the packers and setting forth innumerable facts indicating that their activities were in violation of the antitrust laws of the United States.

8. In July, 1919, the National Wholesale Grocers' Association began a proceeding before the Interstate Commerce Commission, alleging that the packers in the extension of their business into unrelated food lines were utilizing their refrigerator cars for the

transportation of food products not requiring refrigeration and thereby obtained expedited service together with preferential rates, which was discriminatory and constituted unfair competition with all other merchants in the United States who were engaged in the manufacture, sale, and distribution of food products. The packers intervened in said proceeding.

9. In September, 1919, the United States Government began proceedings against the packers before a Federal grand jury in Chicago, which was later followed by a proceeding before a grand jury in New York.

10. In December, 1919, committees of both House and Senate began investigations on bills designed to bring the packing industry under definite regulation.

11. In December, 1919, the packers voluntarily appeared before the Attorney General and agreed to discontinue the practices which the Attorney General, on behalf of the United States, complained of, and the packers entered into the memorandum or stipulation, the terms of which were later embodied in the decree entered in the action of this proceeding, on the 27th day of February, 1920, which decree the petitioner herein is seeking to set aside.

12. Shortly following the entry of the decree, counsel for the packers, who had at that time intervened in the proceeding before the Interstate Commerce Commission, called the attention of that commission to the fact that the packers had entered into the consent decree, which covered many of the matters at issue before the commission, thereby seeking to dispose of that proceeding by reason of the said consent decree.

13. On August 15, 1921, the packers and stockyards act passed by Congress, became a law, and the activities of the packers, so far as their general business in meats and meat-food products are concerned, came under the regulation of the Department of Agriculture.

14. Prior to the passage of said packers and stockyards act, the packers called to the attention of the committees of Congress the fact that they had entered into the consent decree, and the existence of said decree was accepted by committees of Congress as a reason for omission from the said packers and stockyards act of various provisions already contained in said decree consented to by the packers.

15. In November, 1921, certain stockyard commission merchants, located in the Union Stock Yards at Chicago, began two proceedings to set aside the said packers and stockyards act, on the ground that it was unconstitutional. In one of these proceedings the leading counsel for Armour & Co. represented the plaintiffs and made argument before the lower court and also in the Supreme Court of the United States. The Supreme Court of the United States, in May, 1922, held that said act was constitutional, thus finally disposing of an attempt by the packers to defeat regulation by Congress.

16. Since May, 1920, according to the statement of its vice-president and general manager, the California Cooperative Canneries, upon whose property Armour & Co. holds a mortgage, have been attempting to set aside the consent decree. After failing to procure the consent of the Attorney General to that effect, this company now applies to this court to intervene for that express purpose. It is to be hoped that this court will, following the United States Supreme Court, finally dispose of this attempt of certain packers to nullify the action of the court taken with their express consent in the purpose of enforcing the antitrust laws.

EVENTS PRECEDING ENTRY OF THE DECREE.

Ever since the enactment of the Sherman Act in 1890 it has been repeatedly alleged that the large meat packers have been engaged in combinations and conspiracies in restraint of trade and in furtherance of the establishment of monopolies in violation of the Sherman Act. Repeated investigations have been made by State and Federal governmental authorities.

The first public investigation of this character was made by the Vest Committee of the United States Senate in 1888-1890, and this committee reported May 1, 1890, that the large meat packers were combining in restraint of trade. Repeated investigations have been made since then by congressional committees and statutes have been enacted largely due to the belief that the flagrant and persistent misconduct of the meat packers made such legislation necessary to protect the public. Such belief was largely responsible for the passage of the original antitrust act, known as the Sherman Act, in 1890; the act of June 30, 1906, known as the meat-inspection law, the act of October 15, 1914, known as the Clayton Act, and the act of August 15, 1921, known as the packers and stockyards act. The first, second, and last laws, of course, were aimed specifically at the meat packers.

In the very recent case of *Stafford v. Wallace*, decided by the United States Supreme Court May 1, 1922, and not yet reported, the court upheld the constitutionality of

the packers and stockyards act and reviewed briefly the situation which led up to the enactment of that law. Chief Justice Taft in writing the opinion of the court in framing the facts of the case referred as follows to the events which preceded the enactment of the statute:

"The chairman of the Committee on Agriculture, in reporting to the House of Representatives the bill which became the act here in question (May 18, 1921, 67th Congress, 1st session, Report No. 77, to accompany H. R. 6320), referred to the testimony printed in the House committee hearings of the Sixty-sixth Congress, second session, Committee on Agriculture, volumes 220-2 and 220-3, as furnishing the contemporaneous history and information of the evils to be remedied upon which the bill was framed.

"It appeared from the data before the committee that for more than two decades, it had been charged that the five great packing establishments of Swift, Armour, Cudahy, Wilson, and Morris, called the 'Big Five,' were engaged in a conspiracy in violation of the antitrust law, to control the business of the purchase of the live stock, their preparation for use in meat products, and the distribution and sale thereof in this country and abroad. In 1903, a bill in equity was filed by the United States to enjoin further conduct of this alleged conspiracy, as a violation of the antitrust law, and an injunction issued. *United States v. Swift*, 122 Fed. Rep. 529. The case was taken on appeal to this court, which sustained the injunction. *Swift v. United States*, 196 U. S. 375. In 1912, these same defendants or their successors in business, were indicted and tried for such violation of the antitrust law, and acquitted.

(See House committee hearings before Committee on Agriculture, 1920, vol. 220-2. Subject, meat packer legislation, 718.) It further appeared that on February 7, 1917, the President directed the Federal Trade Commission to investigate and report the facts relating to this industry and kindred subjects. The commission reported that 'the Big Five' packing firms had complete control of the trade from the producer to the consumer, had eliminated competition and that one of the essential means by which this was made possible was their ownership of a controlling part of the stock in the stockyards companies of the country. The commission stated its conclusions as follows:

"The big packers' control of these markets is much greater than these statistics indicate. In the first place, they are the largest and in some cases practically the only buyers at these various markets and as such, hold a whip hand over the commission men who act as the intermediaries in the sale of live stock.

"The packers' power is increased by the fact that they control all the facilities through which live stock is sold to themselves. Control of stockyards comprehends control of live stock exchange buildings where commission men have their offices; control of assignment of pens to commission men; control of banks and cattle loan companies; control of terminal and switching facilities; control of yardage services and charges; control of weighing facilities; control of the disposition of dead animals and other profitable yard monopolies; and in most cases control of all packing house and other business sites. Packer-owned stockyards give these interests access to records containing confidential shipping information, which is used to the disadvantage of shippers who have attempted to forward their live stock to a second market.' Summary of report of the Federal Trade Commission on meat packing industry, July 3, 1918."

The quotation by Chief Justice Taft from the report of the Federal Trade Commission relates, of course, more particularly to the meat packers' monopoly over meats and meat-food products which it was sought to regulate and control by the statute involved.

The report of the Federal Trade Commission, July 3, 1918, also showed that the meat packers, who originally handled only meat and meat food products, were seeking to monopolize and control the production and distribution of other lines of food products not at all related to the meat industry. The following brief extracts from the summary report of the Federal Trade Commission referring to the unrelated lines shows the condition which was found to exist as a result of the investigation and the facts substantiating these conclusions will be found in the report of the commission:

"Five corporations—Armour & Co., Swift & Co., Morris & Co., Wilson & Co. (Inc.), and the Cudahy Packing Co.—hereafter referred to as the 'Big Five' or 'The Packers,' together with their subsidiaries and affiliated companies, not only have a monopolistic control over the American meat industry, but have secured control, similar in purpose if not yet in extent, over the principal substitutes for meat, such as eggs, cheese, and vegetable oil products, and are rapidly extending their power to cover fish and nearly every kind of foodstuff." (Summary report, page 9.)

"The business of the packing companies originally was limited to the slaughter of live stock and the distribution of meat and animal products and by-products. Now, however, they are rapidly extending their control over all possible substitutes for meat—fish, poultry, eggs, milk, butter, cheese, and all kinds of vegetable oil products,

and have secured strategic points of collection, preparation and distribution of these products. (Summary report, p. 13.)

"The purpose of this combination, which for more than a generation has defied the law and escaped adequate punishments, are sufficiently clear from the history of the conspiracy and from the numerous documents already presented, namely:

"To monopolize and divide among the several interests the distribution of the food supply not only of the United States but of all countries which produce a food surplus, and, as a result of this monopolistic position

"To extort excessive profits from the people not only of the United States but of a large part of the world." (Summary report, p. 40.)

The Federal Trade Commission reported that in its opinion the defendant meat packers were guilty of violations of the Sherman Act and Clayton Act and the evidence which they had collected was turned over to the Department of Justice for such action as might be proper.

The Attorney General thereupon commenced an independent investigation of the records transmitted to the Department of Justice and of the many facts which had been developed by the department's Bureau of Investigation. As a result, the Attorney General was satisfied that the meat packers had violated the law, and in September, 1919, commenced grand jury proceedings in Chicago and the following month in New York, with a view to determining whether to proceed by indictment or by action in equity.

The petitioner herein attempts to create an impression that the Department of Justice did not possess evidence showing violations of law by the defendants but insisted on a decree which there was no evidence to sustain. We call attention to the Attorney General's testimony before the congressional committees on this subject:

Before the Senate Committee on Agriculture and Forestry:

"I think they had violated the Sherman antitrust law; that is both a criminal and a civil statute, Senator." (Hearing on S. 2199 and S. 2202, pt. 4, p. 47.)

And before the House committee:

"Mr. Voigt, General, you said that your special assistants, Morrison, Pagan, and Kresel, acting independently, had arrived at the same conclusion primarily on the evidence which was submitted. Are you at liberty to state whether these gentlemen recommended a criminal prosecution against the packers?"

"Attorney General PALMER. They recommended that action be taken under the Sherman antitrust law against the packers, leaving it to the Attorney General to decide whether it should be on the criminal or on the equity side of the court. They may possibly have advised criminal proceedings." (Hearing on meat packer legislation, pt. 31, pp. 2327-2328.)

ENTRY OF DECREE.

While hearings were being held by these grand juries, emissaries of the meat packers came to Washington to see the Attorney General and solicited the settlement of the impending proceedings by means of a consent decree in equity. (Hearings before House Committee on Agriculture, pt. 31, pp. 2311-2312; hearings before Senate committee, pt. 4, p. 37.)

In December, 1919, a memorandum was thereupon drawn up and signed by the attorneys for the defendants wherein it was agreed that an action in equity would be brought by the Government and that in such action a decree would be entered containing the provisions which are found in the decree in this proceeding. A copy of that memorandum appears in paragraph 8 of the petition of the California Cooperative Canneries.

A complaint thereafter was prepared by the Attorney General along the lines set forth in the memorandum and this complaint, together with answers prepared and executed by or on behalf of the defendants, were filed with this court, and with the written consents of the defendants the decree was entered herein on February 27, 1920.

The decree generally enjoined the defendants from entering into any contract, combination, or conspiracy in restraint of trade, and from jointly or severally monopolizing or attempting to monopolize trade or commerce. These were about the same prohibitions as were imposed upon the defendants by the decree in the case of *United States v. Swift*, which was affirmed by the Supreme Court of the United States in 1905 (196 U. S. 375).

It further specifically provided as follows:

1. The defendants were prohibited from owning any interest in any public stockyard company or stockyard terminal or in any stockyard, market newspaper or journal.
2. The defendants were prohibited from permitting any other person, firm, or corporation to use their distributive system, except that they were permitted to lease their refrigerator cars to common carriers for public use.

3. The defendants were prohibited from engaging in any way in the manufacturing, selling, and distributing, except as common carriers, of a large number of specified food products commonly known as "unrelated lines" and being the class of food products generally handled by wholesale and retail grocers; and the individual defendants were enjoined from owning voting stock in excess of 50 per cent in any corporation, except common carriers handling a certain limited number of such unrelated lines, there being no limit as to the stock ownership of the individual defendants in corporations doing business in the other unrelated lines.

4. The defendants were prohibited from owning, operating, or conducting retail meat markets.

5. The defendants were enjoined from owning any capital stock in public cold-storage warehouses.

6. The defendants were prohibited from handling fresh milk or cream, except as common carriers, and except as same was used in the manufacture of products which they were permitted to sell.

The decree directed the defendants to file within 90 days plans for divesting themselves of the stockyards, stockyard market newspapers, and to dispose of such interests and also their ownership in public cold-storage warehouses and retail meat markets within nine months, and to discontinue the handling of unrelated products within two years. All such sales, transfers, and other disposition made of defendants' interest were to be submitted to the court for approval.

ACCEPTANCE OF THE DECREE AS AN ESTABLISHED FACT.

Although it is generally charged in the intervening petition that this court had no power or jurisdiction of any kind to enter the decree herein entered and that said decree is void and a nullity, as well as an economic mistake unfounded in law and in fact, up to the time of the present application it has been accepted by all parties thereto, both Government and packers, as a final settlement of the situation which existed at the time when the decree was entered.

Moreover, the report of the Attorney General to the Senate Committee on Agriculture, printed in the subcommittee hearings, pages 2-16, shows that not only the Government and the packers, but this court itself has passed upon innumerable questions in connection with the carrying out of the terms of the decree.

During the past two years, since the entry of the decree by the court, the position of all parties has been materially changed. The Government has lost its opportunity of proceeding against the packers on evidence in hand in 1919, either civilly or criminally under the antitrust laws of the United States, the statute of limitations having run against many of the acts of the defendants, relied upon as a violation of law, at the time of the entry of the decree.

The packers, on the other hand, have in many instances, parted with property in order to comply with the terms of the decree. For example, all of the defendants except Armour & Co. have complied with the provisions of the decree requiring them to dispose of their respective interests in the unrelated lines. The vacating or modifying of any of the terms of the decree, other than in the interest of the enforcement of the same, would seriously affect not only the Government, as represented by the Attorney General, the designated enforcement officer of antitrust laws, but also the rights of various packer defendants.

By the entry of the decree the defendants obtained from the Government an abandonment of the proceedings which were then pending and which probably would have taken the form of criminal prosecutions. While no express agreement to this effect was made, the grand jury proceedings were immediately discontinued and the Attorney General himself testified that having consented to the decree he would not bring criminal proceedings. Before the House Committee on Agriculture the question was asked by Mr. Voigt:

"If there had not been this grand jury investigation and the possibility of prosecution by your department in their minds, you do not think they would have consented to this decree, do you?"

Attorney General Palmer:

"If they had thought I was not going to do anything about it, they would not have bothered to come and see me. They got the notion I was going through, and they were right." (Hearing before House Committee on Agriculture, pt. 31, p. 2329.)

Before the Senate committee the Attorney General was asked by Senator Norris:

"Under your settlement, while you have made no agreement, of course, you do not expect to proceed against them criminally for that violation, do you?"

Attorney General:

"This is the first time I have ever announced it, but I do not expect to proceed against them criminally."

There were also pending before Congress at the time of the entry of the decree a number of bills which had been introduced for the purpose of regulating the defendant packers and prohibiting them from handling the unrelated items to such an extent as to lessen competition or create a monopoly. (See S. 2202 by Mr. Kenyon; S. 2202, substitute by Mr. Moses; S. 3944 by Mr. Gronna; S. 3944, substitute by Mr. Sterling; S. 2199 by Mr. Kendrick; S. 5288 by Mr. Smith; H. R. 6492 by Mr. Anderson, and H. R. 7001 by Mr. Jones.)

These provisions with regard to the unrelated items and also certain other provisions in these bills were eliminated from the packers and stockyards act as finally enacted on August 15, 1921, and an examination of the records of the debates on this legislation and of the committee's reports shows that these bills were changed because the meat packers urged that pursuant to the terms of the consent decree they had agreed to abandon the handling of the unrelated items. (See Report and statement of conference committee in Congressional Record, August 2, 1921, pp. 4896-4898; report of House Committee on Agriculture on S. 3944 on February 5, 1921, and debates generally.)

The conference committees of Senate and House referred specifically to the decree as follows:

"This amendment (No. 8) adds to the bill a provision that after two years from the passage of the act no packer engaged in interstate or foreign commerce shall own or control or have any interest in any stockyard unless the Secretary of Agriculture determines that such ownership or control of interest 'is not in violation of the purposes of this act,' or that the packer has been unable, 'despite due diligence,' to dispose thereof, in which case the Secretary may by order extend the period during which such ownership, control, or interest may continue. The matter is now dealt with more effectively in the consent decree as it relates to the large packing concerns; and the Senate recedes." (Statement of House conferees, August 2, 1921. Congressional Record, August 2, 1921, p. 4897.)

The chairman of the Senate committee on agriculture, who was also a member of the conference committee which framed the packers and stockyards act, spoke as follows with regard to the decree before the Senate on February 3, 1922:

"In other words, this decree is one about which legislation was to a certain extent drafted, and Congress did certain things in the legislation that it would not have done had it not been for the decree. Assuming that what the decree did would be permanent law, as the act of Congress was permanent, it omitted to legislate on some of the things included in the decree."

The defendants have also used the decree herein to their advantage in the proceeding brought by the National Wholesale Grocers' Association before the Interstate Commerce Commission against the railroads for the purpose of obtaining an order preventing the meat packers from using the brine-tank refrigerator cars for the transportation of nonperishable articles, it being claimed that such use constituted a preferential service unfair to their competitors. This proceeding was commenced in July, 1919, prior to the entry of the decree herein and was being tried when the decree was entered, on February 27, 1920.

As soon as the decree was entered the attorneys for the meat packers immediately introduced the decree in evidence in the Interstate Commerce Commission case and urged that because of the entry of the decree there was no longer any reason for carrying on that proceeding, as the complainants received greater benefit from the decree than could be granted by the Interstate Commerce Commission.

In their joint brief filed by the attorneys for Armour & Co., Morris & Co., Swift & Co., and Wilson & Co., it was stated:

"It was in order to make publicly of record such an absolute and unqualified denial of any effort to monopolize the food products of the country as could not be disputed by any intelligent mind, that the packer defendants in the equity proceeding consented to the entry of the decree in that case."

The Southern Wholesale Grocers' Association regarded this condition as so thoroughly meeting its demands that after the date of the consent decree it withdrew from the Interstate Commerce Commission proceeding, and while the National Wholesale Grocers' Association continued the proceeding, there is no doubt but that the general efforts of the complainants were thereafter weakened, and while the decision of the Interstate Commerce Commission, in general terms, holds that the proceeding does not warrant the full-relief sought by the complainants, the Interstate Commerce Commission mentions at length the fact that the decree and its provisions that the packers were to withdraw from handling these unrelated lines in their private cars, and there is no doubt that this agreement on the part of the packers to go out of business in the unrelated lines exercised a strong influence on the opinion rendered by the Interstate Commerce Commission.

ATTEMPTS TO SECURE MODIFICATION OR SETTING ASIDE OF THE DECREE.

Since May, 1920, as is stated in the petition of the California Cooperative Canneries, that corporation has been endeavoring to secure the setting aside of the decree herein, and the present application is the third which has been made for that purpose.

The first application was made to Congress. On May 3, 1920, Mr. Vernon Campbell, vice president and general manager of California Cooperative Canneries, appeared before the Committee on Agriculture of the House of Representatives which had under consideration the proposed packers and stockyards act. At such hearings he attacked the consent decree on the same grounds as those rehearsed and set forth in the intervening petition and asked that a specific amendment be made to the bill under consideration, as follows:

"I suggest this amendment to this bill:

"In paragraph (d), section 403, line 21, page 27, add:

"*Provided, however,* That nothing contained in this act shall be construed to prohibit or prevent the packers from manufacturing, purchasing, storing, selling or handling on commission foods or food products other than live-stock products."

"Or, if you have got some people so radical that they won't accept that, then say this:

"*Provided, however,* That nothing contained in this act shall be construed to prohibit or prevent the packers from handling on commission foods or food products other than live stock."

(Hearings on meat packer legislation, Series D, pt. 1, p. 105.)

The amendment which Campbell suggested did not meet with the approval of the House Committee on Agriculture, and was not contained in the bill reported by the committee or as passed by either House of Congress or as finally enacted as a law.

The second application of Campbell and the California Cooperative Canneries to have the decree set aside or modified in some other way, was made to the Attorney General in the spring, 1921. It is our understanding that at the time of making this application the connection between California Cooperative Canneries and Armour & Co. was not revealed, but it was represented that the California Cooperative Canneries was an association of independent California growers. An attempt was made to persuade the Attorney General to move the court for a modification of the decree and to ask the defendants to consent thereto. Before any final decision was made by the Attorney General, and about September, 1921, the public learned of this threatened action, with the result that many protests were immediately filed against such action. In order that all the parties having an interest in the question might be heard, the Attorney General on September 25, 1921, appointed a committee composed of a representative of the Department of Justice, a representative of the Department of Agriculture, and a representative of the Department of Commerce to hold hearings and to report as to what action he should take in the premises. As previously stated these hearings were held continuously for three weeks, November 28-December 15, 1921, and thereafter the matter was argued orally and briefs submitted. As a result the committee reported that the Attorney General should not grant the application of the California Cooperative Canneries, and the report of the committee was adopted by the Attorney General.

The third application of Campbell and the California Cooperative Canneries to vacate or modify the decree is the present application to this court. This application takes the form of a petition, in the first instance, for leave to intervene in the proceeding for the purpose of making an application to have the decree "vacated in its entirety, or that it may be so modified as to allow the defendants to resume their dealing in the so-called unrelated commodities, as before the entry of the said decree, or to allow them to use their distribution facilities for the purpose of moving the same, either upon a commission basis or upon some other efficient basis."

POSITION OF THE ORIGINAL PARTIES.

The action in equity resulting in the decree was brought by the United States of America, represented by the Attorney General. As stated, the Attorney General as already denied the request of the California Cooperative Canneries that he move for a modification and certainly will not, and has not, consented to the modification or setting aside of the decree.

Although the defendants are many in number, they may be divided, as is done in the complaint, into five groups, as each defendant is closely identified with one of the five large meat packers who make up the main defendants.

The position which Armour & Co. may take for the purposes of the record is not known. Armour & Co. has failed to state frankly where it stands. As is shown in

our answer and in the record before the interdepartmental committee, the California Cooperative Canneries is closely affiliated with Armour & Co. and is, we believe, under the control and domination of Armour & Co. While Armour & Co. has declined to make any statement as to its position with reference to the modification or setting aside of the consent decree, it has up to the present time given no consent to such action except possibly to Mr. Campbell or the petitioner.

Swift & Co. in its yearbook for the year 1922 states:

"There have been many reports that the packers have asked for a modification of the consent decree, which prohibits their handling certain unrelated products; forbids their going into the retail business; and requires them to sell their interest in stockyards. Swift & Co. has not been a party to any request to have this decree modified. So far as I know, there is no truth to the report that the larger packers are seeking to enter the retail field. Swift & Co. accepted the consent decree with the avowed purpose of being governed accordingly." (Swift & Co.'s Yearbook for 1922, p. 9.)

The position of the Morris defendants is contained in a letter of Morris & Co. to the president of the National Wholesale Grocers Association and published with the approval of Mr. Morris, as follows:

"Inasmuch as I do not believe that the position of Morris & Co. in reference to the Wholesale Grocers is entirely understood by the latter, I am taking the liberty of writing you this letter in order to state our position.

"Morris & Co. have in good faith disposed of all their merchandise at a loss of something over \$1,000,000. They have not asked for any extension in time for which to do this, and do not desire to reenter the merchandise field. Mr. Edward Morris and I each own approximately 2 per cent of the Eckerson Co., which is an independent company operating in the East by the Eckersons along similar lines that they had operated long before we had any connection with them. They do not use any packer facilities in distributing their goods. Neither Morris & Co., nor any of the other officers of Morris & Co. own any stock in the Eckerson Co. or any other company handling merchandise.

"We have not asked and do not contemplate asking for any modification or extension of the decree, as we have complied with same in every respect and the only thing remaining at the present time to be disposed of under the decree is some stock in the stockyards companies in western cities, held by individuals which we are disposing of as rapidly as possible."

With regard to the Cudahy defendants, the Cudahy Packing Co. has stated its position in a telegram to the president of the National Wholesale Grocers' Association to be as follows:

"The Cudahy Packing Co. position on consent decree and handling by it of grocery lines mentioned in decree is the same as what you state you have from certain other defendants, but we further feel that as regards the individual defendants who may have interests in outside manufacturing concerns which have already recognized jobber distribution and would naturally so continue the decree might in fairness and to benefit of everyone be modified with understanding that packing company selling facilities could not be utilized and would be glad of your support to this end. We are prepared to discuss fully with you such situation frankly."

Wilson & Co. has filed in this court a report setting forth the steps which have been taken to comply with the decree. This report contains the following statement:

"The corporation defendants and each of them represent to the court that they have fully complied with all the provisions of said decree in respect to 'unrelated lines,' and are no longer engaged in the manufacture, sale, handling, distribution or otherwise dealing in any of the commodities named and described in paragraph fourth of said decree, except such uses of said commodities specifically authorized by said decree. * * *

"The individual defendants named herein represent to the court that they and each of them jointly and severally own no interest in any business or concerns engaged in the manufacture, sale, and distribution of so-called 'unrelated lines' beyond the interests they as individuals are authorized to own under the provisions of said decree. Nor are they or any of them holding any interest in any such business as an officer, agent or employee of any of said corporation defendants whatsoever."

It is furthermore set forth in this report:

"These defendants and each of them represent to the court that they and each of them have fully complied with both the spirit and letter of said decree, and are now observing same in all its details; that there are no stock or other interests in any wise remaining to be disposed of by the defendants named herein; that the only interests held by said defendants jointly or severally during the period of time covered by said decree, required to be disposed of, was the stock of so-called 'unrelated lines' which have been sold to the general trade in the regular course of business, and there now

remains nothing further to be done by any of the defendants named herein to comply fully with the provisions of said decree."

It appears, therefore, that the petitioner asks for leave to intervene for the purpose of having the decree herein modified or set aside without presenting to this court the consent of any of the original parties to such action.

Furthermore it appears that the United States of America, plaintiff in the equity action, and a majority of the main defendants, are on record as opposing the setting aside of the decree or its modification in the form which the intervening petitioner seeks.

POSITION OF INTERVENING PARTIES.

In addition to the original parties to this proceeding, intervention was allowed to the National Wholesale Grocers' Association under date of November 5, 1921, and the Southern Wholesale Grocers' Association under date of September 10, 1921. The orders allowing such intervention, however, specifically provide that the said associations are not allowed to intervene to take control of the proceedings but for the limited purpose of being heard in opposition to any modification of the decree which would deprive the intervenors of the protection which the decree secures to them. In other words, their standing is merely that of *amici curiæ*.

CONTENTION OF NATIONAL WHOLESALE GROCERS' ASSOCIATION WITH REGARD TO THE APPLICATION OF THE INTERVENING PETITIONER.

We contend and expect to show in this memorandum that the decree entered herein on consent gave judicial sanction and authority to a contract between the Government and the packers which was valid and within the power of the parties; that the decree was a final determination of the issues raised by the complaint and answers in this proceeding, and that such decree possesses greater sanctity and weight because it was entered into on consent than it would have if entered over opposition.

Consent decrees have been frequently and commonly used as a means of determining controversies ever since courts of law were organized. In particular, they have been the usual methods adopted by the courts of this country as a means of settling as between the parties many of the perplexing questions arising in cases brought to enforce the Sherman Act and the Clayton Act.

It is well-settled law that consent decrees can not be vacated or set aside unless (1) all the parties consent and the court approves or (2) upon application of a party and upon proof of fraud or mistake which vitiates the consent.

We claim that there is no defect or invalidity in the decree in this case; that it was not obtained by fraud or mistake of facts, nor does the petitioner so allege; that the parties have not consented to its modification or being set aside. The court, therefore, has no jurisdiction to modify or set aside the decree at the instance of the petitioner, who is without standing to make any application and who alleges no facts which would justify action if he did have standing before the court.

To allow intervention such as the petitioner prays for would be an idle ceremony which would be followed by costly and long-drawn-out proceedings leading nowhere. The petition, therefore, should be denied.

The National Wholesale Grocers' Association does not object to the petitioner being allowed to intervene as *amicus curiæ* with the same limitations imposed upon the petitioner, namely, to be heard upon any proposed modification of the decree which would deprive the petitioner of the rights which the decree now secures to it.

POINTS.

I. The practice of entering decrees by consent is of great antiquity and the principles governing such decrees have long been well settled.

The petitioner has sought diligently to create an impression that the practice of entering decrees upon the consent of the parties is a novel procedure and that such decrees being an innovation are entitled to little consideration.

Such an impression is erroneous. In the early history of equity jurisprudence we find the courts endowing consent decrees with an even greater sanctity than is accorded to a decree or judgment in *invitum* and establishing the principles which prevail at the present time.

In 1721, in the case of *Richmond v. Taylour*, 1 Dick. 38, where an infant, upon attaining the age of 21, filed a bill to set aside a consent decree which had been entered against him during his minority, Lord Eldon said:

"No fraud appearing in obtaining the decree, the plaintiff is barred thereby, and therefore let the bill stand dismissed."

In 1752, in *Harrison v. Rumsey*, 2 Ves. Sr. 488:

"Lord Chancellor said he would by no means set aside a decree obtained by consent of counsel of both sides; for it would be most dangerous. It was an established rule not to do it; nor would he make the precedent."

In 1754, in *Bradiash v. Gee*, Ambler 229, Lord Chancellor Hardwicke said:

"Where a decree is made by consent of counsel, there lies not an appeal or rehearing, though the party did not really give his consent; but his remedy is against his counsel, etc.; but if such a decree was by fraud and covin, the party may be relieved against it, not by rehearing or appeal, but by original bill."

In the numerous proceedings brought under the antitrust laws, a great majority of the decrees entered have been by consent.

In Davies on "Trust Laws and Unfair Competition," the author says at page 478, with reference to decrees against violators of the Sherman law:

"By far the greater number of prohibitions of unfair competitive methods, however, are found in consent decrees. The usual procedure in such cases has been for the Government to file a bill setting forth the organization of the offending combination, as association, or other defendant, the violation of law complained of, and the competitive methods employed by the defendants. The latter coming into court have admitted a technical violation of the act and have agreed to the terms of a decree satisfactory to the Department of Justice."

These consent decrees constitute the principal fortifications which the Government has slowly and laboriously erected against monopoly, restraint of trade, and unfair competition, and it is inconceivable that at the present day any court would seek to deprive them of their binding effect.

In *Harris' Estate*, 82 Vt. 199, the court in holding that a judgment by consent is as conclusive on the parties as one rendered in the ordinary course, said at page 219:

"Judgments and decrees by stipulation are now entered as a matter of common practice in cases of the very highest importance with the understanding of parties that such judgments, when the court has jurisdiction of the matters covered by the stipulation, renders such matters *res judicata*, and that such judgments are entitled to the faith and credit of judgments in general in every State of the Union. It is doubted that at this day any court of this country would hold that the mere fact that a judgment or decree is entered upon a stipulation detracts anything from its force as a domestic adjudication or disentitles it to full faith and credit as such in the courts of the other States. Certainly this court does not so hold but holds the direct opposite of that proposition."

II. A consent decree is a solemn contract between the parties, waives all defects and irregularities in the proceedings, dispenses with the necessity for findings by the court, and constitutes a judicial admission that the decree is a just determination of the rights of the parties.

In 2 Street, Fed. Eq. Pr. section 1957, it is said:

"Where the parties have composed their troubles and arrived at a settlement satisfactory to themselves, the court will not inquire into its merits or into the equities settled by the decree. The only question for the court to determine is whether the parties have mutually bound themselves by the consent decree that is proposed to be entered. Such a decree is in the nature of a solemn contract."

To the same effect see Gibson, "Suits in Chancery," section 577.

In 5 Enc. of Pl. and Pr. 961-962 (title "Decrees"), it is said:

"A consent decree is not in a strict legal sense 'a judicial sentence,' but it is in the nature of a solemn contract."

In *Hodgson v. Vroom*, 266 Fed. 267 (C. C. A. 2d Cir.), the court said that a consent decree "is a mere agreement of the parties under the sanction of the court and is to be interpreted as an agreement."

In *Huddersfield Banking Co. (Ltd.), v. Henry Lister & Son (Ltd.)* (1885). L. R. 2 ch. 273, Lord Lindley, at page 280, referring to a consent order, spoke of "the agreement it expresses in a more formal way than usual."

In *Karnes v. Black*, 185 Ky. 410, the court said, at page 414:

"Where a decree is made by the consent of the parties the court does not inquire into the merits or equities of the case. The only questions to be determined by it are whether the parties are capable of binding themselves by consent and have actually done so. If these two facts appear, the court orders a decree to be entered, and when thus entered, showing on its face that it is by consent, it is conclusive upon the consenting parties."

In *Edney v. Edney*, 81 N. C. 1, the court said, at page 3:

"* * * But a decree by consent is the decree of the parties put on file with the sanction and permission of the court; and in such decrees the parties acting for them-

selves may provide as to them seems best concerning the subject matter of the litigation, and with the like sanction of the court they may alter or amend from time to time with the assent of all."

To the same effect see *Belcher v. Cobb*, 169 N. C. 689; *Morris v. Patterson* (N. C.), 105 S. E. 25; *Cobb v. Killingsworth* (Okla.), 187 Pac. 477; *Stites v. McGee*, 37 Oreg. 574.

Consent to decree waives errors.—If the court has jurisdiction of the parties and the subject matter, the consent of all parties to the entry of the decree operates as a waiver of all defects and irregularities in the previous proceedings, even though they be such as would have constituted reversible errors in the case of an ordinary judgment. 23 Cyc. 729, and cases cited.

In *Pacific Railroad v. Ketchum*, 101 U. S. 289, at page 298, the court said:

"Consent can not give the courts of the United States jurisdiction, but it may bind the parties and waive previous errors if when the court acts jurisdiction has been obtained."

Dispenses with necessity for findings.—In *Harniska v. Dolph*, 133 Fed. 158 (C. C. A. 9th Cir.), the court said, at page 160:

"The consent of the plaintiffs on the trial of the cause in open court to the judgment so entered against them dispensed with the necessity of filing separate findings of fact or conclusions of law. The consent of the parties relieved the court of the necessity of finding the facts. *Saltonstall v. Russell*, 152 U. S. 628; *Gregory v. Gregory*, 102 Cal. 50."

Need not be confined to issues.—In 5 Enc. of Pl. & Pr. 962, it is said:

"* * * Although as a general proposition all provisions in a decree outside of the issues raised by the pleadings are void, this can not be predicated of a consent decree." *Nashville, etc., R. Co. v. U. S.*, 113 U. S. 261; *Schmidt v. Oregon Gold Mining Co. (Oreg.)*, 40 Pac. 1014; *Schermerhorn v. Mahaffie*, 34 Kan. 108.

In *Seiler v. Union Manufacturing Co.*, 50 W. Va. 208, the court said, at page 218:

"The parties to a suit can adjust matters and their rights between themselves and have a decree entered by consent of all parties without regard to the state of the pleadings or evidence."

Admits that decree is just determination of rights.—A consent decree "is in effect a judicial admission that the decree embodies a just determination of their rights upon the real facts of the case if such had been gone into." 2 Street, Fed. Eq. Pr., sec. 1957; 12 Corpus Juris, 520; *Gibson, Suits in Chancery*, sec. 577.

III. A consent decree is as binding and conclusive upon the consenting parties and their privies as one entered after a trial by the court.

In 23 Cyc. 729, it is said:

"A judgment by consent of the parties is more than a mere contract in pais; having the sanction of the court, and entered as its determination of the controversy, it has all the force and effect of any other judgment, being conclusive as an estoppel upon the parties and their privies."

In 12 Corpus Juris, 520, it is said:

"Such a decree is so binding as to be absolutely conclusive upon the consenting parties."

To the same effect see *Gibson, "Suits in Chancery,"* sec. 577; 2 Street, Fed. Eq. Pr., sec. 1957.

In *Knobloch v. Mueller*, 123 Ill. 565, the court said:

"Decrees of courts of chancery in respect of matters within their jurisdiction are as binding and conclusive upon the parties and their privies as are judgments at law; and a decree by consent in an amicable suit has been held to have an additional claim to be considered final. *Alleson v. Stark*, 9 A. and E. 255."

In *Adler v. Van Kirk Land, etc., Co.*, 114 Ala. 551, the court said, at page 561:

"In the absence of fraud in its procurement, and between parties sui juris, who are competent to make the consent, not standing in confidential relation to each other, a judgment or decree of a court having jurisdiction of the subject matter, rendered by consent of parties, though without any ascertainment by the court of the truth of the facts averred, is, according to the great weight of American authority, as binding and conclusive between the parties and their privies as if the suit had been an adversary one, and the conclusions embodied in the decree had been rendered upon controverted issues of fact and a due consideration thereof by the court."

In *Langdon v. Vermont, etc., R. Co.*, 54 Vt. 593, the court said, at page 607:

"If parties are properly impleaded, and consent to a decree or judgment, that decree or judgment is as conclusive upon the parties as if the litigants had wrangled over it for a lifetime."

To the same effect see *Cowley v. Farrow*, 193 Ala. 381; *Lewis v. St. Louis, etc., R. Co.*, 107 Ark. 41; *Jenkins v. Purcell*, 21 App. D. C. 209; *Karnes v. Black*, 185 Ky. 410; *C. A. Briggs Co. v. National Wafer Co.*, 215 Mass. 100; *Morris v. Patterson* (N. C.), 105 S. E. 25; *Stites v. McGee*, 37 Oreg. 574; *Harris Estate*, 82 Vt. 199.

There has been some difference of opinion among the courts as to whether a consent decree is, strictly speaking, *res judicata* and the better opinion seems to be that the decree binds the parties and their privies as an estoppel in pais rather than as an estoppel of record. *Kelly v. Town of Milan*, 21 Fed. 842, 863; *Hodgson v. Vroom*, 266 Fed. 267; *Carr v. Illinois Central R. Co.*, 180 Ala. 159.

However, the courts all agree that a consent decree is at least as binding and conclusive as one rendered by the court after a trial of the cause.

IV. A consent decree is not reviewable by rehearing, appeal, or writ of error.

In 5 Enc. of Pl. & Pr. 961, it is said that a consent decree can not "be reheard in the court that rendered it, appealed from or reviewed upon a writ of error."

See also 3 Corpus Juris 671 and cases cited; *Daniels Chancery Prac.* (8th American ed.) pp. 973, 1459; *Gibson, Suits in Chancery*, sec. 571; 2 Beach Mod. Eq. Pr., secs. 884, 928; *Bradish v. Gee*, Ambler 229; *Kaw Valley Drainage District v. Union Pacific R. Co.*, 163 Fed. 836; *McCafferty v. Celluloid Co.*, 104 Fed. 305; *Ballot v. U. S.*, 171 Fed. 404; *Saleski v. Boyd*, 32 Ark. 74; *Knoblock v. Mueller*, 123 Ill. 565; *Walsh v. Walsh*, 116 Mass. 377; *Horning v. Saginaw Circuit Judge*, 161 Mich. 413; *Starr v. Tennant*, 35 Okla. 125; *Stites v. McGee*, 37 Oreg. 574.

In *Nashville etc. R. Co. v. U. S.*, 113 U. S. 261, the court said, at page 266:

"But the insurmountable difficulty is, that the former decree appears upon its face to have been rendered by consent of the parties, and could not therefore be reversed, even on appeal. Courts of chancery generally hold that from a decree by consent no appeal lies. 2 Dan. Ch. Pract. ch. 32, sec. 1; *French v. Shotwell*, 5 Johns. Ch. 555; *Winchester v. Winchester*, 121 Mass. 127. Although that rule has not prevailed in this court under the terms of the acts of Congress regulating its appellate jurisdiction, yet a decree, which appears by the record to have been rendered by consent, is always affirmed, without considering the merits of the cause. A fortiori neither party can deny its effect as a bar of a subsequent suit on any claim included in the decree."

See also *U. S. v. Babbitt*, 104 U. S. 767; *Pacific R. Co. v. Ketchum*, 101 U. S. 289.

V. A bill of review does not lie to review a consent decree in the absence of fraud or mistake and in any event can be maintained only by a party or one in privity.

In *Daniels Ch. Pr.* (6th Amer. ed.) pp. 973-974, it is said:

"A decree or order made by consent can not be set aside by rehearing or appeal or by bill of review; unless, by clerical error, anything has been inserted in the order, as by consent, to which the party had not consented, in which case a bill of review might lie."

In 3 Enc. Pl. & Pr. 572, it is said:

"A bill of review does not lie to review a consent decree unless by clerical error something has been inserted therein as by consent which was not consented to, or unless consent was obtained by fraud or mistake."

See also 2 Street Fed. Eq. Pr., sec. 2138; 2 Beach Mod. Eq. Pr., sec. 853.

In the case of *In re Penitlarge*, Fed. Cas. No. 10962, the court said:

"The defendants now, many terms of court having elapsed since the entering of the decree, apply, by petition, for leave to file a supplemental bill, for the purpose of procuring the decree so entered by consent to be set aside, upon the ground that the agreement above mentioned was entered into under a mistake of fact. To such an application there are several fatal objections. In the first place, the application is, in substance, for leave to file a bill of review. It is, therefore, governed by the eighty-eighth equity rule, and comes too late. In the second place, a bill of review, for the purpose of setting aside a decree entered by consent, without fraud, will not be entertained. 'A decree taken by consent can not be set aside by a bill of review, or a bill in the nature of review.' 2 Dan. Ch. Pr. (4th Amer. ed.) 1575; *French v. Shotwell*, 5 Johns. Ch. 555."

In *Knoblock v. Mueller*, 123 Ill. 565 (quoted by the United States Supreme Court in *Harding v. Harding*, 198 U. S. 317, 335), the court said:

"Decrees so entered by consent can not be reversed, set aside, or impeached by bill of review or bill in the nature of a bill of review, except for fraud, unless it be shown that the consent was not, in fact, given, or something was inserted as by consent that was not consented to. 2 Daniels Ch. Pr. 1576; *Webb v. Webb*, 3 Swans. 658; *Thompson v. Maxwell*, 95 U. S. 391; *Armstrong v. Cooper*, 11 Illinois 540; *Crunk v. Traubbe*, 66 Illinois 432; *Haas v. Chicago Building Society*, 80 Illinois 248; *Atkinson v. Mauks*, 1 Cow. 693; *Winchester v. Winchester*, 121 Massachusetts, 127; *Alleson v. Stark*, 9 Adol. & E. 225; *Earl of Hopetoun v. Parnsey*, 5 Bell's Appl. Cas. 69. See also, note to *Duchess of Kingston's case*, 2 Smith Lead. Cas. *826 et seq."

See also *Kaw Valley Drainage District v. Union Pacific R. Co.*, 163 Fed. 836; *Smith v. Smith*, 214 Ill. App. 302, 305; *Alcorn County v. Tusculum Drainage District*, 102 Miss. 401.

Thompson v. Maxwell, 95 U. S. 391, is conclusive on this point. There it appeared that a certain consent decree had been entered in September 1866, and that in August, 1870, persons who were not parties to the original suit filed a bill (construed by the court as a bill of review) asking that the consent decree be set aside. At page 397 the United States Supreme Court held the proceedings objectionable on the following grounds:

"First. The decree sought to be set aside and reversed was a consent decree. It is a general rule that against such a decree a bill of review will not lie. *Webb v. Webb*, 3 Swanst. 658; 2 Smith Ch. Pr. 50; 2 Dan. Ch. Pr. 1629 (3d Amer. ed.).

"Second. The bill is filed by and on behalf of an assignee of the original defendant, namely, the Maxwell Land-Grant & Railway Co.; whilst another rule relating to bills of review is that none but parties and privies can have a bill of review. It does not lie for assignees. *Gilbert For. Rom.* 186; 2 Smith Ch. Pr. 49; 2 Dan. Ch. Pr. 1627."

Prince v. McLemore, 108 Va. 269, is also closely in point. In that case it appears that on February 10, 1905, a consent decree was entered in a pending suit. On October 31, 1905, one McLemore, who was not a party to that suit or to the consent decree but had "a very vital interest" therein, gave notice to all parties that he would move to have the cause restored to the docket and to have the consent decree annulled and set aside in so far as it affected his interests. On February 8, 1906, he filed a pleading which he styled a bill of review in which he alleged that he was a party in interest or a privy to the original suit, etc. The court held that a bill of review would not lie in such a case, saying at page 276:

"Without undertaking to determine whether J. L. McLemore held such a relation as party or privy as would entitle him to file a bill of review in the cause of *Prince, Surviving Ex'or v. Prince's Admr.*, he is in this instance precluded from doing so upon another well-settled principle. The decree of March 22, 1905, is upon its face a decree by consent. A bill of review is designed to relieve against errors apparent upon the face of the decree or for after-discovered testimony. The last ground of relief may be disregarded, as it is not invoked in this case; and to grant relief against a consent decree for error is a contradiction in terms. There can be no error in a consent decree, for consent cures all error."

If, therefore, the petition of the California Cooperative Canneries in the present case be regarded as a bill of review, it can not be entertained for two reasons: First, because there is no allegation that the consent decree was obtained by fraud or mistake, and second, because the California Cooperative Canneries is neither a party nor a privy.

VI. The court by which a consent decree is entered has no power to modify it in any material way at any time without the consent of all the parties.

In 5 Enc. Pl. & Pr. 961, it is said of a consent decree:

"* * * It is an elementary principle that it can not be amended or in any way varied without a like consent" (i. e. consent of all parties).

To the same effect see 2 Street Fed. Eq. Pr. sec. 2082; 12 Corpus Juris 520; Gibson, Suits in Chancery, sec. 577; 2 Beach Md. Eq. Pr. sec. 795.

In *Wilcox v. Wilcox*, 1 Ired. Eq. (N. C.) 36, as quoted by Smith, C. J., in *Kerchner v. McEachern*, 93 N. C. 447, 455, the court said:

"The decree is by consent, the act of the parties rather than of the court, and it can only be modified or changed by the same concurring agencies that first gave it form."

In *Edney v. Edney*, 81 N. C. 1, the court said:

"But where a consent decree is entered neither party can strike from it a material part or clause, nor have the aid of the court to do so, without the consent of the other. For if it could be so done, then a party, by order of the court, may be held to a decree with a material clause stricken out, without which he would never have assented to it, and one which, in its altered form, the court could never have made.

"A decree by consent as such must stand and operate as an entirety or be vacated altogether, unless the parties by a like consent shall agree upon and incorporate into it an alteration or modification. If a clause be stricken out against the will of a party, then it is no longer a consent decree, nor is it a decree of the court, for the court never made it."

In *Bank of Glade Spring v. McEwen*, 160 N. C. 414, where it appeared that two of the parties had not in fact consented to the decree, it was held that the court had power to set aside the decree as a whole for fraud or mistake but not to eliminate that part only which affected those defendants prejudicially. At page 423 the court said:

"The agreements of the parties were reciprocal, and each was the consideration or the other. If you take out what hurts the said defendants, what is left is not what was agreed to."

And in the same case, at page 425, it was said:

"A court has the power to open or vacate a judgment which appears to have been entered by consent or agreement of the parties on adequate grounds, e. g., fraud or mistake or the real absence of consent, if so found, but it can not alter or correct it except with the consent of all the parties affected by the judgment."

In *Karnes v. Black*, 185 Ky. 410, the court said at page 415:

"A judgment by consent of parties is a judgment the provisions and terms of which are settled and agreed to by the parties to the action to be affected by it, and it is placed upon, and becomes of record, by the consent and sanction of the court. The court does not settle the grounds or the terms of it; it is not the judgment of the court, except in the sense that the court allows it to go upon the record and have the force and effect of a judgment; and therefore the court can not amend, modify, or correct it except by the consent of all the parties to it. It is essentially, in its provisions, the agreement of the parties, and if the court should change it in any respect without consent, it would cease at once to be the judgment agreed upon by the parties, and such exercise of judicial power would be a practical denial of the right of the party prejudiced or supposing himself prejudiced to be heard according to law. *McEachern v. Karchner*, 90 N. C. 177. See also *Morris v. Peyton*, 29 West Va. 201. To the same effect see *Horning v. Saginaw Circuit Judge*, 161 Mich. 413; *Kerhner v. McEachern*, 93 N. C. 447; *Stites v. McGee*, 37 Oreg. 574; *Morris v. Peyton*, 29 West Va. 201; *Seiler v. Union Manufacturing Co.*, 50 W. Va. 208; *McGraw v. Traders National Bank*, 64 W. Va. 509.

Even at the term at which the decree is rendered the court is without power to modify it in any material respect without the consent of the parties.

In *Deaver v. Jones*, 114 N. C. 649, the court said:

"As a rule all judgments are in fieri during the term at which they are rendered, and it is in the breast of the judge to abrogate or alter on his own motion or at the suggestion of counsel, judgments by consent constituting the exception."

In *Morris v. Patterson* (N. C.) 105 S. E. 25, the court said, at page 27:

"A consent judgment can be amended only by consent and is an exception to the rule that judgments may be modified by the judge during the term at which they are rendered."

It is true that the court which has entered a consent decree has power, upon application of any party thereto, to give such further directions as may be necessary for the purpose of carrying the decree into effect according to its spirit and intent. 2 Street Fed. Eq. Pr. sec. 2082; 2 Beach Mod. Eq. Pr. sec. 795.

But this does not authorize the court to modify or vary the terms upon which the parties have agreed without the consent of all the parties.

In *City of Des Moines v. Des Moines Water Co.*, 218 Fed. 939 (affirmed 230 Fed. 570) an order and judgment in condemnation proceedings were entered by consent. Subsequently the city applied to the court for modification of the order and extension of the time for payment. At page 943 the court said:

"But there is another equally serious objection to this application. This order and everything in it, was entered by consent. In such cases, in the absence of fraud or mistake, it can not be modified or varied in any essential part without the consent of the parties to the same. *Leitch v. Cumpston*, 4 Paige 476; *Manis et al. v. Des Moines National Bank*, 113 Iowa, 395. While the court, upon application of either party may give such further directions as shall become necessary for the purpose of carrying such order or decree into effect according to its spirit and intent, the variation of such an essential element as the time of payment would not fall within such a legitimate exercise of discretion, but would amount to a material alteration of the unambiguous terms of the agreement."

In *Seiler v. Union Manufacturing Co.*, 50 W. Va., 208, the court said, at page 218:

"It is insisted by appellees that the court in carrying into execution a consent decree, must necessarily construe such consent decree and has a right to construe the same and cites *Morris v. Peyton*, supra, in support of their proposition. This is correct in so far as it is necessary to carry into execution such consent decree, but we find no authority in said case or elsewhere authorizing the court to set aside the decree and enter one in lieu thereof totally different under the guise of construing same. In the case at bar the court has determined that the parties in making their consent should have gone further and made an entirely different decree, and undertakes to make it for them. By the consent of the parties, the rights of the savings and loan association were recognized and the real estate was decreed to be sold subject to its claim. This was the final ascertainment of its rights by consent of all the parties to the suit and could not be changed by any subsequent order of the court without like consent and the sale made by the receiver of the equity of redemption under the consent decree should have been confirmed in the absence of a sufficient reason for directing a resale."

VII. Without the consent of all the parties, the only way in which a consent decree can be vacated or set aside is by an original bill alleging fraud or mutual mistake or some other ground which would invalidate an agreement. Consequently even if the petition in this case be regarded as an original bill, it asks for no relief which this court has power to grant.

That the only remedy is by original bill has long been well settled.

Gibson, "Suits in Ch." sec. 577; 2 Dan. Ch. Pr. (6th Amer. ed.), p. 1585; 5 Enc. Pl. & Pr. 1060; 12 Corpus Juris, 520; *Bradish v. Gee*, Ambler, 229; *Clews v. First Mortgage Bondholders*, 51, Ga. 131; *Smith v. Smith*, 214 Ill. App. 302; *Deaver v. Jones*, 114 N. C. 649; *Stites v. McGee*, 37 Oreg. 574; *Hyde v. Superior Court*, 28 R. I. 204; *Darrough v. Blackford*, 84 Va. 509; *Manion v. Fahy*, 11 W. Va. 482; *Armstrong v. Wilson*, 19 W. Va. 103; *Morris v. Peyton*, 29 W. Va. 201.

In *Curry v. Peebles*, 83 Ala. 225, the court said, at page 227:

"A bill of review, or an original bill in the nature of a bill of review, can only be filed by parties or privies to the former suit, and will not be entertained, at their instance, to reverse and set aside a decree taken by consent, unless something which was not consented to has been inserted as by consent, or unless consent was procured by fraud. 2 Dan. Ch. Pl. & Pr. 1576, 1580. When a decree has been obtained by fraud, a party or privy to the suit may seek relief by an original bill in the nature of a bill of review; and if the decree has been executed, may incorporate therein any matters necessary and proper to place the parties in the same situation in which they would have been had the decree not been executed. But, if a stranger to the suit, a party not in privy of title or estate, who is aggrieved, seeks to impeach the decree for fraud in a court of equity, he must proceed by original bill, not for the purpose of reversing the decree, and having the cause retried, but to vacate it entirely as to him. *Gordon v. Ross*, 63 Ala. 357."

In England the court by which a consent decree was rendered has no power without the consent of all parties to set the decree aside. That can only be done in a fresh action. *Ainsworth v. Wilding* (1896), L. R. 1 Ch. 673; 18 Halsbury's Laws of England, 217.

If the court should permit the California Cooperative Canneries to intervene for the purpose of attacking the consent decree, it is clear that the petitioner would have no greater rights than would one of the parties to the decree making a similar attack.

In *Chester City v. White*, 220 Pa. 646, the city having brought suit to prevent the moving through the streets of buildings which had been used as a smallpox hospital, a consent decree was entered providing for destruction of the buildings and compensation of the owners. Certain taxpayers thereafter filed a petition praying for permission to intervene for the purpose of inquiring into the validity of the consent decree. Later they filed a further petition to have the said decree revoked and set aside. Holding that such relief was properly denied, the court said, at page 650:

"Admitting the right of the appellants to be heard as interveners, since it was allowed by the court below, such right allows them to do only that which the original party in whose shoes they stand might do; they are subject to the same limitations and restrictions."

A party to a consent decree may have it set aside by an original bill showing that his consent was procured through fraud or mistake. 2 Dan. Ch. Pr. (6th Amer. ed.) 973-974; *Davenport v. Stafford*, 8 Beav. 503; *Karnes v. Black*, 185 Ky. 410; *Bank of Glad Springs v. McEwen*, 160 N. C. 414; *Prince v. McLemore*, 108 Va. 269.

In *Cowley v. Farrow*, 193 Ala. 381, the court said at page 384:

"In short, a consent decree may be assailed through the consent upon which it is based."

In England the courts have gone somewhat further and held that a consent decree may be set aside in an original action brought for that purpose "upon any grounds which invalidate the agreement it expresses in a more formal way than usual." *Huddersfield Banking Co. (Ltd.) v. Henry Lister & Son (Ltd.)* (1895), L. R. 2 Ch. 273. In *Wilding v. Sanderson* (1897), L. R. 2 Ch. 534, where it was held that a consent order could be set aside on the ground of mistake in an original action brought for that purpose, Lord Lindley said at page 550:

"A consent order based on and intended to carry out an agreement come to between the parties, ought to be treated as an agreement which could be properly set aside on any ground on which an agreement in the terms of the order could be set aside."

In *Great Northwest Central Ry. v. Charlebois* (1899), L. R. App. Cas. 114, it was held that a consent judgment entered upon an agreement to which a corporation was a party might be set aside in an original suit on the ground that such contract was ultra vires the corporation.

But further than this no court has gone and it is generally stated by both text writers and judges that a consent decree can not be set aside without the consent of all the parties except for fraud or mutual mistake.

In 2 Street, Fed. Eq. Pr. sec. 1957, it is said that:

"* * * Such a decree is binding upon the consenting parties and it can not be reheard or reviewed except upon a showing that consent was obtained by fraud or that the decree was based on mutual error. Consent decrees are set aside with the greatest reluctance. The pretense that the applicant was deceived is unavailing where it appears that the decree was entered with knowledge of all material facts and under the advice of competent counsel."

In *Attorney General v. Tomline*, L. R. 7 Ch. Div. 388, Mr. Justice Fry said:

"* * * In my opinion when a consent order has been drawn up, passed and entered it is not competent to this court to vary that order except for reasons which would enable the court to set aside an agreement."

In *Thompson v. Maxwell*, 95 U. S. 391, the court said at page 398:

"A decree for carrying out a settlement and compromise of a suit is certainly not of itself, erroneous. When made by consent, it is presumed to be made in view of the existing facts, and that these were in the knowledge of the parties. In the absence of fraud in obtaining it, such a decree can not be impeached."

In *U. S. Construction Co. v. Armour Packing Co.*, 35 Okla. 177, the court said:

"A court has no power, after stipulation for settlement agreed to and signed by all the parties in interest, has been filed, and after judgment has been entered in accordance with such stipulation, to vacate and set aside or modify the judgment after the term at which it was rendered, in the absence of fraud between the parties agreeing to settlement by consent or stipulation, except for mistake, neglect, or omission of the clerk."

In *Rogers v. Sluder*, 148 N. C. 43, the court said at page 46:

"* * * This judgment directing the survey having been entered by consent, the court had no power to 'set aside or modify the same, except for fraud or mistake of both parties.' *Vaughan & Barnes v. Gooch & Prescott*, 92 N. C. 524; *Bun v. Braswell*, 138 N. C. 135."

See also *Deaver v. Jones*, 114 N. C. 649; *Stites v. McGee*, 37 Oreg. 574.

Since the petition of the California Cooperative Canneries neither shows consent of the parties to modification or vacation of the decree, nor alleges the existence of any ground upon which a consent decree may be set aside without the consent of all parties, it is manifest that it can gain nothing by being permitted to intervene, for this court has no power either to modify or to vacate the decree under such circumstances.

VIII. The interventions allowed to the wholesale grocers' associations are a precedent for the denial of this application.

The petitioner points out that orders have been entered allowing the National Wholesale Grocers' Association and the Southern Wholesale Grocers' Association to intervene in this proceeding, and claims that inasmuch as these associations have been allowed to intervene the California Cooperative Canneries should also be allowed intervention.

The grocers' associations have not been allowed unlimited intervention. They sought for intervention merely to be heard in opposition to any modification of the decree and the court has so limited their rights and has specifically directed that they are not allowed to intervene to take control of the proceedings.

The opinion of Judge Stafford upon the motion to strike out the petition of the Southern Wholesale Grocers' Association was based on statements that it was reported that the Attorney General and the defendant packers being the parties to this action might come into court and by consent ask for a modification of the decree, and is as follows:

"It is considered that upon the facts alleged in their petition it is fair and just that they should be allowed to intervene, not to take control of plaintiff's side of the proceedings, but for the limited purpose stated in their petition, namely, to be heard in opposition to any modification of the decree that would deprive them of the protection now secured by it, for the following reasons, when taken together:

"1. The decree was in part at least the fruit of their own efforts.

"2. They abandoned the pursuit of other remedies in reliance on this decree.

"3. The protection afforded them by this decree might have been secured in a proceeding in their own name and behalf.

"4. The change suggested would leave them in an embarrassing position in now seeking to secure the same protection.

"5. The decree ought not to be modified unless the court is convinced that the public interest requires it and the petitioners fairly represent a large and well-defined portion of the public whose position will enable them, and whose interest will prompt them, to present to the court facts or reasons which, among others, the court ought to hear and consider before allowing the decree to be changed.

"This decision must not be understood as opening the door to all would-be interveners who may consider themselves interested in the decree or any change therein, but as strictly limited to the facts alleged in this petition which are in law admitted by the motion to strike out."

The California Cooperative Canneries, however, does not seek as did the grocers to intervene for the mere right of being heard upon applications made by the parties, but seeks this intervention for the purpose of taking control of the proceeding and destroying as far as possible the entire decree. It should be noted, moreover, that Judge Stafford said: "The decree ought not to be modified unless the court is convinced that the public interest requires it." Doubtless the court would be inclined to exercise its discretion in favor of a party who sought to protect the work of the court as against a party who sought to destroy it.

In the case of the wholesale grocers the petitioners were invoking the exercise of a power which this court does in fact possess, namely, to refuse to modify or vacate the decree even though all the parties should consent thereto.

In *Coleman v. Neill*, 11 Fed. 461, a consent decree was entered in a suit between an assignee in bankruptcy and an assignee under a deed of voluntary assignment. By the terms of this decree the latter was left liable to account to the creditors of the assignor in a State court for the portion of the assets which he had collected. Four years later the defendant petitioned for a modification of the decree and the plaintiff consented to such modification. The court said:

"* * * If he (the plaintiff) and the defendant were alone interested, there would be no reason to deny the application. But the fact is that the amendment sought will seriously affect certain creditors of the bankrupt copartnership, the Titusville Savings Bank, and is intended so to operate. These creditors are before the court by their counsel protesting against the allowance of the amendment, and the real question is whether as against them the decree should be modified. * * *

"After the most serious consideration of the case, the court is constrained to deny the petition to amend the decree. The creditors had a right to rely on the decree as made, and justice to them forbids that it should be disturbed at this late day."

As has already been stated, if the California Cooperative Canneries asks intervention merely for the purpose of being heard as an *amicus curiae*, which is the status of the grocer associations, no objection would be made to its application.

IX. The petitioner shows no facts establishing any peculiar rights entitling it to special privileges as an intervenor.

The petitioner bases its right to intervene primarily, if not exclusively, upon the alleged contract of May 9, 1919, between the petitioner's predecessor and Armour & Co., whereby the latter

"Agrees to purchase and receive from first party all the California canned fruits required by the business of second party and Armour & Co., a corporation of the State of Illinois, during the life of this contract."

Even if this were a contract, it would not be a sufficient warrant for Armour & Co. to violate the laws of the United States in order to carry it out, nor would it place the petitioner on any different basis from other concerns who were presumably doing business with the defendants at the time of the entry of the decree. Inasmuch as the said instrument, however, is not an enforceable contract and contained a clear provision for cancellation by Armour & Co. under conditions brought about by governmental action, petitioner's entire basis for intervention fails.

In order for a contract to be binding, it must possess mutuality, which is entirely lacking in the instrument under consideration. Armour & Co., a New Jersey corporation, agrees to purchase the canned fruits required by it and also the canned fruits required by Armour & Co., an Illinois corporation, during the life of its business. For what purpose such goods may be required is not even defined, but the nature of Armour & Co.'s business in the unrelated lines makes it, of course, evident that these products were not needed for the consumption of Armour & Co., or for the use in the manufacture of other articles, or to meet the requirement of any plant, but that Armour & Co. merely bought these goods either for the purpose of speculation or for reselling same to retailers. Manifestly it was and is impossible to make any reasonable estimate of the quantity which might be required. Not only would the ability of Armour & Co. to extend its business enter into such a determination, but there would also be present many factors relating to general conditions of the industry over which Armour & Co. would have little control. The distinction between cases where such contracts are upheld because the purchaser's business makes possible a reasonably accurate estimate of the purchaser's requirements and cases where the purchaser is merely buying in order to resell as much as possible is well defined. *Pittsburgh Plate Glass Co. v. H. Neuer Glass Co.*, 253 Fed. 161; *Santaella v. Otto F. Lange Co.*, 155 Fed. 719; *Campfield v. Sauer*, 189 Fed. 576; *Lima Locomotive Co. v. National Co.*, 155 Fed. 77; *Crane v. C. Crane & Co.*, 105 Fed. 869.

The present contract, lacking any basis by which the purchaser's need may be estimated, is clearly invalid and unenforceable and is very similar to the contract in *Crane v. C. Crane & Co.*, supra. In that case the court, by Judge Grosscup, said at page 872:

"The contracts brought to our attention have no such standard of approximate certainty and no such safeguard against opportunity to impose upon the vendor. Plaintiffs in error were at the time engaged in no manufacture or business that required dock oak lumber as an incidental supply, nor were they under any contract to deliver such lumber to third persons at fixed prices. They were lumber merchants pure and simple—middlemen between the defendant in error, and such customers as usually come to a merchant. Should the contract under discussion be upheld, the plaintiffs in error would be held to occupy this advantageous situation: If the prices of dock oak lumber rose, they would, by that much, increase their ratio of profits, and probably, coming into a situation to outbid competitors, increase also the quantum of orders; if, on the other hand, prices fell below the range of profits, the orders could be wholly discontinued.

"On the contrary, the situation of the defendant in error would be this: Should prices fall, it could not compel the plaintiffs in error to give further orders; but, should prices rise, the orders sent in would be compulsory, and the loss measured both by the increase of the ratio of profits and the probable increase of the quantum of orders. It is needless to say that such a contract is unilateral and void for want of mutuality. It, in effect, binds the defendant in error alone, for it leaves the plaintiffs in error—whose whole interest is embodied in the prices obtainable—in a situation to either go on or to discontinue, as such interest develops."

Moreover, in this case the price to be paid for the products was entirely subject to the whim of the purchaser, for while it was provided that the price should be the price used by the California Packing Corporation, it was provided further that: "In case the parties are unable to agree upon a price to be paid for such grades, second party shall not be required to accept the same."

Even if this instrument be a valid contract, the petitioner, by the very terms of the instrument, surrendered all right to making the claim which it makes in this proceeding. In paragraph 9 it specifically provides as follows:

"In case governmental action materially interferes with the performance of this contract by second party, then and in that case it shall have the right to cancel and terminate this agreement by giving 60 days' written notice to first party of its intention so to do, and shall not be held liable for any loss resulting therefrom."

Furthermore, there is no doubt that this clause was inserted in the contract to meet the very contingency of some action being taken by the Government against Armour & Co., with respect to its dealings in unrelated lines.

It should be borne in mind that the report of the Federal Trade Commission, condemning the extension of the packers into these unrelated lines was made to the President of the United States on July 3, 1918, and that hearings in which the same subject was considered were begun before the House Committee on Interstate and Foreign Commerce in December, 1918, and that hearings before the Senate Committee on Agriculture and Forestry were begun in January, 1919, while the contract between the petitioner and Armour & Co. is dated May 9, 1919.

The petitioner states that pursuant to this provision in the contract Armour & Co. notified the petitioner that the contract was to be considered as canceled. Even if we assume, therefore, that except for this provision the petitioner had a valid contract and suffered damage, the plaintiff voluntarily surrendered any right of action of any kind which it might have for breach of contract, and having surrendered all rights and claims which it might have under said contract the petitioner loses every possible basis for even an appeal to the consideration of this court.

If petitioner has any ground for complaint whatever, it must be against Armour & Co. individually, and if the petitioner believes that any cause of action exists under the terms of its contract it has a legitimate remedy at law.

X. The consent decree in this case is in all respects valid and binding and contains no defect impairing its validity.

The decisions previously cited show that the claim made in the petition of the California Cooperative Canneries that the decree was an economic mistake and unwise can not now be considered by the court for the reason that "There can be no error in a consent decree, for consent cures all error."

If, however, such an issue were relevant here, it should be noted that every governmental body which has investigated this subject during the past 20 years has reported that the menace of the defendants' monopoly was pregnant with danger to our people and has urged that steps be taken to curb and end its growth. We refer to investigations by congressional committees, the Federal Trade Commission, Department of Justice, grand juries, both State and Federal, and other public bodies.

The history of the acts of aggression and lawlessness on the part of the defendants which lead up to the entry of the decree fill hundreds of pages of public records. For this court to go into an investigation of the history of the meat packers during the last 30 years would be a most laborious and time consuming task, but the consideration of whether or not the decree was wise would certainly make it necessary to assume this burden.

None of the facts set forth in the petition furnish any sound basis for attacking its validity and a brief examination of them shows conclusively that the decree upon its face is perfectly legal and valid.

(1) The general appearance by defendants and their consent gave the court jurisdiction over their persons. (17 Am. & Eng. Enc. of Law, 2d Ed. 1064.)

(2) The court had jurisdiction of the subject matter of the suit. District of Columbia Code, section 61; *Hine v. Morse*, 218 U. S. 493; Sherman Antitrust Act, section 4; United States Judicial Code, section 24.

(3) The petition states facts which fully justify the decree.

It is unnecessary to here set forth the facts alleged in the petition which speak for themselves. It is sufficient to state that the petition alleges the existence of a monopoly and an attempt to monopolize on the part of defendants, existence of unlawful contracts and combinations in restraint of trade, the elimination of competition, and many other acts, which the Sherman Antitrust Act and the Clayton Act make unlawful.

(4) It was fully within the power of the court under existing antitrust acts to stamp out and prevent the continuance of such unlawful acts as were alleged in the petition and the court has ample power and should adapt the decree to the exigencies of the situation by any means or device whatsoever which it may deem proper. *Northern Securities Co. v. United States*, 193 U. S. 197; *Standard Oil Co. v. United States*, 221 U. S. 1, 77, 78; *United States v. American Tobacco Co.*, 221 U. S. 184, 185, 186, 187, 188; *United States v. Union Pacific Railroad Co.*, 226 U. S. 470.

In passing upon the acts of the defendants it is necessary to take into consideration their entire course of business over a period of years, and it is not proper to consider isolated acts which, though not unlawful in themselves may, when viewed in their context, be part of an unlawful conspiracy. *United States v. Patten*, 226 U. S. 525, 544; *Hopkins v. Oxley Stave Co.*, 83 Fed. 912, 920.

The power of the court to prevent and restrain violations of the antitrust laws necessarily includes the power to prohibit acts which, though lawful if standing alone, are elements of an unlawful scheme or plan. *Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418, 438.

In this connection it must be remembered that these same defendants had been under an injunction since 1903, which was affirmed by the Supreme Court of the United States in 1905 (*Swift & Co. v. United States*, 196 U. S. 375), the purpose of which was to terminate the conditions which were still found to exist in 1920 and shown in the petition of the Department of Justice to have become a real menace to open competition and to the public welfare.

(5) It claimed in the petition that the effect of the following provision is to deprive the court of all jurisdiction:

"* * * That their (defendants) consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree or the decree itself shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States."

If this were the case, it would be possible for the convicted criminal to deprive the court of power to sentence him by means of a protestation that he was innocent and not guilty.

Whatever reservations the defendants might have made to save their faces, their consent to the entry of the decree, which was most specific in its terms and prohibitions, was as effective a justification of the decree as the verdict of a jury. The United States Supreme Court has recently cited and referred to the decree as an existing instrument, and it would appear that this saving clause did not impress the court as affecting its validity. In the case of *Stafford v. Wallace*, et al., Chief Justice Taft referred to the decree as follows:

"Following the Report of the Federal Trade Commission, and before the passage of this act, a bill in equity for injunction was filed in 1920 in the Supreme Court of the District of Columbia, in which, on February 27 of that year, was entered a decree against the same Big Five packers consented to by them with the saving clause that it should not be considered as an admission that they had been guilty of violations of law. The decree enjoined the packers from doing many acts in pursuance of a combination to monopolize the purchase and control the price of live stock, and the sale and distribution of meat products and of many by-products in preparation of meats and in

unrelated lines, not here relevant, and from continuing to own or control, directly or indirectly, any interest in any public stockyard market company in the United States, or in any stockyard market journal, or in any stockyard terminal railroad, or in any public cold-storage warehouse."

Therby the United States Supreme Court recognized that this very decree was a perfectly valid act of the court which entered it.

Moreover, this clause merely constitutes a statement of law and gives to the defendants only the same benefit as they are assured of under section 5 of the Clayton Act, which contains the provision that a consent decree shall not be prima facie evidence in any proceeding brought against the defendants. The defendants by insisting that the decree should not operate as an admission of guilt under the antitrust laws, or as an adjudication that they had violated any such laws, clearly had under consideration the triple damage provisions of the Sherman antitrust law. They were willing to consent to the terms of the decree, but not willing to run any chance of having the decree used against them to their injury or as a sword of attack by the many competitors who had fallen victims to the march of their monopoly.

(6) The eighteenth clause of the decree provides that jurisdiction of the cause is to be retained by the court "for the purpose of taking such other action or adding at the foot of the decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree."

This clause does not provide any basis for an application for a modification, for it was limited to such applications as might be necessary for carrying out the enforcement of the decree, and the general words following must be construed in the light of the entire clause. To hold otherwise would lead to the absurd conclusion that by inserting this provision the parties consented in advance to any changes in the terms of their agreement for which any party might apply. As has above been stated, the courts have held consistently that none of the parties to a consent decree can apply for a change of any of the fundamental provisions without the consent of the other party. *City of Des Moines v. Des Moines Water Co.*, 218 Fed. 939 (affirmed 230 Fed. 570); *Seiler v. Union Manufacturing Co.*, 50 W. Va. 208.

As was well said by Senator Shields, a well known jurist and former chief justice of the Supreme Court of the State of Tennessee, upon the floor of the Senate, on this very subject:

"I understood, at the time that decree was entered, that there was a reservation, not as to the principals enunciated or the rights adjudicated, but as to the execution of the decree; that there was a reservation to the effect that the Government could apply for such orders as were necessary to enforce and carry out the adjudication made. I also understood that it was a decree by consent from which there could be no appeal or other proceedings for review prosecuted. Of course, I am not attempting to quote the language of the decree, but if I am correct about it, and it was a mere reservation providing for the execution of the decree that court has no more power to modify that decree than it would have to enact a law. When a court once enters a decree and adjourns, it is a finality. If there was any other rule, if a court could go back and overturn or modify decrees settling the principles of a controversy and the rights of parties then the courts ought to be abolished; there would be nothing final in their action. There would be no end to litigation, and no man would be safe in his adjudicated rights." (Cong. Rec., Jan. 4, 1922, pp. 857, 858.)

In most of the antitrust cases the provision is much broader than the verbiage of clause 18, and frequently provides for an opportunity for the parties to apply to the court "if it be hereafter shown to the satisfaction of the court that by reason of changed conditions or changes in the statute laws of the United States, the provisions hereof have become inappropriate or inadequate to maintain competitive conditions in interstate trade or commerce of the United States * * * and are no longer necessary to secure or maintain competitive conditions in such trade or commerce."

See *United States v. Kluge et al.*, decree dated October 8, 1917, United States District Court, Southern District of New York.

XI. The application of the California Cooperative Canneries should be denied.

The decree entered upon the consent of the parties to the action was the act of the parties themselves, and the court, by approving and signing the same, allowed the decree to go on record and gave it the full force and effect of a judgment by the court.

A consideration of all the cases recited in the previous points of this brief shows that the courts uniformly regard a judgment entered upon the consent of the parties as an agreement between them, which is not subject to modification or change by

the court except upon the consent of the parties making the same or upon proof of fraud or mistake of fact by the parties at the time of entering into the agreement.

The record before the court shows that no party to the action or the agreement has consented that the agreement should be vacated or modified, and no party intimates fraud or mistake in connection with the making of the agreement, the terms of which are specifically set forth in the decree of this court.

Respectfully submitted.

BREED, ABBOTT & MORGAN,
Attorneys for National Wholesale Grocers'
Association of the United States.

WILLIAM C. BREED,
SUMNER FORD,
E. A. CRAIGHILL, Jr.,
Of Counsel.

STATEMENT OF DEFENDANT, THE CUDAHY PACKING CO., IN OPPOSITION TO INTERVENTION OF CALIFORNIA COOPERATIVE CANNERIES.

In the Supreme Court of the District of Columbia. United States of America v. Swift & Co., Armour & Co., Morris & Co., Wilson & Co., Cudahy Packing Co., et al. Equity, No. 37623.

Comes now the defendant, the Cudahy Packing Co., by its attorney, Thomas Creigh, and objects to the granting by this honorable court of the motion filed herein by the California Cooperative Canneries, asking for leave to intervene for the purposes set forth in the intervening petition thereto attached and shows the court that such intervention should not be allowed or granted for the following reasons:

1. The decree having been entered by the consent of all parties thereto, it is equally necessary that the consent of all parties be given before intervention is allowed. This defendant objects.

2. Under paragraph 6 of the intervening petition tendered with said motion it appears that the California Cooperative Canneries claim that such decree is void for want of jurisdiction and certain other reasons.

In such case said California Cooperative Canneries have a remedy otherwise than by being made a party intervenor herein—and to permit them to be made such party intervenor for the purpose of attacking said consent decree would be unwarranted and inconsistent with proper procedure.

Said decree was entered February 27, 1920, and has therefore been in force and effect for more than two years, and the several defendants in such time have in good faith been proceeding in all respects to carry out its terms.

Said California Cooperative Canneries has been fully advised at all times of the entry of said decree and of such steps and procedure and failure on its part earlier to file its application constitutes laches and estops it from now asserting any right if ever it had any, to seek to vacate or modify the terms of said decree.

THE CUDAHY PACKING CO.
By THOMAS CREIGH, *Its Attorney.*

STATEMENT OF DEFENDANT MORRIS & CO. IN RELATION TO PETITION OF CALIFORNIA COOPERATIVE CANNERIES FOR LEAVE TO INTERVENE.

In the Supreme Court of the District of Columbia. The United States of America, petitioner, v. Swift & Co., and others, defendants. No. 37623, equity. Statement of Morris & Co., a Maine corporation; Morris & Co., a New Jersey corporation; Morris & Co., a Louisiana corporation; Morris & Co., a Pennsylvania corporation; Morris Packing Co., a Maine corporation; Joseph Stern & Sons, a New York corporation; Brooklyn Beef & Provision Co., a New York corporation; Condit Beef & Provision Co., a New Jersey corporation; Corwin Wilde Co., a Massachusetts corporation; Donnelly & Co., a Massachusetts corporation; Chamberlain & Co., a Massachusetts corporation; J. M. Wilson Co., a Massachusetts corporation; Middletown Beef & Provision Co., a Massachusetts corporation; National Hotel & Supply Co., an Illinois corporation; Glenn & Anderson Co., an Illinois corporation; Nelson Morris, Edward Morris, Charles M. Macfarlane, Louis H. Heymann, and Harry A. Timmins, defendants.

May it please the court, as this is a consent decree, it can only be modified by the consent of all the parties thereto, and as two different interests are seeking to intervene in this case, one to modify the decree or set it aside altogether as invalid, the other to sustain the decree, it is only fair to this honorable court, to these interveners, and all parties interested that the position of above defendants should be made plain. Accordingly, these defendants would state their position as follows:

When the consent decree was entered in this case, on February 27, 1920, these defendants in open court and as a part of the proceedings made the following statement:

"These defendants have consented to this decree and to give up certain businesses not because of guilt, for they have not violated any law, but that the American people may be assured that there is not the remotest possibility of a food monopoly by the packers; that the constant criticism and agitation leveled at this vital industry, which is seriously injuring not only it, but the people generally, may cease; that better understanding and feeling between this industry and the public may be reestablished, and that conditions in this uncertain and dangerous period of reconstruction may be stabilized and the efficiency and benefits of this great industry dealing as it does in a prime necessity of life, a highly perishable product, may be preserved. For these reasons, and in the sincere belief that these things will be thoroughly demonstrated throughout whatever subsequent proceedings take place in this case, we have consented to this decree."

That was the position of these defendants when the decree was entered; it is their position now.

This consent decree is not grounded upon any violation of law. This is clearly demonstrated by the following clause in the decree, to wit:

"The defendants and each of them maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they nevertheless desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States."

This consent decree would never have been entered into without this clause. This language of the decree is unmistakably plain and speaks for itself.

These defendants state most positively and unequivocally that they violated no law.

The answer which these defendants filed to the Government's petition in this case, hereby expressly referred to and made a part hereof. These defendants now stand by that answer.

Immediately upon the entry of this consent decree these defendants diligently set about to comply with the decree in good faith and to dispose of all the properties as disposed of thereunder. The record in these proceedings will fully confirm the statement that these defendants have complied with this decree in good faith and at great financial loss.

On March 3, 1922, these defendants filed in this court a sworn report of the disposition of their prohibited holdings and of their acts and doings under this decree. This report has been approved by this honorable court and the report itself is hereby expressly referred to and made a part hereof.

When these defendants disposed of all their wholesale groceries in compliance with this decree and at a loss of more than \$1,000,000, they thought that particular question was definitely settled for all time. These defendants do not desire to reenter the grocery field.

These defendants state most emphatically that they have absolutely no connection with, or interest in, any intervening petition filed in this case, either directly or indirectly.

As these defendants for the purposes above indicated entered into and have complied with this decree in good faith, they are opposed to any modification thereof.

As to the validity of the decree, that is purely a legal question for this honorable court. The court knows the law and nothing that these defendants might say or do could have any possible effect upon that particular question.

Respectfully submitted.

Morris & Co., a Maine corporation; Morris & Co., a New Jersey corporation; Morris & Co., a Louisiana corporation; Morris & Co., a Pennsylvania corporation; Morris Packing Co., a Maine corporation; Joseph Stern & Sons, a New York corporation; Brooklyn Beef & Provision Co., a New York corporation; Condit Beef & Provision Co., a New Jersey corporation; Corwin Wilde Co., a Massachusetts corporation; Donnelly & Co., a Massachusetts corporation; Chamberlain & Co., a Massachusetts corporation; J. M. Wilson Co., a Massachusetts corporation; Middletown Beef & Provision Co., a Massachusetts corporation; National Hotel & Supply Co., an Illinois corporation; Glenn & Anderson Co., an Illinois corporation; Nelson Morris, Edward Morris, Charles M. Macfarlane, Louis H. Haymann, and Harry A. Timmins, defendants; by M. W. Borders, their solicitor.

**BRIEF OF AMERICAN WHOLESALE GROCERS' ASSOCIATION IN
OPPOSITION TO INTERVENTION OF CALIFORNIA COOPERATIVE
CANNERIES.**

In the Supreme Court of the District of Columbia. Equity, No. 37623. United States of America v. Swift & Co., Armour & Co., Morris & Co., Wilson & Co., Cudahy Packing Co., et al. Brief of American Wholesale Grocers' Association et al. In opposition to intervening petition of California Cooperative Canneries.

STATEMENT OF CASE.

The motion and notice filed herein by California Cooperative Canneries constitute in substance a rule to show cause why the motion should not be granted. The petition which the motion seeks permission to file is in substance a bill of review. Answer in law and in fact as required by equity rules 32 of this court and 29 of the Supreme Court of the United States has been filed by interveners Southern Wholesale Grocers' Association, Henry G. Sears Co., John Hoffman & Sons Co., Mason, Ehrman & Co., J. M. Radford Grocery Co., Southern Distributing Co., Hall Grocery Co., Albert Mackie & Co. (Ltd.), the Hicks Co., W. D. Cleveland & Sons, Rapides Grocery Co., and Oliver Finnie Grocery Co.

On February 27, 1920, this court, upon consent of parties, entered its decree herein. Later the interveners named above filed an intervention in subordination to and in support of that decree. The California Cooperative Canneries on April —, 1922, filed its motion to be permitted to intervene in opposition to and for the purpose of annulling in whole or in part the decree entered February 27, 1920.

**NO INTERVENTION SHOULD NOW BE PERMITTED BECAUSE NO LITIGATION IS PENDING
OR THREATENED.**

Statement.—The original decree granted a "perpetual" injunction, but provided that jurisdiction was retained for the purpose of making more effectual its terms and for carrying out and enforcing such decree. The language of the last, the eighteenth, paragraph, is as follows:

"That jurisdiction of this cause be, and is hereby, retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree."

Argument and authorities.—This is a final decree and the language quoted could not be construed to permit destroying the decree in whole or in part; and such language can mean no more than that jurisdiction is retained for the purpose of entertaining applications necessary or appropriate for carrying out and enforcing the decree. It is not unusual for courts of equity to render a final decree leaving open for decisions some matter that may affect the manner of enforcement. Precedents for this practice are found throughout the standard works on chancery practice. Ordinarily provisions leaving open the right to make additions at the foot of the decree occur where property is to be sold or a fund divided. (See *Forgav v. Conrad*, 6 How. 47 U. S. 204.) Daniell in his authoritative treatise on Chancery Pleading and Practice, fourth edition, page 996, describes and then states how the practice was extended by saying:

"The same sort of liberty is also given in any other case in which it may seem requisite; and the effect of it is not to alter the final nature of the decree. A decree with such a liberty reserved is still a final decree; and, when signed and enrolled, may be pleaded in bar to another suit for the same matter. The effect of the reservation is to permit persons having an interest under it to apply to the court touching such interest, in a summary way, without the necessity of again setting the cause down."

A modern application of the principle stated by Daniell appears in the opinion of the Supreme Court of Georgia in the case of *Moody v. Muscogee Manufacturing Co.*, 134 Ga. 721, 730, 731. There it was said:

"A decree which settles all of the substantial equities in a case must be regarded as a finality upon such questions. A decree may be partly final and partly interlocutory; final as to its determination of all issues of fact and law, and interlocutory as to its

mode of execution. *Adams v. Sayre*, 76 Ala. 509; *Merle v. Andrews*, 4 Texas 200; *Gray v. Cook*, 24 How. Pr. 432."

Language similar to that used by this court in its decree herein appears in the decree in *Winthrop Iron Co. v. Meeker*, 109 U. S. 180, 27 L. Ed. 898. That decree concluded: "And the court reserves to itself such further directions as may be necessary to carry this decree into effect, concerning costs, or as may be equitable and just."

The Supreme Court held that the decree was final and quoted from the cases of *Forgay v. Conrad*, *supra*, and *Craighead v. Wilson*, 18 How., 59 U. S. 199, 201, 15 L. Ed. 332, 333.

Leave reserved at the foot of a decree to reinstate the cause for the purpose of enforcement of the decree does not effect the finality of the decree. *Stout v. Stout*, 104 Va., 480, 51 S. E. 833.

In *United States v. Terminal Railroad Association*, 236 U. S. 194, 59 L. Ed. 535, the lower court was considering what decree should be entered on a mandate from the Supreme Court. An intervention was proper by persons affected by a determination (the language of the head note of the decision of the Supreme Court) "concerning the settlement, so far as it may operate prejudicially to their rights."

At this time this court has "no settlement" of a decree. That settlement was made February 27, 1920.

In the companion case to the Terminal Railroad Association case, *supra*, it was urged that intervention should not have been allowed for "there was no jurisdiction to do so because, as a result of a previous final decree and an appeal taken therefrom by the United States, the authority of the court over the subject matter was ended." And the court said:

"As those applying to intervene were not parties to the record, we are of opinion that the court below had no power to allow them to intervene under the circumstances ('previous final decree') which existed."

California Cooperative Canneries has no "interest in the litigation" because there is no litigation.

THE CALIFORNIA COOPERATIVE CANNERIES HAS LOST THE RIGHT, HAD ONE EXISTED, TO INTERVENE.

Statement.—The decree was entered herein February 20, 1920. The motion of the canneries was filed April —, 1922.

Argument and authorities.—After final decree, "the court can, as a rule, do no more than correct mere clerical errors found in the record and thereafter a final decree can not be vacated, altered, or modified except by a bill of review. * * * After a decree was enrolled, it could be changed or modified only on appeal or on a bill of review." (10 R. C. L. 563, 564.)

Story, Equity Pleading, section 404, says:

"There are but two cases in which a bill of review is permitted to be brought, and these two cases are settled and declared by the first of the ordinances in chancery of Lord Chancellor Bacon, respecting bills of review, which ordinances have never since been departed from. It is as follows: 'No decree shall be reversed, altered, or explained, being once under the great seal, but upon bill of review.'"

Daniell's Chancery Pleading and Practice, fourth edition, page 1575, says:

"The object of a bill of review, and of a bill in the nature of a bill of review, is to procure the reversal, alteration, or explanation of a decree made in a former suit. If the decree has been signed and enrolled, a bill of review must be filed, if not, a bill in the nature of a bill of review. * * * A decree taken by consent can not be set aside by a bill of review, or a bill in the nature of a bill of review, unless, by clerical error, something has been inserted in the order, as by consent, but which had not been consented to."

At page 1579 Daniell says:

"A bill of review, or a bill in the nature of a bill of review, is only proper where a decree has been made finally determining the rights of the parties; and does not lie where a mistake has been made in directing the fund to be carried to a separate account. It can only be filed by a person who was a party or privy to the former suit, and where any other person considers himself aggrieved by the decree, he must proceed by original bill."

Modern equity practice permits intervention in cases not permissible under the practice of the courts of chancery in England; but if this liberal practice justifies calling the California Cooperative Canneries a party, there is, under the circumstances here, no authority to file a bill of review. This cause having heretofore on February 27, 1920, proceeded to a decree and the proposal of the canneries being to set aside or materially modify that decree, the so-called intervening petition is but a bill of review.

It is too late under equity rule 62 of this court to file such a bill or any proceeding having a purpose obtainable by such a bill.

After defendants, even if the canneries be treated as a defendant, have waited over two years, and in the meantime getting the benefit of the decree, it is now inequitable to set aside the decree, and the California Cooperative Canneries is guilty of such laches as bars it from equitable relief.

In *National Brake & Elec. Co. v. Christensen*, 278 Fed. 490, 494, the court said: "Bills of review are allowed for the purpose either of correcting errors of law apparent on the face of the record or of admitting new evidence which has come into being since the decree or was not known or knowable at the time of the trial. Not only will the appeal to equitable discretion fail if the new evidence or the errors of law are not presented at the earliest practicable moment, but also if the errors of law or the new evidence would not change the substantial equities between the parties."

CALIFORNIA COOPERATIVE CANNERIES' APPLICATION TO INTERVENE SHOWS LACK OF LEGAL INTEREST.

Statement and analysis of alleged contract.—The basis of the claimed interest of the California Cooperative Canneries is the alleged contract copied in paragraph 2 of the proposed intervention. It is submitted that the paper so copied is not a valid contract for reasons as follows:

(a) There is no binding agreement of the alleged seller to produce and deliver any certain quantity of goods, nor is the buyer compelled to take any goods.

(b) There is no selling price fixed with certainty or that can under the claimed contract be made certain.

(c) The decree in this cause is governmental action materially interfering with the performance of the alleged contract.

(A) NO BINDING AGREEMENT.

Statement.—The alleged contract, section 1, sells "all the California canned fruits required by the business of second party (which is Armour & Co.) and Armour & Co., * * * except that purchased by second party from California Growers' Association under its (second party?) contract with that association dated May 7, 1919, limited by the capacity of the factories operated by first party. (Who is 'first party'—the Growers' Association or the Cooperative Canneries?) Not later than January 1 of each year, second party shall furnish to first party a list showing the quantity of the various canned fruits which will be required by the business of said companies."

Argument and authorities.—The language of the contract is uncertain, but giving such language the most liberal construction, it can mean no more than that Armour & Co. agreed to take canned fruits required by its business, less such canned fruit as might have been delivered under a contract with California Growers' Association, and further limited by the capacity of some one's factory, and further subject to a list of requirements to be presented by the buyer or "said companies," it not being certain who is to present such list.

It is shown by the pleadings and decree in this cause that the business of Armour & Co. in canned fruits was one varying in amount and there was and can be no certainty as to what could be sold. Requirements of a distributor are not definite and depend on contingencies of selling efficiency, competition, and consumer's buying power. Such requirements have no such certainty as those of "a particular plant, factory, or mine." (*Select Pictures Corporation v. Australian Films*, 260 Fed. 296, 298.) The California Cooperative Canneries in the proposed intervention shows further indefiniteness. In Paragraph IV it is alleged that Armour "took approximately 52 per cent" of the Cooperative Canneries' output and that damages are "incalculable," and in Paragraph VII that there are "other similar contracts." The uncertainty and nonbinding character of the alleged contract further appears from the fact that Armour & Co. could, as it agreed to do in the decree of February 27, 1920, and as it has, discontinue selling "canned fruits." The alleged contract does not bind Armour & Co. to continue in this business, "canned fruits," which business was "unrelated" to its main business. Armour & Co. is no longer in the business of handling "canned fruits," and therefore those commodities are no longer "required by the business of Armour & Co.," and that company has no adumbration of an obligation to the California Cooperative Canneries.

Some requirement contracts are valid. See a discussion of the principles in *Pittsburgh Plate Glass Co. v. H. Neur Glass Co.*, 253 Fed. 161, 165 C. C. A. 61.

The contract set up here falls within the class of contracts held void because there can be no certainty of the amount of goods that may be required and no certainty that

any will be required. Jobbers, such as Armour & Co. was, in selling canned fruits, buy only what they can sell. They may decide to deal in other articles and "require" none of a particular commodity. Here the court has no such contract as that involved in the Pittsburgh Plate Glass case, *supra*, but this contract falls within the rule announced in *Crane v. Crane & Co.*, 105 Fed. 869, 45 C. C. A. 96, where the court held:

"While one may bind himself by a contract to furnish another with such supplies as may be needed during a specified period of time for some certain business or manufacture, or with such commodities as the purchaser has already contracted to furnish to others, the quantity in such cases being capable of at least approximate estimation when the contract is made, an agreement by a wholesale dealer to supply a retailer during a certain time, at stated prices, with so much of a commodity as the purchaser may require for his trade, which leaves it practically optional with the purchaser to increase or diminish his orders with the rise or fall of prices, as may be most to his advantage and the corresponding disadvantage of the seller, is void for want of mutuality."

The minds of the parties to a valid contract must meet upon all the essential points. Here there was no definite meeting of the minds of the parties either as to goods sold or as to price. *Cunningham Manufacturing Co. v. Rotograph Co.*, 30 App. D. C. 542.

(B) NO PRICE FIXED.

Statement.—The contract alleged in paragraph 11 of the proposed intervention is somewhat confusing as to what price shall be paid for the "canned fruits" purported to be contracted to be sold. Section 3 of the alleged contract provides:

(a) The prices "shall be the prices used by California Packing Corporation."
(b) But the prices must not be "less than the fair value * * * plus actual cost of manufacture."

(c) If "a price" can not be agreed on, Armour & Co. "shall not be required to accept the same."

(d) Seller shall meet the competition of California Packing Corporation and reductions by that corporation shall inure to the benefit of Armour & Co.

(e) Export goods shall also be at a "fair value plus the actual cost of manufacture."

Argument and authorities.—About the only certain conclusion that is possible from the language of section 3 is that no sale could be required if in the future a price would not be agreed on.

Such a contract is unilateral and void. In *Oakland Motor Car Co. v. Indiana Automobile Co.*, 201 Fed. 499, 119 C. C. A. 581, the court said:

"That the right given to cancel 'for just cause' was so indefinite as to leave it to the party to determine what was a just cause, and that in view of such provision, and the further one requiring the approval of orders by defendant before they were binding on it, the contract, for lack of mutuality, was void."

"Certainty in the thing to be done" is necessary.—*Cold Blast Transportation Co. v. Kansas City Bolt & Nut Co.*, 114 Fed. 77, 79, 57 L. R. A. 697.

In *Howe Scale Co. v. Wolfshant*, 170 N. Y. Supp. 943; *Krohn-Fechmeier v. Palmer*, 199 S. W. 763, the court said:

"The law will not hold a party bound to a contract against his will, when the substance of what he is to get in return is executory and is so shadowy in outline that the other party can refuse to perform with impunity, since either the contract does not compel it or no court can say what damage it has caused if it fail to act."

Hammon on Contracts, page 682, says:

"If in a contract where the only consideration is mutual promises if by some infirmity or disability one of the parties to a contract consisting of mutual promises could not be sued thereon, the contract is void, as to the other party also, since there is no consideration for his promise."

Page on Contracts, volume 1, page 452, says:

"Where the parties assume to make a contract in which a promise is the consideration for a promise and analysis shows that one of the promises does not impose any legal duty upon the party making it, such promise is not a consideration for the other promise. This is what is often meant by saying that promises must be mutual."

Addison on Contracts, page 36, says:

"Mutuality of obligation is the very essence of all contracts founded upon mutual promises. 'Hence it follows,' observes Pothier, 'that nothing can be more contradictory to such an obligation than an entire liberty in either of the parties making the promise to perform it or not as he may please.' An agreement giving such a liberty would be absolutely void for want of obligation, i. e., as long as the contract remained wholly executory and nothing had been done under it."

Mechem on Sales, section 234, says:

"Where the essential elements, such as number, price, term of credit and the like have not been settled, there can be no sale."

No price being fixed, there is no contract.

In *National Importing & Trading Co. v. Clark*, 270 Fed. 54, 56, — C. C. A. —, the court said:

"The court may not enforce the terms of a contract, where the minds of the parties have not met. Nor can the court read into the contract a fixed price, when no price has been fixed by a third party, whom it has been agreed upon should fix the price. *Lobenstein v. United States*, 91 U. S. 324, 23 L. Ed. 410. The rights and obligations of the parties to the contract must be found within the terms of the contract, and, when legal responsibility is sought to be imposed, the measure of liability must be that contained in the contract."

(C) THE DECREE HEREIN TERMINATED THE ALLEGED CONTRACT.

Statement.—Section 9 of the alleged contract provides:

"* * * In case governmental action materially interferes with the performance of this contract by second party, then in that case it shall have the right to cancel and terminate this agreement by giving 60 days' written notice to first party of its intention so to do, and shall not be held liable for any loss resulting therefrom."

Section 11 provides:

"This contract shall be subject to all the effective rules and regulations of the Federal Food Administration, the Federal Trade Commission, and other Federal agencies."

Argument.—The foregoing exceptions for the protection of Armour & Co. are easily understood when it is remembered, as this court judicially knows, that when the contract was made investigations of Armour & Co. and other defendants by the Federal Trade Commission were in progress. Armour & Co. naturally anticipating a decree of a Federal court limiting its activities provided in advance "the right to cancel and terminate" the alleged contract. Armour & Co. being authorized to do so gave notice "that it could not further keep the said contract by reason of the said decree, and declined to proceed further with the performance thereof." See Paragraph IV of petition.

WERE THERE A VALID CONTRACT, CALIFORNIA COOPERATIVE CANNERIES HAS NO REMEDY OTHER THAN ACTION FOR DAMAGES.

Statement.—The contract alleged to have been made was breached by Armour & Co. some two years ago. (See Paragraph IV of petition of the canneries.) The petition of intervention here asked to be filed substantially asks this court to decree specific performance of its alleged sales contract.

Argument and authorities.—If the cooperative canneries has a contract, it can get damages. If by reason of uncertainty in terms and prices damages can not be determined, there is no contract. Whichever alternative is taken, this court of equity could grant no relief and the proposed intervenor has no interest in litigation growing out of the decree herein, even if there were, as there is not now, any litigation pending. That no relief can here be granted is clearly stated in *Consolidated Fuel Co. v. St. L. & S. W. Ry. Co.*, 250 Fed. 395, 398, 399, 162 C. C. A. 465, where the court said:

"The case stated in the complaint is simply one where appellant has breached a contract for the sale and delivery of coal to a common carrier. The measure of damages for such breach would be the difference between the contract price and the market price of coal at the nearest market, with the cost of transportation to the point where appellant agreed to deliver the coal. The allegations of the complaint in regard to the damages that would result to the people of Texas and of the United States, including suits and prosecutions for penalties and the damages to employees, if appellee should cease operating its trains for want of coal, present a contingency so remote and impossible as to be negligible, and the people referred to are not complaining. We have been unable to find any authority that would allow a common carrier to go into a court of equity to obtain specific performance of such a contract as is involved in this action. To take jurisdiction in equity of the case made by the complaint would be to destroy all distinction between actions at law and in equity. If we shall take jurisdiction in this case, and specifically enforce a contract for the sale and delivery of coal, where could we stop? The next contract presented for us would be for the sale and delivery of engines, for the sale and delivery of railroad ties, for the sale and delivery of cars, or for the sale and delivery of a thousand other articles which go to make up the equipment of a railroad. The contract price of

coal is fixed; the market price of coal and cost of transportation is easily shown; why should equity assess the damages?"

Vagueness and indefiniteness make specific performance impossible here. *Lipcomb v. Watrous*, 3 App. D. C. 1.

If, as claimed by the California Cooperative Canneries, the decree of February 27, 1920, is invalid, such decree furnishes no defense to a suit for damages against Armour & Co.; if the decree is valid, it is a complete answer to the claim of the right here to intervene. Whichever is true, the motion to intervene now before the court must be denied.

A STRANGER TO A CONSENT DECREE CAN NOT MAINTAIN AN ACTION TO VACATE.

Statement.—The decree of February 27, 1920, was consented to by all parties thereto, and such consent was legally given. The California Cooperative Canneries over two years after such consent and after the entry of the decree seeks to object.

Argument and authorities.—A concise and accurate description of a consent decree is given in 23 Cyc. 729 as follows:

"A judgment by consent of the parties is more than a mere contract in pais; having the sanction of the court and entered as its determination of the controversy, it has all the force and effect of any other judgment, being conclusive as an estoppel upon the parties and their privies."

No one can intervene in opposition to what has gone before in the action. This is a rule long and universally applied in courts of equity. The Supreme Court of the United States in prescribing equity rules recognized the principle and concluded equity rule 37 by providing that—

"Intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding."

While such language is not used in equity rule 15 of this court, rule 15 not conflicting with but being less inclusive than equity rule 37 of the Supreme Court of the United States, this court will recognize rule 37. *Ryan v. McAdoo*, 46 App. D. C. 117. See also *Charleston Ry. Co. v. Pope*, 122 Ga. 577, 579, where Judge, later Mr. Justice, Lamar, held that—

"An intervener took the suit as it found it."

The office of an intervention was stated in *Seaboard Air Line Ry. v. Trust Co.* 125 Ga. 463, 465, as follows:

"The office of an intervention is to cause a party to be made to a pending proceeding, not to establish that the proceeding should not exist."

Intervention to be made a defendant for the purpose of opposing the proceedings is not permissible in equity.

In *Consolidated Gas Co. v. Newton*, 256 Fed. 238, 244, it was said:

"The long-settled practice in equity is that a person can not be made a party defendant on his own application, unless so required by statute. *Toler v. East Tennessee, V. & G. Ry. Co.* (C. C.), 67 Fed. 168, per Lurtin, J., afterwards a justice of the Supreme Court; *Coleman v. Martin*, 6 Blatch. 119, Fed. Cas. No. 2985; *Drake v. Goodridge*, 6 Blatchf. 151, Fed. Cas. No. 4062; *Gregory v. Pike*, 67 Fed. 837, 15 C. C. A. 33."

If equity rule 37 extends the right of intervention in a proper case to one who wishes to be made defendant, as it probably does, such right is in subordination to a decree already entered and this is not a proper case for an intervener to be made a party on behalf of defendants.

THE DECREE OF FEBRUARY 27, 1920, IS VALID.

Statement.—The intervention sought by the California Cooperative Canneries seeks to establish that the consent decree herein is void.

Argument and authorities.—If this court has jurisdiction of the subject matter of the original bill filed by the United States in this case, the decree is valid and can not be set aside.

In 23 Cyc. 729 there appears a short statement buttressed by ample authority of the applicable rule. The statement follows:

"A judgment by consent operates as a waiver of any defects in the process or pleadings, or irregularities in the previous proceedings, or grounds of objection which would have constituted errors in the judgment if rendered upon trial, provided they do not go to the jurisdiction."

Ruling Case Law, vol. 10, sec 347, states the rule in similar language:

"Decrees are frequently entered on consent of the parties, and this fact should be recited. Such a decree, when entered, is binding on the consenting parties, and it can not be heard or reviewed except on a showing that consent was obtained by fraud or that the decree was based on mutual error."

Citing *Adler v. Van Kirk Land, etc., Co.*, 114 Ala. 551, 21 So. 490, 62 A. S. R. 133.

Daniell's Chan. Plead. & Prac. fourth edition, volume 2, pages 973, 974, says:

"It may be mentioned, with reference to the subject of consent causes, that a decree or order, made by consent of the counsel for the parties, can not be set aside, either by rehearing or appeal, or by bill of review; unless by clerical error anything has been inserted in the order, as by consent, to which the party had not consented; in which case, a bill of review might lie."

An interesting application of these rules was made in *United States Construction Co. v. Armour Packing Co.*, 35 Ok. 179, 123 Pac. 371, where it was said:

"There is one principle of law which conclusively determines this case, and that principle is that a court has no power, after stipulation for settlement, agreed to and signed by all the parties in interest, has been filed, and after judgment has been entered in accordance with such stipulation, to vacate and set aside or modify the judgment after the term at which it was rendered, in the absence of fraud between the parties agreeing to settlement by consent or stipulation, except for mistake, neglect, or omission of the clerk. In *Morris v. Peyton*, 29 W. Va. 201, 11 S. E. 954, Mr. Justice Green, speaking for the court on the question of whether the court has power to vacate a decree entered by consent of the parties to the action, said:

"As such a decree is not the judgment of the court upon the merits of the case, but the act of the parties to the suit, it is obvious that it can not be modified, set aside, or annulled by any order in the cause made by the court below without the consent of all parties to the cause. * * * Nor could it be appealed from, nor modified by this court, unless, perhaps, it should be so entirely foreign to the matters in controversy in the cause that for this or some other reason the court below had no jurisdiction or authority to enter such decree by consent or otherwise."

"* * * The judgment in this case was the final ascertainment of the rights by consent of the parties to the suit, and can not be changed by any subsequent order of the court without like consent. *Seiler v. Union Mfg. Co.*, 50 W. Va. 208. * * * In the absence of fraud in its procurement, and between parties sui juris, who are competent to make the consent, not standing in confidential relations to each other, a judgment or decree of a court having jurisdiction of the subject matter, rendered by consent of parties, though without any ascertainment by the court of the truth of the facts averred, is, according to the great weight of American authority, as binding and conclusive between the parties and their privies as if the suit had been an adversary one and the conclusions embodied in the decree had been rendered upon controverted issues of fact and a due consideration thereof by the court."

The validity and force of a consent decree are shown in *Nashville, etc., R. Co. v. United States*, 113 U. S. 261, 266, 28 L. Ed. 971, 973, where it was said:

"But the insurmountable difficulty is that the former decree appears upon its face to have been rendered by consent of the parties, and could not therefore be reversed, even on appeal. Courts of chancery generally hold that from a decree by consent no appeal lies. 2 Dan. ch. pr. ch. 32, sec. 1; *French v. Shotwell*, 5 Johns. ch. 555; *Winchester v. Winchester*, 121 Mass. 127. Although that rule has not prevailed in this court under the terms of the acts of Congress regulating its appellate jurisdiction, yet a decree which appears by the record to have been rendered by consent is always affirmed, without considering the merits of the cause. A fortiori, neither party can deny its effect as a bar of a subsequent suit on any claim included in the decree."

In *Thompson v. Maxwell Land Grant & R. Co.*, 168 U. S. 451, 463, 42 L. Ed. 539, 544, Mr. Justice Brewer said:

"The case falls within the general rule that a decree made by consent of counsel, without fraud or collusion, can not be set aside by rehearing, appeal, or review. *Webb v. Webb*, 3 Swanst. 658; *Harrison v. Rumsey*, 2 Ves. Sr. 488; *Bradish v. Gee*, 1 Amb. 229; *S. C. 1 Kenyon*, K. B. 73; *Downing v. Cage*, 1 Eq. Cas. Abr. 165; *Toder v. Sansam*, 1 Bro. P. C. 468; *French v. Shotwell*, 5 Johns. ch. 555." On former appeal 95 U. S. 391.

No better discussion of the force and validity of consent decrees can be found than that shown in *Adler v. Van Kirk Land, etc., Co.*, 114 Ala. 551, 62 Am. St. Rep. 133, where the court said:

"It is averred in the bill that the decree in the foreclosure suit was 'solely upon the consent of the parties to said cause, and that no judicial ascertainment of the facts stated in the bill filed in said cause was ever had'; and that 'said consent decree does not and did not constitute an adjudication of said cause.' The purpose of the pleader in making this averment was doubtless to state as a fact that the decree was merely a consent decree, a decree agreed upon by the parties, and upon such consent rendered by the court, without the ascertainment of the truth of the facts averred in the bill, or of the rights of the parties therein asserted; and, as a conclusion of law flowing from these facts, that the decree does not operate an adjudication against the land

and construction company of the matters embraced in the *lis pendens* of the foreclosure suit: and the argument is that the decree is not an estoppel of record against the company as to the amount by the decree declared to be owing upon the demands secured by the mortgage.

"Whatever effect such a conclusion, if logically deducible from the premises stated, would have upon the rights of the parties in this cause, under the averments contained in the bill, it is not necessary to consider; and this because the conclusion is a non sequitur. In the absence of fraud in its procurement, and between parties *sui juris* who are competent to make the consent not standing in confidential relations to each other, a judgment or decree of a court having jurisdiction of the subject matter, rendered by consent of parties, though without any ascertainment by the court of the truth of the facts averred, is, according to the great weight of American authority, as binding and conclusive between the parties and their privies as if the suit had been an adversary one and the conclusions embodied in the decree had been rendered upon controverted issues of fact and a due consideration thereof by the court: *Freeman on Judgments*, sec. 330; 2 *Black on Judgments*, sec. 705; *Gifford v. Thorn*, 9 N. J. eq. 722; *French v. Shotwell*, 5 Johns. Ch. 568; *Walsh v. Walsh*, 116 Mass. 383; 17 Am. Rep. 162; *Dunman v. Hartwell*, 9 Tex. 495; 60 Am. Dec. 177; *Nashville, etc., Ry. Co. v. United States*, 113 U. S. 261; *Curry v. Peebles*, 83 Ala. 228; *Rogers v. Prattville Mfg. Co.*, 81 Ala. 483; 60 Am. Rep. 171; *Patillo v. Taylor*, 83 Ala. 233.

"The fact that the decree in the foreclosure suit was rendered by consent of parties does not, therefore, detract from its dignity or lessen its conclusiveness as an adjudication between the parties. Not only is such its effect, but its consent is a waiver of error, precluding a review of the decree upon appeal and, as a general rule, upon a bill of review: *Thompson v. Maxwell*, 95 U. S. 391; *Nashville, etc., Ry. Co. v. United States*, 113 U. S. 266; 2 *Daniell's Chancery Pleading and Practice*, 5th Am. Ed. 1576; *Dunman v. Hartwell*, 9 Tex. 495; 60 Am. Dec. 176; *Curry v. Peebles*, 83 Ala. 227."

To the same effect see *Short v. Taylor*, 137 Mo. 517, 59 Am. St. Rep. 508.

Courts of equity have plenary powers to make such decrees as are required to meet the situation presented.

Judge Story in his work on *Equity Pleading*, Vol. I, 13th Ed., p. 21, said:

"But courts of equity are not so restrained. Although they have prescribed forms of proceeding, the latter are flexible, and may be suited to the different postures of cases. They may adjust their decrees so as to meet most, if not all, of these exigencies and they may vary, qualify, restrain, and model the remedy so as to suit it to mutual and adverse claims, controlling equities and the real and substantial rights of all the parties. * * * So that one of the most striking and distinctive features of courts of equity is that they can adapt their decrees to all the varieties of circumstances which may arise, and adjust them to all the peculiar rights of all the parties in interest."

Broad decrees are necessary in these antitrust suits. The defendants here have been sued many times and several injunctive decrees have been entered against them. These were ineffective, and so the agreement to the decree of February 27, 1920, was asked and defendants accepted the offered decree. The decree does prohibit the doing of a business ordinarily lawful, but if it is necessary to prevent the business in order to keep the defendants within the law, the business should be stopped. Certainly the subject matter of the original bill was broad enough to justify a court, even without any agreement, in entering such a decree as was needed to prevent the practices described in the bill. Decrees may prevent "doing specific things" and courts are not powerless to enforce the act (antitrust) or to suppress the illegal combination, and powerless to protect the rights of the public as against that combination. *Northern Securities Co. v. United States*, 193 U. S. 197. (See also *Standard Oil Co. v. United States*, 221 U. S. 1, 77, 78; *United States v. American Tobacco Co.*, 221 U. S. 10; *Gompers v. Buck Stove & Range Co.*, 221 U. S. 418, 438; *United States v. Union Pacific R. R. Co.*, 226 U. S. 470, 474.)

ESTOPPEL APPLIES.

Statement.—This record shows that complaints having been made against the defendants herein, the President directed the Federal Trade Commission to investigate. The investigation was had and was exhaustive. Reporting the result of the investigation to the President, the Federal Trade Commission gave data and stated conclusions showing that the defendants were transacting their business contrary to law and that with reference to the commodities described in paragraph 4 of the decree herein were gradually obtaining such a monopoly as would exclude all except themselves from handling such commodities.

This report was referred to the Attorney General, who supplemented the work of the Federal Trade Commission with grand jury investigations and who was prepar-

to file such proceedings as he deemed wise and adequate. Defendants herein approached the Attorney General with a proposition to reform, and after careful consideration, many investigations, weeks of publicity, and testimony before a Senate committee a conclusion was reached and embodied in the decree of this court of February 27, 1920. Investigations then ceased, no suits were thereafter filed, and no criminal prosecutions instituted.

Southern Wholesale Grocers' Association had prepared and filed, before the reformation of these defendants, a complaint to the Interstate Commerce Commission seeking to have the commission issue its order compelling all interstate carriers to cease and desist from according the defendants here the unlawful rates and practices which defendants enjoyed. These defendants intervened before the Interstate Commerce Commission. While testimony was being taken on that complaint, the fact that defendants had offered to turn from their economic sins became known and further taking of testimony before the commission was suspended.

Southern Wholesale Grocers' Association, relying on the consent decree and believing that the repentance of defendants was sincere and knowing that the decree was a complete answer to the complaint before the commission, did not further prosecute that complaint. A companion complaint proceeded and defendants here, interveners before the commission, relied on the decree herein, as was proper and legal. The reliance on this decree was not in vain; the commission denied all substantial relief, and in doing so made reference to the decree herein. *National Wholesale Grocers' Assn. v. Director General*, 62 I. C. C. 375.

Defendants here won before the Interstate Commerce Commission because of the consent decree.

While the discussion of the terms of the consent decree was in progress and also after such decree was entered, the Congress had for consideration the further regulation of "packers." Congress, as clearly appears from the statute (42 Stat. 159, 160, 161, 168), subsequently passed, considered the decree herein as terminating defendants' connection with the business of handling the "unrelated" commodities described in paragraph 4 thereof.

"Packer" before that decree would have included a dealer in all kinds of commodities, but by statute a "packer" is defined to mean:

"Sec. 201. When used in this act the term 'packer' means any person engaged in the business (a) of buying live stock in commerce for the purpose of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of manufacturing or preparing live stock products for sale or shipment in commerce, or (d) of marketing meats, meat food products, live-stock products, dairy products, poultry, poultry products, or eggs, in commerce.

Argument and authorities.—Congress used, in substance, the definition Mr. Attorney General Palmer had used in his testimony before the Senate. Mr. Palmer said the decree made defendants "butchers," but permitted them to handle dairy products. The statute defines defendants as "meat" and "dairy products" dealers. Defendants consented to a decree limiting their business to meats and dairy products, the Congress affirmed in effect that decree by defining "packers" exactly in agreement with such limitation.

It will also be noted that throughout the packers and stockyards act, 1921. when regulation is had it is of "packers"; dealers in unrelated items are not regulated because packers were, when the statute was passed, not engaged in handling such items. The decree herein completely covered and prohibited the handling of unrelated items, and if this decree should now be set aside, the defendants will be able to proceed as they did prior to their agreement.

Benefits having been received from their consent to the decree herein, defendants are estopped from trying to set it aside. (*Parish v. McGowan*, 39 App. D. C. 184, 40 W. L. R. 726; *Johnson v. Washington Loan & Trust Co.*, 33 App. D. C. 242, 37 W. L. R. 227; *Staples v. Port Graham Coal Co.*, 46 App. D. C. 542, 45 W. L. R. 371.)

The California Cooperative Canneries claiming an interest only because of an alleged contract with one of the defendants can have no better right than the defendant with which it has the agreement.

These interveners having changed their position by abandoning the prosecution of a claim before the Interstate Commerce Commission, the defendants having received that and other benefits from the decree of February 27, 1920, will not now, directly or indirectly, be permitted to destroy that decree so as to work an injustice to these interveners. (*Drury v. Gossett*, 44 App. D. C. 518, 44 W. L. R. 147.)

Parish v. McGowan, supra, was reversed by the Supreme Court, but the principle cited above was not questioned. (*McGowan v. Parish*, 237 U. S. 255, 59 L. Ed. 955, 43 W. L. R. 387, 389.) The Supreme Court (pp. 295, 296, L. Ed. 963) announced another rule applicable here, by saying:

"The consent decree not only amounted to a clear and express waiver of jurisdictional objections, but it rendered irrelevant, so far as the present parties are concerned, all questions as to the effect of the contracts in creating a lien upon the proceeds of the ice claim."

WEBB EXPORT ACT HAS NO APPLICATION.

Statement.—The California Cooperative Canneries relies in its petition of intervention on the act of April 10, 1918 (40 Stat. L. 517, Comp. Stat. Supp. 1919, sec 8836½-A seq.).

Argument and authorities.—Section 2 of the statute expressly makes that act inapplicable to defendants here and expressly provides that the practices alleged in the original bill filed herein are not legalized. The act was in force when the decree herein was entered and presumably received full consideration. Only an association whose "sole" purpose is export trade is included, and as to such association it is provided:

"That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein."

Defendants are excluded from rights under the export law.

IMPERTINENCE IN PROPOSED INTERVENTION.

It is not believed that the California Cooperative Canneries has any legal or equitable right to file the proposed intervention; but should any intervention be permitted to be filed, it should be required that the one proposed be amended by eliminating therefrom the impertinent parts specifically described in the answer of the Southern Wholesale Grocers' Association et al.

Respectfully submitted.

EDGAR WATKINS,
(Watkins, Russell & Asbill, Atlanta),
Attorney for Southern Wholesale Grocers' Association et al.

**PETITION OF DEFENDANT ARMOUR & CO. FOR EXTENSION OF
TIME WITHIN WHICH TO COMPLY WITH TERMS OF DECREE.**

In the Supreme Court of the District of Columbia. United States of America, petitioner *v.* Swift & Co. and others. In equity, No. 37623. Petition of Armour group of defendants for extension of time.

To the honorable the Supreme Court of the District of Columbia:

Now comes the Armour group of defendants, by Charles J. Faulkner, jr., and Conrad H. Syme, their attorneys, and respectfully shows the court that the decree herein required said defendants to dispose of certain commodities and of defendants' interests in corporations, manufacturing and dealing in said commodities of the character mentioned in paragraphs 4 and 5 of said decree; that the defendants have disposed of a large portion of said commodities and certain of their interests held in corporations manufacturing and dealing in said commodities, but that owing to the depression in industrial, financial, and business affairs of the country since the entry of such decree, the defendants have been unable to divest themselves completely of said commodities and interests in companies engaged in the manufacture and dealing in the commodities mentioned in paragraphs 4 and 5 of said decree.

Said group of defendants further show that under date of February 2, 1922, this honorable court extended the time for the disposition of such commodities and interests in companies engaged in the manufacture, jobbing, selling transporting, distributing, or otherwise dealing in such commodities, until August 27, 1922.

Your petitioners show the court that progress has been made in the disposition of such of the commodities mentioned in paragraphs 4 and 5 of said decree as defendants still have in stock, but that defendants have been unable to divest themselves completely of said commodities or of their interests in certain properties and firms, corporations, and associations engaged in the business of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in such commodities.

Wherefore these defendants pray that the time as fixed in paragraph 12 of said decree within which they may be allowed to divest themselves of the commodities and interests mentioned in said paragraph 12 and paragraphs 4 and 5 of said decree, be extended for such time as to the court may seem proper, and your petitioner will ever pray.

CHARLES J. FAULKNER, JR.
CONRAD H. SYME,
Attorneys for Armour group of defendants.

MEMORANDUM OF NATIONAL WHOLESALE GROCERS' ASSOCIATION IN RELATION TO PETITION OF ARMOUR & CO. FOR EXTENSION OF TIME WITHIN WHICH TO COMPLY WITH DECREE.

Supreme Court, District of Columbia. United States of America v. Swift & Co. et al.
Memorandum in behalf of National Wholesale Grocers' Association.

The National Wholesale Grocers' Association, allowed intervention herein for the purpose of being heard in opposition to any change in the decree which would deprive the interveners of the protection now afforded them by the decree, is primarily interested in this proceeding because its members were peculiarly affected and especially injured by the acts of the meat packers in extending their business into the so-called unrelated lines. This injury was due, first, to the fact that the packers, by using their refrigerator cars for the transportation of nonperishable grocery products, secured for such products an expedited service not available to other dealers in food products, and, secondly, to the advantages arising out of the great size and financial resources of the defendant packers.

The decree herein was entered February 27, 1920, and allowed the defendants two years in which to dispose of the so-called unrelated lines described in paragraphs fourth and fifth of the decree and all their interests in concerns engaged in handling such products. Within that time all of the defendants complied with this part of the decree except the Armour defendants. This group applied for an extension of one year and on such application were allowed six months, which expired August 27, 1922. A further extension is now sought.

It follows, therefore, that all of the defendants except the Armour defendants have long since disposed of the unrelated lines in honest compliance with the decree. As the court will recall, the Morris and Cudahy defendants appeared in court recently on the hearing of the application of the California Cooperative Canneries to intervene in this proceeding, and showed that they had complied with the decree at a great loss and stated they desired to be placed on record in opposition to any change in the decree. The Swift and Wilson defendants have also reported full compliance with this part of the decree. Fairness to the other defendants, as well as to others involved, requires that Armour & Co. should not be granted an extension of time to comply with the decree unless facts peculiar in the case of Armour & Co. warrant such an extension.

Not only is Armour & Co. the only defendant which has not yet complied with the decree in respect to the unrelated lines, but it alone of the defendants has refused to state its position with regard to the decree. The other defendants have publicly stated that they entered into the decree in good faith and regard it as an established fact which they do not seek to change.

Armour & Co. has remained silent. Such silence is not compatible with frankness to the court or to the public. This court now has before it the application of the California Cooperative Canneries to intervene herein for the express purpose of seeking to have the decree set aside. The papers before the court show that Armour & Co. has a large mortgage on the property of the California Cooperative Canneries and has had close business relations with it, if not a dominant control over its business. The president of the canneries testified at the hearings held by the Attorney General that before the canneries commenced its efforts to have the decree set aside he conferred with officers of Armour & Co. and was told to go ahead and have the decree set aside and that Armour & Co. would then enter into an arrangement to distribute the output of the canneries on a 5 per cent commission basis.

We have no desire to take an unreasonable position with respect to the application before this court, but we feel that the circumstances are such that before the court should grant the favor of a further extension to Armour & Co. the latter should show:

1. Its position with respect to the decree, and in particular with respect to the efforts of the California Cooperative Canneries to destroy the decree. The court should know whether Armour & Co. consented to the decree in good faith and is making every effort to perform the solemn agreement sanctioned by the court arising out of the decree.

2. The efforts Armour & Co. has made to comply with the decree and the reason why it has not been able to comply as yet.

3. The character and extent of Armour & Co.'s present interest in the unrelated lines, which it still has not disposed of.

Unless and until Armour & Co. satisfies the court of its good faith and that the fact warrant an extension of time, we believe the present application should be denied.

Respectfully submitted.

BREED, ABBOTT & MORGAN,
Attorneys for National Wholesale Grocers' Association

**ORDER OF HON. JENNINGS BAILEY EXTENDING TO MAY 1, 1923,
THE TIME WITHIN WHICH DEFENDANT, ARMOUR & CO., MAY
COMPLY WITH TERMS OF DECREE.**

Order filed September 1, 1922. Morgan H. Beach, clerk. In the Supreme Court of the District of Columbia. United States of America, petitioner, v. Swift & Co. and others. In equity, No. 37623.

Upon consideration of the petition of the Armour group of defendants herein filed, it is this 1st day of September, 1922—

Ordered, That the time as provided by paragraph 12 of the decree herein, within which the said defendants and each of them have to dispose of the commodities and products described in paragraphs 4 and 5 of the decree herein entered, and to divest themselves of their interests to the extent required by said decree in firms, corporations, and associations in the United States engaged in the business of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of said commodities, be, and the same is hereby, extended until the 1st day of May, 1923.

JENNINGS BAILEY, *Justice.*

A true copy, test.

MORGAN H. BEACH, *Clerk.*
By ELIZABETH WILSON, *Assistant Clerk.*

(Seal of the Supreme Court of the District of Columbia.)

OPINION DATED OCTOBER 16, 1922, OF HON. JENNINGS BAILEY, JUSTICE OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA (1) HOLDING THAT THE CONSENT DECREE IS VALID AND EFFECTIVE; AND (2) DENYING THE APPLICATION OF THE CALIFORNIA COOPERATIVE CANNERIES FOR LEAVE TO INTERVENE.

Memorandum opinion filed October 16, 1922. Morgan H. Beach, clerk. United States of America v. Swift & Co., et al. No. 37623, Eq.

The California Cooperative Canneries has moved for leave to file an intervening petition in this cause, seeking to set aside or modify the consent decree heretofore entered. The interest claimed by the canneries in this suit is based upon a contract between it and one of the defendants, Armour & Co., under the terms of which the latter agreed to purchase from the canneries such products as Armour & Co. might require for the period of 10 years. The contract also contains a provision that in case of material interference by Governmental action Armour & Co. might terminate the agreement upon 60 days' notice.

The canneries claim that the consent decree entered is void as to it, for these reasons: That it is a consent decree based upon an agreement made between the Government and the defendants prior to the bringing of the suit, which provided that this suit should be brought and this particular decree entered by consent; that in the decree the defendants maintain the truth of the allegations of their answers, which deny any wrong doing on the part of the defendants, and that there was therefore not only no sufficient finding of facts to authorize the decree, but even an express refusal to admit such facts; and in addition that the whole proceedings were a fraud upon the court.

None of the parties to the suit are before the court seeking to set aside the decree. It was entered on February 27, 1920, and pursuant to its provisions several of the defendants have disposed of large interests in what have been called "unrelated commodities," doubtless in some cases at considerable loss. If the decree were set aside, it would be impossible to restore the status quo. Without going into the question of laches in the application for leave to intervene, for the petition sets up grounds which might be sufficient to avoid that defense, I think that the motion for leave to intervene should be overruled.

Under the present equity rules, no recital of facts upon which the decree is based is necessary, and the refusal of the defendants to admit any violation of the law may

well have been a precaution against the use of such admissions in a criminal prosecution, although the statute itself provides against such use. Parties may compromise their differences and a consent decree as between them is certainly of fully as binding force as a decree rendered after a full hearing on the facts. That such a decree is entered pursuant to an agreement made prior to the bringing of the suit does not in my opinion render the decree less effective, where the court has not been, by any deception as to the facts, induced to enter a decree which may be injurious to third parties or in excess of the jurisdiction of the court.

If the decree was entered into by Armour & Co. for the purpose of preventing the fulfillment of any legal obligations it might owe to the canneries under it, an action at law in the proper forum would afford relief.

The motion for leave to intervene will be overruled.

JENNINGS BAILEY,
Justice.

(Seal of the Supreme Court of the District of Columbia.)

**PETITION OF CALIFORNIA COOPERATIVE CANNERIES FOR RE-
HEARING OF MOTION FOR LEAVE TO INTERVENE, DATED JAN-
UARY 10, 1923.**

In the Supreme Court of the District of Columbia. *United States of America v. Swift & Co. et al.* Equity, No. 37623. Petition of California Cooperative Canneries for rehearing.

The petition of the California Cooperative Canneries for rehearing of its application for leave to intervene herein respectfully shows as follows:

1. October 16, 1922, the court filed an opinion holding that your petitioner's application for leave to intervene in this suit should be denied, but no formal order overruling the said application has been entered.

2. The said opinion briefly sets out the claims of your petitioner, and then considers the same, and upon such consideration the court bases its decision that your petitioner's application for leave to intervene should be overruled.

3. Your petitioner further avers that the several grounds upon which the court bases its decision do not support the same, and the denial of your petitioner's application for leave to intervene is erroneous and operates grievous and irreparable injury to your petitioner.

4. Your petitioner contended, and still contends, (a) that the consent decree of February 27, 1920, is void and of no effect in law; (b) that your petitioner has no plain, adequate, and complete remedy at law, and has the right, and should be permitted, to intervene in this suit; and (c) that the agreement or contract which the Government and the defendants in this cause made for the entry of the particular decree which was passed in this suit February 27, 1920, was and is void, both at common law and under the Federal antitrust statutes.

5. Under paragraphs 2 to 8, both inclusive, of the said decree, both as set out in the said agreement and as entered by this court, the defendants are enjoined (a) from owning any interest in stockyards and enterprises appertaining thereto, and (b) from manufacturing or dealing in the unrelated lines, and particularly the lines handled by wholesale grocers: that the said agreement is not that the parties defendant shall discontinue or abandon any contracts, combinations, or conspiracies in restraint of trade prohibited by section 1 of the Sherman Act, nor that they shall desist or refrain from monopolizing, or attempting to monopolize, trade prohibited by section 2 of the Sherman Act, in order that they shall cease and desist from any discrimination in prices or unfair practices, substantially lessening competition, prohibited by the Clayton Act, but the said agreement is that they and each of them, severally and in their separate and individual capacities, shall refrain from engaging or being interested in the described businesses, in any circumstances, even though they lawfully conducted themselves in such businesses and conducted such businesses legally, in all respects, in accordance with the laws of the United States; that the said agreement between the Government and the defendants, when sanctioned by the court, made the act of engaging in the described businesses illegal in itself, if the judicial sanction be valid; and that agreements to close down and abandon an existing business are unlawful at common law because against public policy and are also unlawful under the antitrust statutes. (*U. S. v. Addyston Pipe, etc., Co.*, 85 Fed. 271; *Dr. Miles Medical Co. v. John D. Park, etc., Co.*, 220 U. S. 373, 55 L. Ed. 502; *John D. Park, etc., Co. v. Hartman*, 153 Fed. 24; *Oliver v. Gilmore*, 52 Fed. 562; *More v. Bennett*, 140 Ill. 69, 9 N. E. 888; *Tuscaloosa Ice Manufacturing Co. v. Williams*, 127 Ala. 110, 28 So. 669; *Stewart v. Stearns, etc., Lumber Co.*, 56 Fla. 670, 48 So. 19; *Clemons v. Meadows*, 23 Ky. 178, 94 S. W. 13; *Kosciusko Oil Mill, etc., Co. v. Wilson Cotton Oil Co.*, 90 Miss. 561, 43 So. 435; 6 R. C. L., p. 791, par. 196; 19 R. C. L., p. 126, par. 94.)

6. Your petitioner further avers that the Attorney General of the United States had no authority to require, or even to agree, that the defendants should wholly abandon lawful existing businesses and refrain from legally engaging therein; that the Congress of the United States makes it the duty of the several district attorneys of the United States, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain violations of the antitrust laws; that the authority of the Attorney General is limited to enforcing the laws of the United States; that his authority under the antitrust statutes is limited to agreeing to a decree which will prohibit the defendants from contracting, combining, or conspiring to violate such stat-

utes, or to use their property or business in violation thereof, and your petitioner particularly avers that the Attorney General has no authority to enter into an agreement for a decree which will prohibit citizens of the United States absolutely from legally engaging in the lawful business of stockyards or manufacturing and distributing the so-called unrelated lines.

7. Your petitioner further alleges that this court is wholly without jurisdiction, power, or authority to sanction judicially the illegal agreement contained in paragraphs 2 to 8, both inclusive, of the said consent decree, and is also wholly without jurisdiction, power, or authority to enter the injunctions contained in paragraphs 1 and 9 of the said decree, substantially in the language of the statute; that under section 4 of the Sherman Act and section 14 of the Clayton Act the courts of the United States have jurisdiction to prevent and restrain violations of those acts, and, in a proper case disclosing such violations, it is the duty of the courts to enforce the law by enjoining the specific acts shown to be in violation thereof, but the courts have no jurisdiction, power, or authority to give judicial sanction to an agreement which provides that the defendant shall absolutely close down and abandon lawful businesses in which they are severally and individually lawfully engaged, and thereby destroy their competition with the wholesale grocers in those businesses and their competition among themselves; that sections 2 to 8, both inclusive, of the said consent decree do not enjoin the defendants from doing any certain specific acts which restrain trade in the described businesses, but require the defendants wholly to abandon and refrain from engaging in the businesses described, in any way or at any time; that the injunctive provisions contained in paragraphs 1 and 9 of the said decree are void, in that each is merely a general injunction against all possible breaches of the antitrust laws, and not against any specific acts in violation thereof (*Swift & Co. v. U. S.*, 196 U. S. 375, 49 L. Ed. 518; *N. Y., N. H. & H. Ry. Co. v. Interstate Commerce Commission*, 200 U. S. 361, 50 L. Ed. 515; *U. S. v. Agler*, 62 Fed. 824; *Southern Pacific Co. v. Colorado Fuel & I. Co.*, 101 Fed. 779; *Privett v. Pressley*, 62 Ind. 491; 14 R. C. L. p. 310, par. 8), and that the remaining paragraphs of the said decree, namely, paragraphs 10 to 18, both inclusive, are also void, in that they are intended to render effective the void injunctive orders contained in paragraphs 2 to 8 thereof, both inclusive.

8. Your petitioner further avers that the rule which makes it unnecessary to recite or state certain matters does not dispense with the requirement that the fundamentals and essential jurisdictional facts to support the decree must appear in the record; that the answers of the defendants in this suit categorically and directly deny each and every material allegation in the bill of complaint; that no evidence whatever was introduced or was intended to be introduced to meet or overcome the averments of the answers denying all of the material allegations of the bill; that the allegations of the bill must be taken as of no probative effect and the averments of fact in the answers must be taken and stand as admitted; that this case was presented to the court on bill and answers and is to be considered on the averments of the bill which are not denied by the answers (*Terral v. Burke Construction Co.*, 257 U. S. 529, 531; *Iowa v. Illinois*, 147 U. S. 1, 7); that in this state of the pleadings the Government and the defendants entered into a stipulation for a decree which should not contain a recital of facts but which should contain a recital that the defendants consented to the entry of the decree upon the condition that the decree should not constitute an adjudication that the defendants had violated any law of the United States; that this recital or provision in the decree, when entered by the court, constituted an adjudication of the same dignity and authority as any other adjudication in the said decree, and even more so, because the said consent decree was entered exclusively and expressly upon the condition that such recital—becoming an adjudication when entered—should be a part of the decree itself; that neither the agreement of the parties nor the decree itself admitted any facts which met or overcame the averments of the answers; that the averments of fact in the answers, denying the allegations of the bill, that the defendants had violated any law of the United States, standing admitted in record, as they do, conclusively causes the record to disclose no case or controversy between the Government and the defendants, such as is required by the Federal Constitution before the Federal courts can take jurisdiction, and the court was wholly without any jurisdiction, power, or judicial authority to enter any decree against the defendants in the premises, and particularly the said consent decree which was actually spread upon the minutes of this court.

9. Your petitioner further avers that the courts of the United States, including this court, are of limited jurisdiction; and the record must affirmatively show the facts necessary to sustain its jurisdiction; that there is no presumption of jurisdiction, as in the case of a common law English or State court, unless the contrary appears, but the record must show affirmatively that the court has authority, under the Federal Consti-

tution, to hear and determine the case (*Dred Scott v. Sanford*, 19 Howard, 401; *Turner v. Bank of North America*, 4 Dallas, 11; *Jackson v. Ashton*, 8 Peters, 148; *Ex parte Smith*, 94 U. S. 456; *Robertson v. Cease*, 97 U. S. 648); that even if it be presumed that all the facts necessary to give the court jurisdiction to render the particular consent decree which was entered in this suit, yet the said decree is void on its face because it shows no facts to support the jurisdiction of the court, but, on the contrary, the provision of the decree that it shall not constitute an adjudication that the defendants have violated any law of the United States affirmatively destroys any possible basis upon which the jurisdiction of the court can be upheld. (U. S. Constitution, Art. III, sec. 2; *Muskra v. U. S.*, 219 U. S. 346, 55 L. Ed. 246; *Fairchild v. Hughes*, U. S. Adv. Ops. No. 10, p. 260, Apr. 1, 1922; *Windsor v. McVeigh*, 93 U. S. 274, 23 L. Ed. 914; *Mequire v. Conwine*, 101 U. S. 108, 25 L. Ed. 899; *Reynolds v. Stockton*, 140 U. S. 254, 35 L. Ed. 464; *United States v. Trans-Missouri Freight Ass'n*, 58 Fed. 58; *Kreider v. Colo.* 149. Fed. 647; *Peoples Bank v. Gilson*, 161 Fed. 286, 291; *Munday v. Vail*, 34 N. J. L. 418; *State v. Nast*, 108 S. W. 563, 567, 568 (Mo.); *Watson v. Bair*, 74 So. 317 (Fla.); *Griffith v. Henderson*, 45 So. 1003 (Fla.); *Israel v. Reynolds*, 11 Ill. 218, 223; *State v. Baughman*, 38 Ohio St. 455, 459; *Hubler v. Pullen*, 9 Ind. 273, 68 Am. Dec. 620; *Stafford Introduction to The Law Restated*; *Hughes's The Law Restated*, p. 27; 1 *Hughes Procedure*, pp. 22, 23, 58, sec. 5a, 65, 113, sec. 21, 154, 156, sec. 41; 15 C. J. 723, sec. 13, 725; *id.* 734, sec. 34; *id.* 783, sec. 77; *id.* 827, sec. 146; *id.* 915, sec. 300; 21 C. J. 157, sec. 139, note 56 (a); *id.* 485, sec. 565, note 7; *id.* 548-551, secs. 670-673; *id.* 560, sec. 694, note 2; *id.* 642, sec. 821; *id.* 688, sec. 861, note 42 (b); *id.* 813, notes 13-18; *id.* 814, sec. 965; 2 R. C. L. 31, sec. 9.)

10. Your petitioner further avers that the court has no power to impose any penalties other than those provided in the statute; that this suit is filed under the antitrust laws; that section 1 of the Sherman Act prohibits contracts, combinations, or conspiracies in restraint of trade; that section 2 of the said act prohibits monopolizing or attempting to monopolize trade; that the Clayton Act prohibits discrimination in prices and unfair practices which substantially lessen competition; that persons violating the Sherman Act are thereby declared guilty of a misdemeanor, punishable on conviction by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or both, in the discretion of the court; that each statute invests the court with jurisdiction to prevent and restrain violations of it; that by neither act is the court authorized, either expressly or by implication, to enjoin a defendant absolutely from engaging in business in any circumstances or under any conditions; that the utmost limit of the jurisdiction and the power of the court, in such case, is to enjoin the defendant from agreeing, combining, or conspiring with others to restrain trade by monopolizing, or attempting to monopolize, trade, in violation of the Sherman Act, and from violating the Clayton Act by illegally discriminating in prices or by indulging in unfair practices; that in this case the court has perpetually enjoined each defendant, individually and independently, from owning any interest whatsoever in certain business and from manufacturing and dealing in certain described commodities defined in the said consent decree as unrelated lines; and that the said consent decree is therefore beyond the jurisdiction, power, and authority of the court, and is void. (*Windsor v. McVeigh*, 93 U. S. 274, 23 L. Ed. 914; *Campbell v. Porter*, 162 U. S. 478, 40 L. Ed. 1044; *Cooper v. Reynolds*, 10 Wall. 308, 19 L. Ed. 931; *Naah v. Williams*, 20 Wall. 226, 22 L. Ed. 254, at 257 and 258; *United States v. Walker*, 109 U. S. 258, 27 L. Ed. 927; *Re Sawyer*, 124 U. S. 200, 31 L. Ed. 402; *Ex parte Neilsen*, 131 U. S. 176, 33 L. Ed. 118; *Ex parte Cuddy*, 131 U. S. 280, 33 L. Ed. 154; *United States v. Am. Tobacco Co.*, 191 Fed. 371, 382, 383; *Kreider v. Cole*, 149 Fed. 647; *Powhatan Coal & C. Co. v. Ritz*, Judge, 60 W. Va. 395, 404, 56 S. E. 257; *Chapman v. Parsons*, Judge, 66 W. Va. 307, 66 S. E. 461; *Paul v. Willis*, 69 Tex. 261, 7 S. W. 357; *Lewis v. Allred*, 57 Ala. 628; *Folger v. Insurance Co.*, 99 Mass. 267; *Fithian v. Monks*, 43 Mo. 502; *Seamster v. Blackstock*, 83 Va. 232, 2 S. E. 36; *Anthony v. Kasey*, 83 Va. 338, 5 S. E. 176; *Story's Equity Pleading*, sec. 10; 2 *High Injunctions* (4th Ed.), sec. 1425; *Hughes, The Law Restated*, page 25, sec. 7; 15 C. J. 810, sec. 106; 15 C. J. 725, sec. 13; *Id.* 734, sec. 34; *Id.* 802, sec. 101.)

11. Your petitioner further avers that the jurisdiction of the Federal courts is derived from the Federal Constitution and laws, and from no other source or sources whatever; that consent of parties can not confer jurisdiction or power on the court to enter a decree which the court had no jurisdiction or power to enter under the authority conferred on it by the Constitution and laws; that the record must affirmatively show the authority of the court to proceed to judgment or decree and to enter the particular decree which has been passed (*The Law Restated*, introductory chapter pp. 12, 13, and 14, per Mr. Justice Stafford; 1 *High on Injunctions* (4th Ed.), p. 48,

par. 31; 1 Hughes on Procedure, pp. 22 and 23); that in this case, the only facts before the court are the averments of the answers of the defendants denying all of the material allegations in the bill of complaint, and the decree itself expressly provides that it does not adjudicate that the defendants have violated any law of the United States; that in the absence of facts proving, or tending to prove, a violation of the Antitrust laws, and in the absence of admissions of the necessary jurisdictional facts, the court is wholly without jurisdiction, under the Constitution and laws, including the Antitrust laws, to enter the decree against the defendants in this cause, or any decree against them, and the consent of the parties could not confer on the court the jurisdiction necessary to authorize the action which was taken in spreading the consent decree upon the minutes of the court. *Fairchild v. Hughes*, U. S. Adv. Ops. No. 10, p. 260, April 1, 1922; *Sevilleta, etc., v. Belen Land Grant*, 242 U. S. 595, 61 L. Ed. 514; *Muskraat v. United States*, 219 U. S. 346, 55 L. Ed. 246; *Harding v. Harding*, 198 U. S. 317, 49 L. Ed. 1066; *Pittsburg C. & St. L. Ry. Co. v. Ramsey*, 22 Wall 322, 22 L. Ed. 823; *Kreider v. Cole*, 149 Fed. 647; *State v. Nast*, 108 S. W. 563, 568, 569 (Mo.); *State v. Muench*, 217 Mo. 124, 117 S. W. 25; *Marietta v. Henderson*, 121 Ga. 399, 49 S. E. 312; *Sennette v. Police Jury*, 56 So. 653 (La.); *Story, Equity Pleading*, sec. 10; *Stafford, introduction to The Law Restated*, pp. 12 to 14; *Hughes. The Law Restated*, p. 25, sec. 7; 1 Hughes, Procedure, pp. 22, 23, 57, 65, 113, sec. 21, 126, sec. 26, 137, 154, 156; 1 High, Injunctions (4th Ed.), 48 sec. 31; 15 C. J. 730, sec. 27. Id. 802, sec. 101, Notes 6, 17; Id. 844, sec. 164; 21 Id. 813, Notes 13 to 18; Id. 814, sec. 965; Id. 815, Notes 55, 56; Id. 915, sec. 300; 2 R. C. L. 31, sec. 9; 7 Id. 1039, sec. 70; 15 Id. 643, sec. 86; Id. 645, sec. 90.)

12. Your petitioner further avers that the opinion of the court, denying intervention, states that the refusal of the defendants to admit any violation of the law may well have been a precaution against the use of such admissions in a criminal prosecution, that the court was referring to the language of the decree, which recites that the decree shall not constitute or be considered as an adjudication that the defendants, or any of them, have in fact violated any law of the United States; that this provision was the vital conditions upon which the consent decree was entered; and that the said condition can not be modified or read out of the said decree for the purpose of establishing or sustaining the jurisdiction of the court to enter it (2 R. C. L. 31, sec. 9; 15 Id. 646, sec. 90, Note 3; 21 C. J. 813, Notes 6 to 12; Id. 815, Notes 81 to 83; Id. 816, sec. 5.)

13. Your petitioner further alleges that when the court has exceeded its jurisdiction, it should take appropriate steps to correct its action and should of record declare the decree void for want of jurisdiction whenever the matter is called to its attention by either or any party, or by *amicus curiae*, or it should act *sua sponte*. (*Campbell v. Porter*, 162 U. S. 478, 40 L. Ed. 1044; *Kreider v. Cole*, 149 Fed. 647; 1 Hughes Procedure 82; 15 C. J. 732, sec. 27, note 68, 852, sec. 171; 21 Id. 162, sec. 146, 168, sec. 149, 186, sec. 171.)

14. Your petitioner further avers that, for reasons apparent on the fact of the record, the said consent decree of February 27, 1920, is void, and lapse of time can not validate it. (*Windsor v. McVeigh*, 93 U. S. 274, 23 L. Ed. 914; *Kreider v. Cole*, 149 Fed. 647; 15 C. J. 826, sec. 144, 847, sec. 166.)

15. Your petitioner further avers that it is entirely without any plain, adequate, or complete remedy at law, in the premises; that the court is in error in stating in its opinion that if the decree was entered into by Armour & Co. for the purpose of preventing the fulfillment of any legal obligations it might owe to the canneries under it, an action at law in the proper forum would afford relief, since an action at law for damages for anticipatory breach of the said contract would not restore to your petitioner the distribution facilities necessary to the moving of its commodities, but would leave your petitioner—as it and its associates are now left—subject to the dictation and control of the wholesale grocers; that in your petitioner's application for intervention, the contract between it and Armour & Co. is set out in full in paragraph 11 thereof, and the said contract, among other things, provides that in case governmental action materially interferes with the performance of the contract by Armour & Co., the said company should have the right to cancel and terminate its agreement by giving 60 days' written notice to your petitioner of its intention so to do, and should not be held liable for any loss resulting therefrom; that if the said consent decree be valid, the said Armour & Co. are thereby enjoined from carrying out its said contract with your petitioner, no matter what may have been the reasons of Armour & Co. for agreeing with the Attorney General to the consent decree in this cause; that if the said consent decree is void, and this court so declares, your petitioner will then be in position to assert its rights under the said contract; but if the said decree be valid, it constitutes a perpetual barrier against the assertion by your

petitioner of any rights under the said contract between your petitioner and the said Armour & Co.

16. Your petitioner further avers that the said consent decree of February 27, 1920, is in effect a contract between this court and the parties to this suit, regardless of the rights of any third parties, including particularly your petitioner; that this court has no power to contract, or allow others to contract, the exercise of its judicial functions to consenting parties before it, but its jurisdiction must rest exclusively upon the Constitution and laws of the United States and not upon contract or convention; that all Federal courts are creatures of written law; that all Federal courts are of limited jurisdiction; that the record in Federal courts must affirmatively show jurisdiction; that it is the duty of every Federal court to make sure that it has jurisdiction, and so soon as the absence of jurisdiction is noticed the case must be stopped, no matter how far it has gone; that a Federal court can entertain no suit except by authority of an express written enactment; that no Federal court can exercise any jurisdiction not given to the United States by the second section of the third article of the Federal Constitution; that neither Congress nor consent of parties can extend the jurisdiction of Federal courts beyond the Constitution grant; that Federal courts are careful to exercise no jurisdiction not clearly there; that Congress is always anxious to restrict, and not to enlarge, the jurisdiction of the Federal courts; that no inferior Federal court can exercise any jurisdiction except it can point to the particular act of Congress conferring such jurisdiction upon it; that the constitutional grant of judicial power is not self-executing; that Congress has never provided for the exercise of more than a part of the judicial power given by the Constitution; that unnecessary extension of the jurisdiction of Federal courts is undesirable; that Federal courts have no common law jurisdiction, civil or criminal (Rose, Federal Jurisdiction and Procedure, second edition, pp. 1-39); and that the said consent decree entered in this suit is therefore void on the face of the record, and should be so declared by this court.

17. Your petitioner further avers that the record in this cause shows a conflict of rulings on intervention; in that the National Wholesale Grocers' Association, and the Southern Wholesale Grocers' Association—whose name is now American Wholesale Grocers' Association—neither having any special interest in the subject matter of this suit, have been permitted to intervene herein by the order of this court, after full arguments by counsel and thorough consideration by the court; and the application of your petitioner, California Cooperative Canneries, having a special interest in the subject matter of this suit, has been denied, the presiding justices not being the same in the several instances mentioned.

18. By reason of the matters and things hereinbefore set forth, your petitioner should be accorded the right or privilege of intervention in this suit, for the protection of its rights in the premises.

Wherefore, the premises duly considered, your petitioner respectfully prays as follows:

1. That after due notice of this petition to all parties in interest, a rehearing may be granted to your petitioner on its application for leave to intervene herein.

2. That on such rehearing, the application of your petitioner for leave to intervene may be granted.

3. That on such rehearing and intervention being granted, the said consent decree of February 27, 1920, may be declared null and void, as beyond the jurisdiction, power, and authority of this court.

4. That your petitioner may have such other and further relief in the premises as may be just and proper.

CALIFORNIA COOPERATIVE CANNERIES,
By FRANK J. HOGAN, Attorney.

DISTRICT OF COLUMBIA, ss:

Frank J. Hogan, being first duly sworn, deposes and says that he is the attorney of the California Cooperative Canneries, the petitioner named in the foregoing petition for rehearing by it by him subscribed, and that he is duly authorized to sign the said petition and to make this affidavit; that the foregoing petition for rehearing contains the special matters or causes on which such rehearing is applied for; that the facts therein stated are true, and that the said petition is not filed for the purpose of delay.

FRANK J. HOGAN.

Subscribed and sworn before me this 10th day of January.

[SEAL.]

MARIE McDONALD,
Notary Public, District of Columbia.

**MEMORANDUM BRIEF ON BEHALF OF UNITED STATES OF AMERICA
OPPOSING APPLICATION OF CALIFORNIA COOPERATIVE CAN-
NERIES FOR REHEARING OF MOTION FOR LEAVE TO INTER-
VENE.**

In the Supreme Court of the District of Columbia. United States of America v. Swift & Co. and others. In equity, No. 37623. Memorandum brief of the United States of America in opposition to the petition of the California Cooperative Canneries for rehearing upon their petition for leave to intervene.

The California Cooperative Canneries have filed a petition for a rehearing of their petition for leave to intervene in the above-entitled suit. The original petition for leave to intervene, upon which it is now asked that this court grant a rehearing, was filed, and the purpose of the intervenor, as stated in said petition, was to come into this suit in order to question the validity of the decree which the court rendered on February 27, 1920, or to procure a modification thereof. The Morris group of defendants, including therein all of the corporation defendants as well as all individual defendants of such group, filed objections to the setting aside of this decree. The Cudahy Packing Co., another defendant, also filed objections to the setting aside of this decree. The National Wholesale Grocers' Association and the American Wholesale Grocers' Association (formerly Southern Wholesale Grocers' Association), both being permitted by this court to participate in the hearing of such petition, each filed answers to the petition of the California Cooperative Canneries for leave to intervene. The United States of America objected to the proposed intervention but thought no answer was necessary to properly raise the question of the rights of the California Cooperative Canneries to intervene and, therefore, filed no answer to their petition for leave to intervene. The court heard extended argument by separate counsel representing each of the following, namely: The California Cooperative Canneries, the Morris group of defendants, the Cudahy Packing Co., the National Wholesale Grocers' Association, the American Wholesale Grocers' Association, and the United States of America, upon this petition for leave to intervene. Briefs were then filed upon the question so raised. The court took the matter under consideration for such time as would enable it to give the careful consideration and deliberation to which a matter of this importance is entitled, and handed down a memorandum decision overruling the prayer of the petition for leave to intervene. No order upon such memorandum decision has as yet been entered. In this memorandum decision the court assigned as reasons for its conclusion, not one, but many reasons. The court heard argument, received briefs, considered and decided not only the technical question of the right of the California Cooperative Canneries to intervene, but also the question as to the merit of the contention of the California Cooperative Canneries that the decree was invalid and the merit of their alleged right to ask for a modification of the decree.

A petition for rehearing upon a petition for leave to intervene is rather an usual proceeding, and we have been unable to find any cases which are precedents for such a petition. However, we do not contend that a rehearing of a petition for leave to intervene should not be granted in any case, but we do contend that a rehearing should not be granted in this case. The only analogy by which we can be guided in this question is that which comes from petitions for rehearing upon original bills in suits of equity, and the authorities indicate that the causes for rehearing in such a situation are the same as the causes for a new trial in an action at law, namely: (1) For new and important material evidence discovered after the trial, and which could not have been discovered by the use of due diligence prior thereto; or (2) for errors of law apparent upon the face of the record. The petition for rehearing upon the petition for leave to intervene in this suit is based upon the contention that the decision of the court upon the petition for leave to intervene is erroneous because of matters of law appearing upon the face of the record in this case. The petition for rehearing does not urge the right to intervene to ask a modification of the decree. That was fully argued upon the hearing of the petition for leave to intervene, so we will not repeat our argument as to that. But the petition for rehearing is directed to the alleged invalidity of the decree. We earnestly urge upon the court that the contention of alleged invalidity of the decree presented by this petition for a rehearing is the same question which the court considered on the original petition for leave to intervene and after careful consideration decided it upon the argument and briefs duly presented to it. Some authorities not

cited upon the original argument are cited in the petition for rehearing. We also contend that all of the cases now presented in support of this contention were decided prior to the original argument upon the petition for leave to intervene and that counsel for petitioner has no right to ask for a rehearing because he was negligent in the original presentation of his case and trifled with the time of this court when he did not present all of his authorities of law at that time. This alone would justify the overruling of the petition for a rehearing. However, none of the authorities cited by counsel for petitioner, including these cited in the petition for rehearing and those which were not cited in the original argument, show that there was any error of law in the decision by this court upon their petition for leave to intervene. It was not deemed advisable or proper to incorporate in this memorandum the argument and authorities which were presented on the original petition for leave to intervene, as the court has already examined these and is familiar with them, but as counsel for the petitioner has again cited some of these same authorities, it is thought best to attach, as an exhibit to this brief, a copy of the brief filed by the Government upon the original petition for leave to intervene so that the court may have a handy reference thereto in the event he feels it necessary to reconsider these cases. We believe that these authorities are fully discussed and disposed of in the attached copy of our original brief.

We will proceed to consider and discuss only the allegations of the petition for a rehearing and authorities cited therein, all of which deal only with the alleged invalidity of the decree. We will not discuss the interest which the California Cooperative Canneries claims as the basis for their alleged right to intervene as they have not renewed that question in their petition for rehearing, and as such question was quite fully discussed upon the original argument we respectfully refer to the briefs therein filed covering such question.

Paragraphs 1 to 4, both inclusive, of the petition for rehearing are mere statements of conclusions which need not be discussed, as such conclusions depend upon the discussion in the subsequent part of such petition, all of which will be considered by us in the order in which they occur in the petition for rehearing.

Paragraph 5 states the contention that the decree is void both under the antitrust laws and under the common law because it enjoins the defendants from engaging in certain lines of business, which lines of business it is contended are lawful in themselves. We do not contend that the handling of unrelated commodities or the stockyard business is in itself unlawful. But it is a too familiar rule of law to require citation of authorities that an unlawful conspiracy or combination may consist of either doing a lawful thing by unlawful means or doing an unlawful thing by lawful means. The argument of opposing counsel seems to overlook entirely the fact that a perfectly lawful business may be used in an unlawful way and thereby become objectionable to the antitrust laws and may therefore be enjoined. The meat packers by this decree are enjoined from engaging in certain lines of business. The theory of the bill as well as of the decree was that these prohibited lines were used by the meat packers in gaining and maintaining a monopoly in the meat business, and that they were being used as a means to accomplish an unlawful result. It was properly within the power of the court to enjoin the continuation thereof, and as it was regarded that the continuation by the defendants in these lines of business would have the result of assisting them in maintaining a monopoly in the meat business, it was also proper to enjoin the defendants from engaging at all in such lines of business. *Swift & Co. v. U. S.*, 196 U. S. 375 at 396; *Monarch Tobacco Works v. American Tobacco Co.*, 165 Fed. 774 at 780 and 781.

We do not dispute the principles laid down in the cases cited by counsel for the California Cooperative Canneries in paragraph 5 of their petition for rehearing, but such cases are wholly inapplicable and, therefore, can not be considered as authority upon the questions here presented. The cases of *U. S. v. Addyston Pipe, etc., Co.*, 85 Fed. 271; *Dr. Miles Medical Co. v. John D. Park, etc., Co.*, 220 U. S. 373, 55 L. Ed. 502; *John D. Park, etc., Co. v. Hartman*, 153 Fed. 24, are all cases denouncing, under the Federal antitrust laws, contracts among private business interests and adjudging such contracts to be unreasonable restraints upon trade and commerce. The cases of *More v. Bennett*, 140 Ill. 69, 29 N. E. 888; *Tuscaloosa Ice Mfg. Co. v. Williams*, 127 Ala. 110, 28 So. 669; *Stewart v. Stearns, etc., Lumber Co.*, 56 Fla. 570, 48 So. 19; *Oliver v. Gilmore*, 52 Fed. 562; *Clemons v. Meadows*, 123 Ky. 178, 94 S. W. 13; *Kosciusko Oil Mill, etc., Co. v. Wilson Cotton Oil Co.*, 90 Miss. 51, 43 So. 435, as well as the text citations from ruling case law, all enunciate the old familiar rule that contracts between private business interests which unreasonably restrain trade and commerce are illegal at common law as the same are contrary to public policy. However, all of these acknowledge the principle that there may be contracts which are perfectly legal under certain circumstances, even though they do incidentally restrain trade and

commerce, if such restraint is not unreasonable in view of the lawful purpose to be accomplished. A few of the many distinctions between the cases cited and the case at bar are:

1. We do not consider that the consent decree is nothing more than a mere contract.
2. It is not a contract between private business interests.
3. It is not a contract between competitors.
4. It has not been shown to the court that the decree unreasonably restrains trade.
5. The purpose of its entry was to accomplish a lawful and worthy object.
6. It was entered to accomplish the very objects and purposes of the antitrust laws rather than to violate them.
7. It was entered to protect the public interest rather than to injure it.
8. It was entered to carry out and accomplish the public policy as announced by Congress in the antitrust laws rather than to accomplish a purpose contrary to such public policy.

Paragraph 6 of the petition for rehearing contends that the Attorney General had no authority to agree to such a decree, as the decree is invalid and contrary to the antitrust laws. Their argument upon this contention is predicated upon the theory that the decree is invalid and is in restraint of trade. Remove this hypothesis and the argument entirely fails. We have discussed this question of alleged invalidity above in this memorandum and will further discuss it later herein. The Attorney General has a very broad discretion to exercise in such matters. If this decree is in any sense a contract, it must be remembered that it has been given a judicial sanction by the court which entered it as a decree. It is quite certain that the Attorney General has authority to agree to any decree and ask the sanction of the court thereto which, in the exercise of his discretion, he feels will prevent monopolies and combinations in restraint of trade, and thus enforce the antitrust laws and protect the interests of the people of the United States. This we contend, as we have pointed out elsewhere herein, is exactly what the Attorney General did in this case. The question of the validity of the decree was also fully discussed upon the consideration of the original petition for leave to intervene, and the court is respectfully referred to the briefs then filed, it being felt that the court does not desire a repetition of that argument here.

But to go further, even if the Attorney General did have no authority to agree to this decree, what difference does it make—how does it affect the validity of the decree? None of the original parties thereto object, and we hesitate to infer, in the absence of an express allegation in the petition for rehearing, that there was fraud upon the part of the Attorney General in consenting to this decree, and in the absence of fraud, as was pointed out upon the argument of the original petition for leave to intervene, the court will not disturb such a consent decree. *Thompson v. Maxwell*, 95 U. S. 391 at 398.

In paragraph 7 of the petition for rehearing it is urged that the court has power to enjoin only unlawful acts and has not power to require defendants to wholly abandon and refrain from engaging in any certain business. Let us again call attention to the fact that the theory of the original bill in this suit, as well as the theory of the decree, is that the engaging by the defendants in a given line or lines of business is the means by which they acquire and maintain a monopoly and restrain trade and commerce in the meat business. In such a case the argument made by opposing counsel is without any force and effect. The discussion which we have presented with reference to paragraph 5 of the petition for rehearing is applicable also to paragraph 7. The case of *Swift & Co. v. United States*, 196 U. S. 375, instead of being an authority in support of the contention of the California Cooperative Canneries supports the contention of the Government that when any lawful business is used as a means to acquire and maintain an illegal monopoly and to restrain trade, then, under these circumstances, all of the legal means become parts of the whole unlawful plan and become tainted with that illegality and may, therefore, be enjoined. The cases of *N. Y., N. H. & H. Ry. Co. v. Interstate Commerce Commission*, 200 U. S. 361, 50 L. Ed. 515; *Southern Pacific Co. v. Colorado Fuel & L. Co.*, 101 Fed. 779; and *Privett v. Pressley*, 62 Ind. 491; 14 R. C. L. p. 310, par. 8, hold that injunctions should be directed against specific violations of law and should not be general and be a mere repetition of the general provisions of a statute. We do not question such a principle of law but assert that in the decree in this case the court has enjoined specific means used in the acquiring and maintaining of monopoly and such decree is therefore in exact accord with the law as announced in the decisions cited. The case of *U. S. v. Alger*, 62 Fed. 824, holds that the court may enjoin violations of the Sherman law and in contempt proceedings punish persons who violate such injunctions. It also deals with certain questions of technical defects in the bill and discusses the right of the court to punish persons not parties to the original bill. We can see no possible application of the questions so decided to the questions for which this case is cited as an authority.

In paragraph 8 of the petition for rehearing it is urged that this case stands as if it had been heard upon bill and answer and that all allegations of the answer are to be considered as true and that as the answer denies any violation of law by defendants and the consents to the entry of the decree stipulate that neither such consents nor the entry of the decree shall be considered as an admission or an adjudication that the defendants have in fact violated any law, all jurisdiction and authority of the court to render a decree is taken away. The cases of *Terral v. Burke Construction Co.*, 257 U. S. 529, 531; and *Iowa v. Illinois*, 147 U. S. 1, 7, are cited in support of this contention. These cases announce the rule that in a case heard on bill and answer the averments of the bill not denied by the answer and the averments of the answer are to be taken as true. Of course this proposition of law is correct, but the case at bar was not heard upon bill and answer. A decree was rendered by consent and the consent supplies the evidence necessary to support the decree and removes the necessity for any findings of fact. *Harniska v. Dolph*, 133 Fed. 158 at 160.

It should also be borne in mind that the decree does not find that there was no violation of law by the defendants, but merely provides that the decree shall not be considered an admission by defendants that they had violated any law and should not be considered an adjudication by the court that the law had been violated. Such a provision of course would protect defendants in other litigation brought by other parties plaintiff and this provision is almost an exact restatement of the provision of section 5 of the Clayton Act in regard to consent decrees under antitrust laws. It certainly does not amount to a finding that the defendants had not violated the antitrust laws.

Let us turn to paragraph 9 of the petition for rehearing. It is there contended, and we agree that it is correct, that courts of the United States are of limited jurisdiction; that the record must show jurisdiction; that there is no presumption of jurisdiction in United States courts and we do not question the authority of the cases of *Dred Scott v. Sanford*, 19 Howard 401; *Turner v. Bank of North America*, 4 Dallas 11; *Jackson v. Ashton*, 8 Peters 148; *Ex parte Smith*, 94 U. S. 456; and *Robertson v. Cease*, 97 U. S. 648, cited to sustain the above propositions. We agree further that all such facts necessary to sustain jurisdiction are presumed in a consent decree, and we earnestly contend that the bill alleges all necessary facts to sustain jurisdiction in this court and as has been shown in our discussion of paragraph 8 of the petition for rehearing, the decree does not in any way destroy the effect of the facts set out in the bill nor does it remove the presumption created by the consent. A great list of authorities is cited at the close of paragraph 9 of the petition for rehearing in support of the contentions made in such paragraph. We do not question the authority of a single one of these cases. They all state well-known principles of law which we do not dispute, but they decide nothing in this case because they are wholly inapplicable.

A brief statement of the principles of law for which they stand will show that they are altogether lacking in authority in the case at bar. Article III, section 2, of the United States Constitution, defines the judicial power of the United States. The case of *Muskrat v. United States*, 219 U. S. 346, 55 L. Ed. 246, holds that neither the legislature nor the executive branches could assign any other than judicial duties to the United States courts, and that the judicial power is limited by the Constitution and does not extend beyond it. *Fairchild v. Hughes*, U. S. Adv. Ops. No. 10, p. 260, April 1, 1922, holds that courts have no jurisdiction unless in a "case or controversy" as set out in the Constitution. *Windsor v. McVeigh*, 93 U. S. 274, 23 L. Ed. 914, holds that courts once getting jurisdiction can decide all questions in the case, but that courts are limited in the extent and character of judgments and can not transcend the power conferred on them. *Meguire v. Corwine*, 101 U. S. 108, 25 L. Ed. 899, holds that a contract contrary to a public policy is void and where the taint exists affects it fatally in all its parts. *Reynolds v. Stockton*, 140 U. S. 254, 35 L. Ed. 464, defines jurisdiction and states its elements and further says that a judgment must be responsive to the issue raised by the pleadings. *United States v. Trans Missouri Freight Ass'n.*, 58 Fed. 58, holds that where a suit is heard on bill and answer the allegations of the bill which are denied by the answer are to be taken as disproved and the averments of the answer stand admitted. In *Kreider v. Cole*, 149 Fed. 647, an effort had been made by arrangement between the parties to give the Federal court jurisdiction because of diversity of citizenship. The suit was one of which the court would not otherwise have had jurisdiction. The court permitted this question to be raised, and decided against its own jurisdiction in order to protect the court from imposition. This case was fully discussed upon the original argument. The cases of *Peoples Bank v. Gilson*, 161 Fed. 286, 291; *Watson v. Blair*, 74 So. 317 (Fla.), and *Griffith v. Henderson*, 45 So. 1003 (Fla.), all deal with the question of what is considered as true when cases are heard on bill and answer or bill, answer, and replication. *Munday v. Vail*, 34 N. J. 418, holds that a decree in equity, which is entirely

aside from the issue raised in the record, is invalid and a nullity. *State v. Nast*, 106 S. W. 563, 567, 568 (Mo.), holds that parties can not confer jurisdiction over subject matter by consent, and that the judgments must be responsive to the issues. *Israel v. Reynolds*, 11 Ill. 218, 223, holds that where there is no issue a trial is a nullity and that the court is not at liberty to assume a different state of facts in defiance of the records, which declare to the contrary. A great list of textbook citations is also set out here and all bear upon the same propositions, as have been stated in the above cases. As the Government does not deny or question any of these cases or the general principles of law which are announced in them and in the textbooks cited, we deem it unnecessary to prolong this discussion with reference to them. It is quite apparent that the case at bar does not fall under any of these authorities.

In paragraph 10 of their petition for rehearing the California Cooperative Canneries urge that the court has no power to impose any penalties other than those provided in the statute, and that the injunctions contained in the decree in the case at bar are not authorized by the antitrust laws, but are in excess of such authority, and that the consent decree is therefore beyond the jurisdiction, power, and authority of the court and is void. In the first place, none of the injunctions or prohibitions contained in the consent decree are in any sense penalties. They are prohibitions to do things in the accomplishing of an unlawful act. Further than this, we have shown in our discussion of paragraph 5 of the petition for rehearing that the court has enjoined in the decree precisely what the antitrust statutes and the decided cases authorized it to enjoin; certainly no more than authorized and perhaps much less. Another long list of cases has been cited in support of the contentions in paragraph 10. These cases also announce general and well-settled principles of law, but are wholly inapplicable to the situation existing in the case at bar. We do not question the principles of law which these cases lay down and a brief statement of them will show they are inapplicable. *Windsor v. McVeigh*, 93 U. S. 274, 23 L. Ed. 914, was cited under paragraph 9 and we there stated its holding. *Campbell v. Porter*, 162 U. S. 478, 40 L. Ed. 1044, holds that it is immaterial which party raises a question of jurisdiction, for being a question of jurisdiction it would be the duty of the court of its own motion to take notice of it. *Cooper v. Reynolds*, 10 Wall. 308, 19 L. Ed. 931, defines what is meant by jurisdiction over the subject matter and says such jurisdiction must be found in the general nature of the court's powers or in authorities specially conferred upon it, and that judgments rendered without jurisdiction may be collaterally attacked. *Nash v. Williams*, 20 Wall. 226, 22 L. Ed. 254, at 257 and 258, also defines jurisdiction, and holds that where the court has jurisdiction its decrees can not be impeached collaterally except for fraud. *United States v. Walker*, 109 U. S. 258, 27 L. Ed. 927, holds that an order in excess of a court's jurisdiction is void and can be attacked collaterally. In *re Sawyer*, 124 U. S. 200, 31 L. Ed. 402, holds that when a court has jurisdiction it may decide all questions in the case and its judgment is binding upon all other courts, but if the court acted without jurisdiction its judgments are nullities and are void. *Ex parte Neilson*, 131 U. S. 176, 33 L. Ed. 118, holds that where a court is without authority to pass a particular sentence such sentence is void. *Ex parte Cuddy*, 131 U. S. 280, 33 L. Ed. 154, holds that courts of the United States are of limited jurisdiction and their proceedings are erroneous if jurisdiction is not shown upon the face thereof.

The case of *United States v. American Tobacco Co.*, 191 Fed. 371, 383, is an opinion by the lower court upon the contentions of the various parties regarding the carrying out of the decree of the Supreme Court in the *American Tobacco Co.* case and the mandate issued by the Supreme Court to the lower court, and indicates throughout that the court will not exceed the powers conferred upon it by law and by the mandate of the Supreme Court in carrying out such mandate regardless of the contentions of any of the parties thereto. *Kreider v. Cole*, 149 Fed. 647, has been heretofore discussed in this as well as in the brief on original argument which is attached hereto. *Powhatan Coal & C. Co. v. Ritz*, Judge, 60 W. Va. 395, 404, 56 S. E. 257, and *Chapman v. Parsons*, Judge, 66 W. Va. 307, 66 S. E. 461, all held that if in granting an injunction a court takes a step beyond the powers conferred upon it by law the act is one in excess of its jurisdiction. *Paul v. Willis*, 69 Tex. 261, 7 S. W. 357, holds that a void judgment may be collaterally attacked and lapse of time can not aid it or give it any force. *Lewis v. Allred*, 57 Ala. 628, states that jurisdiction of subject matter and parties is essential to every judgment or decree and that want of jurisdiction is fatal thereto whether it is assailed collaterally or directly and that in courts of limited jurisdiction the record must disclose material facts upon which jurisdiction depends. If such facts do not exist the decree is a nullity. *Folger v. Insurance Co.*, 99 Mass. 267, holds that judgments in excess of jurisdiction are void; that the presumption is in favor of the jurisdiction of courts of general jurisdiction but this is not conclusive. *Pithian v. Monks*, 43 Mo. 502, holds that where there is no authority in a court to act,

its proceedings are null and void and if judgment is void question may be raised in collateral proceedings. *Seamster v. Blackstock*, 83 Va. 232, 2 S. E. 36, and *Anthony v. Kasey*, 83 Va. 338, 5 S. E. 176, both hold that even if court has jurisdiction of subject matter and parties, but in progress of a case it exceeds its jurisdiction, such judgments are void and may be attacked directly or collaterally. Textbooks cited are along the same line as the cases just discussed and further discussion of such general proposition is not at all necessary.

Paragraph 11 of the petition for rehearing contends that the jurisdiction of Federal courts is derived from the Constitution and laws of the United States and that consent of the parties can not confer any powers not so given in such Constitution and laws. We agree that consent can not give a court of the United States jurisdiction of the subject matter although it may give the court jurisdiction of the parties, but the latter proposition is not material for our discussion. We also agree, as urged in paragraph 11 of the petition for rehearing, that the record in a suit should show authority of the court to proceed to judgment or decree and we do not question the correctness of the principles of law stated in the citations upon this proposition, namely, "The law restated," introductory chapter, pages 12, 13, and 14, per Mr. Justice Stafford; 1 *High on Injunctions* (4th Ed. p. 48, par. 31); 1 *Hughes on Procedure*, pp. 22, 23. However, we have heretofore shown in this memorandum brief that the court has jurisdiction of this suit and authority to enter the decree which was entered and that the record in the suit sustains such jurisdiction and authority. Therefore, the argument set out in paragraph 11 is inapplicable. Another long list of cases, together with some textbook citations, is set out in support of the contentions of this paragraph. Again we do not question the correctness of any of these decisions, except one, which will be hereinafter pointed out and which is not material as we have shown that the propositions of law for which these authorities stand are not applicable to the case at bar. We will again briefly refer to the general principles decided in such citations. *Fairchild v. Hughes*, U. S. Adv. Ops. No. 10, p. 260, April 1, 1922, has been discussed in connection with a previous paragraph. *Sevilleta, etc., v. Bolen Land Grant*, 242 U. S. 595, 61 L. Ed. 514, holds that parties can not by their acts or by consents enlarge the powers of a court as such powers are defined in the act creating it. *Muskat v. United States*, supra, has been discussed in connection with a prior paragraph hereof. *Harding v. Harding*, 198 U. S. 317, 49 L. Ed. 1066, holds that a judgment entered upon consent has the same force as a judgment entered in invitum and is entitled to full faith and credit in courts of another State.

This case also sets out that decrees of courts of chancery in respect of matters within their jurisdiction are as binding and conclusive upon the parties and their privies as are judgments at law and a decree by consent in an amicable suit has been held to have an additional claim to be considered final. Decrees so entered by consent can not be reversed, set aside or impeached by bill of review, or bill in the nature of a bill of review, except for fraud, unless it be shown that consent was not in fact given, or something was inserted as by consent which was not consented to. It is the general doctrine that such a decree is not reversible upon an appeal, or writ of error, or by bill of review for error. *Pittsburg C. & St. I. Ry. Co. v. Ramsey*, 22 Wall. 322, holds that consent of the parties can not give the courts of the United States jurisdiction but the parties may admit the questions of facts which show jurisdiction and the courts may act judicially upon such admission. *Kreider v. Cole*, supra, has been discussed in the original brief as well as previously in this memorandum brief. *State v. Nast*, supra, has also been previously discussed in connection with another paragraph. *State v. Muench*, 217 Mo. 124, 117 S. W. 25, defines jurisdiction and holds that any decree of a court beyond the issues is void; also that an O.K. upon the decree by counsel does not remedy it.

The court doubts the authority of counsel to so approve. *Marietta v. Henderson*, 121 Ga. 399, 49 S. E. 312, holds that a consent decree is no more sacred or of any greater validity than any other decree; that a judgment binds only as to the matters involved in the suit; that where a new state of facts arises after entry of a decree, even though the decree by consent, a petition praying for the granting of an order that the decree is no longer binding should be entered. We do not agree with the propositions as laid down in this case but as they are not material we feel it unnecessary to discuss them further. *Sennette v. Police Jury*, 56 So. 653 (La.), holds that consent can not give jurisdiction and where a jurisdictional question exists the court will consider it although neither party raises it. The textbook citations are along the same lines as the cases above discussed and we shall not enter into a further discussion thereof.

In paragraph 12 of the petition for rehearing it is urged that the language of the decree providing that the same shall not constitute or be considered an admission or an adjudication that the defendants have violated any law, was a vital condition upon which the consent decree was entered and can not be disregarded or read out

of the decree. We do not attempt to read it or any other part out of the decree in any of the contentions that we make in this case. Therefore, the citations in support of this proposition are wholly immaterial and inapplicable and need no further discussion.

In paragraph 13 of the petition for rehearing it is stated that when a court has exceeded its jurisdiction it should take appropriate steps to correct its action whenever the matter is called to its attention by any party or by amicus curiae, or it should act sua sponte. The cases of *Campbell v. Porter*, 162 U. S. 478, 40 L. Ed. 1044; *Kreider v. Cole*, 149 Fed. 647, and some textbook citations are given in support of these contentions. These cases have been discussed previously in this memorandum brief and the contention in paragraph 13 in support of which they are cited is not applicable if the court has jurisdiction. If the court has exceeded its jurisdiction the United States wants the same corrected without any delay, as the interests of the public which it represents are vitally affected, but as we have heretofore shown that the court has neither exceeded its jurisdiction or authority we believe this contention in paragraph 13 is wholly inapplicable.

In paragraph 14 it is stated that as the decree is void lapse of time can not validate it. We do not urge that lapse of time can remedy a void decree, but this argument and the cases cited in support thereof are wholly inapplicable because if the decree is not void, a question which we have fully discussed heretofore in this memorandum, then the argument of lapse of time is of no effect.

Paragraph 15 discusses the interests of the California Cooperative Canneries, which it is contended gives it a right to intervene herein. As this question was so fully discussed and argued upon the original hearing of the petition for leave to intervene and no additional authorities are cited in the petition for rehearing, we refrain from repeating what was set out in our brief upon such original hearing and call the court's attention thereto in the copy of such brief which is attached hereto.

Paragraph 16 of the petition for rehearing is but a summary of the argument advanced by the California Cooperative Canneries in a previous paragraph of such petition for rehearing, and the correctness of paragraph 16 depends upon the correctness of the contention made in such previous paragraph. The comments of the United States in this memorandum brief with reference to these previous paragraphs of the petition for rehearing fully dispose of paragraph 16 and no further discussion is necessary.

Paragraph 17 of the petition for rehearing alleges an inconsistency of rulings by this court in permitting the National Wholesale Grocers' Association and the Southern Wholesale Grocers' Association to intervene and in denying such right to the California Cooperative Canneries. This was quite fully discussed on argument of the petition for leave to intervene and it is only necessary to now again point out that the court in that connection did not decide the legal right of these associations to intervene but merely stated that if any move for a modification of the decree was made it would hear these associations; also that there is quite a difference between asking the right to be heard in court to support and sustain the action of the court and to come into court for the purpose of tearing down and destroying what the court has done, and ousting the court's jurisdiction, it being recalled that equity rule 37 prescribed that intervention shall be in subordination to and recognition of the propriety of the main proceeding, and rule 15 of the equity rules of the Supreme Court of the District of Columbia is not in conflict therewith.

For the reasons herein set forth the United States earnestly contends that the California Cooperative Canneries is not entitled to rehearing upon its petition for leave to intervene, and is not entitled to be granted leave to intervene by this court, and the United States further contends that the decree entered in this suit on February 27, 1920, is and was within the jurisdiction, power, and authority of this court and is valid and legal in all respects.

Respectfully submitted.

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MEMORANDUM IN BEHALF OF NATIONAL WHOLESALE GROCERS' ASSOCIATION OF THE UNITED STATES IN OPPOSITION TO THE APPLICATION OF CALIFORNIA COOPERATIVE CANNERIES FOR A REHEARING OF ITS MOTION TO INTERVENE, DATED FEBRUARY 8, 1923.

In the Supreme Court of the District of Columbia. United States of America v. Swift & Co., Morris & Co., Armour & Co., Wilson & Co., Cudahy Packing Co., et al. In equity, No. 37623. Memorandum in behalf of National Wholesale Grocers' Association of the United States in opposition to the application of the California Cooperative Canneries for a rehearing of its motion to intervene.

On April 20, 1922, the California Cooperative Canneries moved this court for leave to intervene in this action for the purposes set forth in its petition, namely, of moving to vacate or modify the final decree of this court, which was entered on February 27, 1920, on the application of the United States of America and on the filed written consent of all the defendants.

The application came on for a hearing on June 14, 1922, and an entire day was consumed in oral argument in behalf of such application and in opposition thereto. Extensive briefs were filed in behalf of various parties.

On October 16, 1922, an opinion was filed overruling the motion to intervene. The court stated in its opinion that the decree was valid and that if any rights of the California Cooperative Canneries had been violated by reason of the entry of said decree it had a proper remedy in an action at law against Armour & Co.

No order has yet been entered pursuant to this opinion, but after several months the petitioner now moves for a rehearing. The application for a rehearing does not claim that all or any of the points now urged were not fully argued, briefed, and considered, but is based on the fact that the decision reached by the court with respect to these matters was erroneous. In the application for a rehearing the following statement is made with respect to the court's decision (*the italics being ours*):

"2. *The said opinion briefly sets out the claims of your petitioner, and then considers the same, and upon such consideration the court bases its decision that your petitioner's application for leave to intervene should be overruled.*

"3. Your petition further avers that the several grounds upon which the court bases its decision do not support the same, and the denial of your petitioner's application for leave to intervene is erroneous, and operates grievous and irreparable injury to your petitioner."

It is readily apparent, therefore, that the petitioner seeks merely to have the court again consider the same points which have already been urged and that no contention is even raised that the petitioner has any new points to urge or that any old point has been overlooked. The petitioner merely seeks to obtain a review by the court of its previous action instead of taking an appeal.

The National Wholesale Grocers' Association of the United States opposes this application for a rehearing on the following grounds:

1. An application for a rehearing should not be granted where it is merely an application for leave to reargue the case on the same grounds already urged. Before a rehearing is granted, it should appear either that the court has overlooked some decisive point and failed to consider same, or that some new decision or circumstances since the case was argued so changes the situation as to justify a rehearing.

2. Nothing is now urged by counsel for petitioner which was not urged in his previous application and fully argued, briefed, and considered. The petitioner claims that the decision of the court was erroneous, and in such case the proper remedy is to appeal.

3. The application for a rehearing merely restates the grounds previously urged by the petitioner as making the decree invalid. The arguments and briefs heretofore filed fully disposed of these contentions and show that they are untenable and that on the contrary the decisions fully establish the validity of this decree.

I. The petitioner fails to come within the well-established rules governing the allowance of a rehearing.

While the granting or refusing of a rehearing rests in the discretion of the court, there are certain well-established principles governing such applications. These principles have frequently been stated by various courts in established rules governing

such applications. Such rules generally provide that the application for a rehearing must be filed promptly after the original decision and that it must show that in this decision certain decisive points were overlooked or that some new circumstance changes the conditions and justifies a rehearing. The policy is well settled that where an application for a rehearing is nothing more than an application for leave to reargue the case on the same grounds it should be denied. Such a rule is founded on a sound policy that a party is entitled to one fair chance to present his case and no more; otherwise there would be no end to such applications for repeated rehearings. The defeated party always has his remedy against an erroneous decision in an appeal.

For example, the present rule of the United States Supreme Court on rehearings is as follows:

"RULE XXX.

"Rehearing.—A petition for rehearing after judgment can be presented only at the term at which judgment is entered, unless by special leave granted during the term; and must be printed and briefly and distinctly state its grounds, and be supported by certificate of counsel; and will not be granted, or permitted to be argued, unless a justice who concurred in the judgment desires it, and a majority of the court so determines."

The rule in the Supreme Court of the District of Columbia court appears to have been well established ever since *Boucher v. Boucher* (3 MacArthur 453, 1877), in which the court considered and refused a motion for a rehearing. Judge Wylie said at page 454:

"It seems from this motion as if the practice in regard to applying for a rehearing was unsettled. That is not so. The reasons assigned for a rehearing in this case were all argued before the court and passed upon at the hearing. No facts and no views are now presented which were not then fully considered and decided, and a simple motion is now made to rehear the case as if it were a matter of course."

In *Hein v. Pungs* (9 App. D. C. 492), the Court of Appeals for the District of Columbia expressed its attitude toward petitions for rehearing as follows by Judge Morris, at page 495:

"As we have intimated, we can not sanction the indiscriminate practice of filing motions or petitions for a rehearing—such motions in the future will receive but scant consideration unless it is made very plainly to appear that the questions raised by them could not well have been raised at an earlier stage of the proceedings, or that the cause of substantial justice could not be subserved without their consideration."

In a very recent case of the United States District Court of Georgia, *Swann v. Austell*, 257 Fed. 870, Judge Newman considered a situation essentially the same as that presented here, namely, an application for a rehearing on the same grounds as those contained in the original application, and in denying the application he said, at page 870:

"I have examined the petition for rehearing, and especially the brief of counsel for plaintiff, which is very elaborate and well gotten up, but which simply makes the questions which were made in the original hearing before me, which was argued at length by able counsel for several days, and especially with a perfect knowledge of the case and perfect familiarity with the law of the case by counsel for the plaintiff.

"As I have just stated, while it is considerably elaborated, there is nothing new in this motion for a rehearing. Every question made in it seems to have been passed upon by the court in disposing of the original case. There is not a single ground for rehearing which was not a ground presented for a right to a decree by counsel arguing the case originally. The matters are presented in a somewhat different way probably, certainly somewhat more thoroughly than they were in the original briefs and arguments; but there is not a new proposition, so far as I can see, in the motion for rehearing, or one that was not presented in the original case, certainly not a ground which is to me meritorious.

"It is well understood, of course, that a motion for a rehearing should show either newly discovered evidence or some manifest misapprehension on the part of the court as to the law of the case or some mistake as to the facts involved. Nothing of this sort appears, so far as I can see, in this well-prepared brief of counsel acting for the plaintiff or in the oral argument before the court. As stated, it presents the same question heretofore thoroughly argued and very carefully considered by the court."

II. No new point is raised in the application for a rehearing.

As has been pointed out, it is frankly admitted in the application for a rehearing that the opinion of the court recites the claims of the petitioner and considers same. The grievance is not that petitioner's claims were overlooked, but that the decision was adverse to the petitioner after its claims were considered. An examination of the application for a rehearing and of the original petition for intervention and of the argument of petitioner's counsel and his memorandum in support of the application for

intervention shows that exactly the same grounds are now urged as were urged before. These may be briefly summarized as follows:

1. The court did not have jurisdiction to enter a decree which prohibited the defendants from carrying on a certain business. (Original petition, pp. 38, 53, 60, 61; argument of Mr. Hogan, pp. 15, 29, 226, 227; memorandum of Mr. Hogan, heading 2.)

2. The provision contained in the decree that the decree was not deemed to be an adjudication that the defendants had violated the law deprived the court of jurisdiction to enter any decree. (Original petition pp. 27, 28, 38, 60; argument of Mr. Hogan, pp. 11-14, 44; memorandum of Mr. Hogan, heading 3d.)

3. The petitioner has no remedy at law. (Original petition, p. 7; Mr. Hogan's argument, pp. 217-219.)

We believe that practically all of the grounds for attacking the decree and in support of the alleged right of the petitioner to intervene fall under one of these heads, and all of these points were urged in the original arguments of counsel for the petitioner and in his memorandum. While it is true that some additional cases are cited, they are no more applicable to the present situation than those originally referred to. Furthermore, none of the additional cases cited have been decided since the date of the original argument.

The opinion of the court shows that all of the points on which the claim for a rehearing was based received the careful attention of the court. The court stated in its opinion that—

"No recital of facts upon which the decree is based is necessary.

"The refusal of the defendants to admit any violation of the law may well have been a precaution against the use of such admissions in a criminal prosecution.

"The parties may compromise their differences and a consent decree as between them is certainly of fully as binding force as a decree rendered after a full hearing on the facts.

"That such a decree is entered pursuant to an agreement made prior to the bringing of the suit does not in my opinion render the decree less effective, where the court has not been, by any deception as to the facts, induced to enter a decree which may be injurious to third parties or in excess of the jurisdiction of the court.

"If the decree was entered into by Armour & Co. for the purpose of preventing the fulfillment of any legal obligations it might owe to the canneries under it, an action at law in the proper forum would afford relief."

It is therefore plain that the petitioner has already had its day in court on the matters hereinabove.

III. The consent decree is in all respects valid and binding, and the decision of the court on the application to intervene is correct.

Inasmuch as the validity of the decree has already been fully argued and briefed, we will not presume to again set forth the authorities with respect to this point. The matter has already been fully covered in the argument and we will merely refer to the brief called herein the "court brief," which was submitted in behalf of the National Wholesale Grocers Association of the United States in opposition to the original application, and also to the brief called herein the "interdepartmental brief," filed before the interdepartmental committee and also submitted to this court on the original application of the California Cooperative Canneries to intervene. We merely refer to the pages of those briefs showing the validity of the decree:

(a) "The court had jurisdiction of the parties and the subject matter." (Court brief, p. 67; interdepartmental brief, pp. 48, 49.)

(b) "The court had jurisdiction to enter this decree which did not exceed its powers as it had full complete power to stamp out and prevent such unlawful acts as were alleged in the petition and could adapt the decree to the exigencies of the situation." (Court brief, pp. 57, 58; interdepartmental brief, pp. 50-68.)

(c) "The provision in the decree that it should not be considered an adjudication that defendants had violated any law did not deprive the court of jurisdiction." (Court brief, pp. 59, 60; interdepartmental brief, pp. 80-84; and see in particular *Stafford v. Wallace*, 66 L. Ed. (U. S. Supreme Court) 469, where the court in discussing this decree made specific reference to this saving clause without intimating that such clause in any way invalidated or impaired the decree.)

(d) "The petitioner shows no interest entitling it to intervention and no lack of an adequate remedy for any violation of its rights." (Court brief, pp. 52-56.)

(e) "The decree has especial sanctity because it was entered on consent of the parties and can not be vacated or modified without their consent in the absence of fraud upon the court." (Court brief, pp. 28-49; interdepartmental brief, pp. 68-75.)

For the convenience of the court we are submitting herewith copies of the court brief and interdepartmental brief.

IV. There is no inconsistency between the rulings on the different applications for intervention in this proceeding.

In the application for a rehearing the petitioner claims there is a conflict of rulings between the order permitting the wholesale grocer associations to intervene and that denying intervention to the petitioner. No such conflict exists. The two grocer associations were allowed intervention for the limited purpose only of being heard in opposition to any modification of the decree which would deprive the interveners of the protection which the decree secures to them. In other words, their standing is merely that of *amici curiæ*, and the court refused intervention to any greater extent. At page 27 of its brief in opposition to the application to intervene the National Wholesale Grocers' Association stated that it did not object to the petitioner being allowed to intervene with the same limitations imposed upon it, namely, to be heard upon any proposed modification of the decree which would deprive the petitioner of the rights which the decree now secures to it.

The petitioner, however, does not seek any such intervention. It asks to be allowed to intervene for the purpose of taking entire control of the proceeding and of having the decree declared "null and void as beyond the jurisdiction, power, and authority of this court." (See pp. 49-52 of the court brief on the intervention of the grocers' association being a precedent for the denial of this application.)

As has been pointed out by this court, the petitioner has no interest which would justify any such intervention being granted to it, nor is there any authority of law for allowing an outside party to be given such a position in this proceeding.

V. The application for rehearing should be denied.

Dated February 8, 1923.

Respectfully submitted.

BREED, ABBOTT & MORGAN,
Attorneys for National Wholesale Grocers' Association of the United States.

WILLIAM C. BREED,
SUMNER FORD,
Of Counsel.

ANSWER AND OBJECTIONS OF AMERICAN WHOLESALE GROCERS' ASSOCIATION TO PETITION OF CALIFORNIA COOPERATIVE CANNERIES FOR A REHEARING OF ITS MOTION FOR LEAVE TO INTERVENE.

In the Supreme Court of the District of Columbia. Equity. No. 37623. United States of America v. Swift & Co., Armour & Co., Morris & Co., Wilson & Co., Cudahy Packing Co., et al. Answer and objections of American Wholesale Grocers' Association et al., to petition for rehearing filed by California Cooperative Canneries, January 19, 1923.

Come now American Wholesale Grocers' Association, Henry G. Sears Co., John Hoffman & Sons Co., Mason, Ehrman & Co., J. M. Radford Grocery Co., Southern Distributing Co., Hall Grocery Co., Albert Mackie & Co. (Ltd.), The Hicks Co., W. D. Cleveland & Sons, Rapides Grocery Co., and Oliver Finnie Grocery Co., and answering and objecting to the granting of the petition of California Cooperative Canneries filed herein on January 19, 1923, seeking a rehearing on the opinion of this court, entered in the above-styled case on the 16th of October, 1922, say:

1, 2, 3. These interveners admit the correctness of the allegations of paragraphs 1 and 2 of said petition of said California Cooperative Canneries, and deny paragraph 3 of said petition.

4. Referring to paragraph 4 of said petition, interveners named above admit that said California Cooperative Canneries made the contention therein stated, but these interveners deny the correctness of the stated contentions.

5. Answering paragraph 5 of said petition of said California Cooperative Canneries, the interveners hereinbefore named respectfully refer to the decree entered in this case on February 27, 1920, for a full and accurate statement of the provisions thereof; but the interveners deny that said decree or any part thereof is erroneous or in violation of any law, statutory or common, and they deny that the said decree is against public policy.

With specific reference to the cases cited by the said California Cooperative Canneries at the end of paragraph 5 of its said petition, these interveners respectfully submit:

Substantially petitioner in the cases referred to beginning with that of *United States v. Addyston Pipe Co.*, 85 Fed. 271, and concluding with the text 19 R. C. L. p. 126, seek to establish the principle of law that covenants, to go out of business, must be ancillary to the main purpose of a lawful contract and necessary for the protection of the covenantee. With such a principle and statement of the law these interveners are not in disagreement. Such a principle, however, has no application to the facts in the instant case.

Throughout the petition for rehearing the petitioner confuses jurisdiction with procedure. It is not claimed by petitioner that this court is without jurisdiction to enjoin monopoly and restraints of trade, nor is the claim definitely presented that attempts to monopolize and tendencies to restrain trade may not be stopped before they become effective. The antitrust statutes specifically confer jurisdiction but seemingly the petition for review is based on the fallacy that the court lost jurisdiction because the allegations of the original bill were denied. The contention, vaguely made but nowhere in the petition definitely stated, means just this: "It was jurisdictional error to enter a decree by consent so long as the allegations of the bill remained denied." When the contention of the petitioner is thus reduced to a definite statement, the fallacy becomes obvious. If proof were required, which it was not when by consent it was waived the action of the court was merely an error in procedure. Such error must be corrected by appeal within the time provided by law or by bill of review, as authorized by equity rule 62 of this court. Neither of these methods having been adopted, the decree can not be set aside after the expiration of the term at which it was entered, nor in any event can a stranger to the decree take advantage of error, had there been error.

It is not necessary to take the time of the court to analyze each of the citations in paragraph 5 of the Canneries' petition. Brief reference, however, may be made to one or two of the illustrative cases.

The *Addyston Pipe* case dealt with contracts having as their purpose effectually to restrain competition, and which tended to and did create a monopoly. While the court discusses the general principles of sales of businesses and covenants to refrain

from continuing the particular business which was the object of the sale, the whole case shows that such agreements as were there under discussion to refrain from doing a certain business were with the definite purpose of restraining interstate trade. In the same case on appeal the Supreme Court states this fact very clearly, and says:

"While no particular contract regarding the furnishing of pipe and the price for which it should be furnished was in the contemplation of the parties to the combination at the time of its formation, yet it was their intention, as it was the purpose of the combination, to directly and by means of such combination increase the price for which all contracts for the delivery of pipe within the territory above described should be made, and the latter result was to be achieved by abolishing all competition between the parties to the combination."

See the case in the Supreme Court reported, 175 U. S. 211, 240; 44 L. Ed. 136, 147. The Addyston Pipe case is explained and limited in the case of *Anderson v. U. S.*, 171 U. S. 604, 617; 43 L. Ed. 300, 306.

The *Dr. Miles Medicine Co.* case, 200 U. S. 373; 55 L. Ed. 502, is another case where the agreements involved, as stated by the Supreme Court, "had for their purpose the control of the entire trade."

The case of *John D. Park v. Hartman*, cited by the Canneries, is a parallel case to the *Dr. Miles Medicine Co.* case. Similarly it may be shown that none of the cases relied on have application to the issues here, where the consent decree was to prevent restraint of trade and monopoly; and not as were the agreements in the *Pipe and Medicine* cases to effectuate such restraint and such monopoly. The instant case is more analogous to the decree in the case of *U. S. v. American Tobacco Co.*, 221 U. S. 106, 188; 55 L. Ed. 663, 697, where in discussing the decree that should be entered the Supreme Court spoke of a disintegration of the several connected corporate businesses and pointed out that it might be necessary "by way of an injunction restraining the movement of the products of the combination into channels of interstate or foreign commerce, or by the appointment of a receiver, to give effect to the requirements of the statute."

What is here involved is that which is specifically authorized to be enjoined by the acts of Congress. The Sherman antitrust law, section 2, makes guilty "every person who shall monopolize or attempt to monopolize."

Section 4 of the same statute authorizes injunctions "to prevent and restrain violations of this act."

Attempts may be prevented before they become successful.

When there is considered the allegations of the original bill filed in this cause, the findings by the Federal Trade Commission, the facts set out in the intervention filed by the American Wholesale Grocers' Association, and the facts stated in the committee's report on Senate Resolution 211, referred to on the hearing of this petition, it is clearly shown that there was an attempt to monopolize, if not actual monopoly of the distribution of food products, by the defendants in this case.

In the Clayton law, section 3, there is further authority to seize him who attempts to violate the law and stop him before his attempt is successful. Section 3 of the Clayton law, in so far as it is here applicable, reads:

"That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to * * * make a sale or contract for sale of goods, * * * for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia * * * where the effect of such * * * sale or contract for sale * * * may be to * * * tend to create a monopoly in any line of commerce."

What this court did in the decree of February 27, 1920, and what your honor here presiding did in your opinion of October 16, 1922, was merely to enforce the provisions of the antitrust laws, and the same rulings would have been appropriate with the proof indicated in the documents aforesaid had the decree been entered after hearing instead of by consent.

It certainly does not weaken a decree that the defendants consented to its entry. If the allegations and the findings of the Federal Trade Commission are true, then even though defendants had contested the entry of any decree, it would have been right and proper to have entered the decree of February 27, 1920. All the court did here was to stop before it became fully successful the attempt to create a most dangerous monopoly; and the defendants, by agreeing to limit their business to that which was legitimately within the scope of their respective enterprises, were as stated by the court in *Oliver v. Gilmore*, 52 Fed. Rep. 562, 567, adapting their businesses to "the line of the modern division of labor" with the result, as further stated by the court, to "prove of advantage to the community."

6. For answers to paragraph 6 of said petition for rehearing interveners hereinbefore named deny the same and say that the Attorney General, under statutes hereinbefore

copied, had authority and it was his duty to stop the defendants from their attempted monopoly of the food products of the country; that if it were necessary, as the allegations showed it was, that there should be a division of labor and a discontinuance by defendants of some parts of their business in order to fully enforce the law and effectuate the object of the Attorney General to prevent this attempt at monopoly the courts have full authority to act.

These interveners further say that the injunction decreed herein was not a contract requiring defendants to abandon a lawful business, but was an injunction compelling the defendants to cease from a business, the continuance of which tended to create a monopoly and to restrain interstate trade.

Selling groceries is per se lawful. So is "peaceable persuasion" by labor organizations. But either selling groceries or peaceful persuasion may be part of an illegal scheme, and thus a proper subject for an injunction.

In *Duplex Printing Press Co. v. Deering et al.*, 254 U. S. 443, 465; 41 Sup. Ct. 172, 176; 65 L. Ed. 349; 16 A. L. R. 196, the court defines the conspiracy which is prohibited and which may be enjoined as follows:

"The accepted definition of a conspiracy is: 'A combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means.' * * * If the purpose be unlawful, it may not be carried out, even by means that otherwise would be legal; and, although the purpose be lawful it may not be carried out by criminal or unlawful means."

After discussing other decisions, the court further in the *Duplex Printing case* said:

"It is settled by these decisions that such a restraint produced by peaceable persuasion is as much within the prohibition as one accomplished by force or threats of force, and it is not to be justified by the fact that the participants in the combination or conspiracy may have some object beneficial to themselves or their associates which possibly they might have been at liberty to pursue in the absence of the statute."

7. Answering paragraph 7 of said petition for rehearing, interveners hereinbefore named deny the same and say that this court had full jurisdiction, power, and authority to enjoin the defendants as they were enjoined in the decree of February 27, 1920; that the courts are not compelled to wait until a monopoly has been fully established and restraints of trade have been made effective, before preventing same, but it is the duty of the court, as was done in this case, to enjoin those attempts, the completion of which would effectuate monopolies and restraints of trade.

Referring specifically to the cases cited in the petition for review in paragraph 7 thereof, these interveners respectfully submit.

The case of *Swift & Co. v. United States*, 196 U. S. 375; 49 L. Ed. 518, itself furnishes justification for the decree in this case. Referring to the pages of the official edition it will be seen that among the charges made in the *Swift case*, as in this case, was the charge that the railroads were giving preference to the packers. (P. 394.) It was charged in the *Swift case* and is charged here, and is true, that the defendants in that case and in this case were conspiring to monopolize the distribution of certain named commodities. (P. 395.)

In speaking of the rules of pleading, Mr. Justice Holmes denied the contention that a bill in equity should be as specific as an indictment, and referring to a bill in equity, said:

"But it is to be taken to mean what it fairly conveys to a dispassionate reader by a fairly exact use of English speech." (P. 395.)

And, referring to the general scheme, Mr. Justice Holmes further said:

"The scheme alleged is so vast that it presents a new problem in pleading * * *. The elements, too, are so numerous and shifting, even the constituents parts alleged are, and from their nature must be, so extensive in time and space that something of the same impossibility applies to them." (Pp. 395, 396.)

Further Mr. Justice Holmes:

"It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful."

And further:

"But when that intent and the consequent dangerous probability exist, this statute, like many others, and like the common law in some cases, directs itself against that dangerous probability as well as against the completed result."

The reading of the *Swift case* shows the necessity for such an injunction as was rendered in this case.

The canneries also cited the case of *New York, New Haven & Hartford Railroad Co. v. Interstate Commerce Commission*, 200 U. S. 361, 50 L. ed. 515, which has no application whatever to the facts here. That case dealt with an alleged violation of the acts to regulate commerce, and in substance holds that an injunction could not merely prevent general violations of law, but must refer to specific violations. Here the decree specifically mentions the things that are enjoined.

The case cited by the canneries of *United States v. Agler*, 62 Fed. 824, supports the decree in this case. In the *Agler* case it was claimed that the injunction was void because the bill was demurrable. District Judge Baker discussed the right of the United States to obtain an injunction prior to the Sherman Act, and said that one of the purposes of the Sherman Act was the "checking and arresting of all lawless interference," and that it applied to capitalists, monopolists, and laborers. And the learned Judge, in language appropriate, here said:

"It is a praiseworthy purpose, in the midst of tumult and excitement, when lawlessness seizes upon the arteries of the commerce of the Nation, for the courts of the land, in their peaceable and orderly way, to lay their hands on these men, and bid them cease. It is a lawful thing—a commendable thing. The law give them that power."

The other two cases cited by the canneries and the text from the *Ruling Case Law* have no application to the facts of this case. Petitioners forget, or at least disregard, the fact that the defendants in this case, the only parties who may complain of the decree, have consented to the decree. The canneries ostentatiously ignore the law with relation to consent decrees.

In 23 Cyc. 729 there appears a short statement buttressed by ample authority of the applicable rule. The statement follows:

"A judgment by consent operates as a waiver of any defects in the process or pleadings, or irregularities in the previous proceedings, or grounds of objection which would have constituted errors in the judgment if rendered upon trial, provided they do not go to the jurisdiction."

Ruling Case Law, volume 10, section 347, states the rule in similar language:

"Decrees are frequently entered on consent of the parties, and this fact should be recited. Such a decree, when entered, is binding on the consenting parties, and it can not be heard or reviewed except on a showing that consent was obtained by fraud or that the decree was based on mutual error." Citing *Adler v. Van Kirk Land, etc., Co.*, 114 Ala. 551, 21 So. 490, 62 A. S. R. 133.

Daniell's Chan. Plead. & Prac., 4th ed., vol. 2, pp. 973, 974, says:

"It may be mentioned, with reference to the subject of consent causes, that a decree or order, made by consent of the counsel for the parties, can not be set aside either by rehearing or appeal or by bill of review; unless by clerical error anything has been inserted in the order, as by consent, to which the party had not consented; in which case a bill of review might lie."

An interesting application of these rules was made in *United States Construction Co. v. Armour Packing Co.*, 35 Ok. 179, 128 Pac. 371, where it was said:

"There is one principle of law which conclusively determines this case, and that principle is that a court has no power after stipulation for settlement, agreed to and signed by all the parties in interest, has been filed and after judgment has been entered in accordance with such stipulation, to vacate and set aside or modify the judgment after the term at which it was rendered, in the absence of fraud between the parties agreeing to settlement by consent or stipulation, except by mistake, neglect, or omission of the clerk. In *Morris v. Peyton*, 29 W. Va., 201, 11 S. E. 954, Mr. Justice Green, speaking for the court on the question of whether the court has power to vacate a decree entered by consent of the parties to the action, said:

"As such a decree is not the judgment of the court upon the merits of the case but the act of the parties to the suit, it is obvious that it can not be modified, set aside or annulled by any order in the cause made by the court below without the consent of all parties to the cause. * * * Nor could it be appealed from or modified by this court unless, perhaps, it should be so entirely foreign to the matters in controversy in the cause that for this or for some other reason the court below had no jurisdiction or authority to enter such decree by consent or otherwise."

"* * * The judgment in this case was a final ascertainment of the rights to consent of the parties to the suit and can not be changed by any subsequent order of the court without like consent. *Seiler v. Union Mfg. Co.*, 50 W. Va. 208. * * * In the absence of fraud in its procurement, and between parties sui juris, who are competent to make the consent, not standing in confidential relations to each other, a judgment or decree of a court having jurisdiction of the subject matter, rendered by consent of parties, though without any ascertainment by the court of the truth of the facts averred, is according to the great weight of American authority as binding and

conclusive between the parties and their privies as if the suit had been an adversary one and the conclusions embodied in the decree had been rendered upon controverted issues of fact and a due consideration thereof by the court."

The validity and force of a consent decree are shown in *Nashville, etc., R. Co. v. United States*, 113 U. S. 261, 266, 28 L. Ed., 971, 973, where it was said:

"But the insurmountable difficulty is that the former decree appears upon its face to have been rendered by consent of the parties, and could not therefore be reversed, even on appeal. Courts of chancery generally hold that from a decree by consent no appeal lies. 2 Dan. ch. pr. ch. 32, sec. 1; *French v. Shotwell*, 5 Johns. ch. 555; *Winchester v. Winchester*, 121 Mass. 127. Although that rule has not prevailed in this court under the terms of the acts of Congress regulating its appellate jurisdiction, yet a decree, which appears by the record to have been rendered by consent, is always affirmed without considering the merits of the cause. A fortiori, neither party can deny its effect as a bar of a subsequent suit on any claim included in the decree."

In *Thompson v. Maxwell Land Grant & R. Co.*, 168 U. S. 451, 463, 42 L. Ed. 539, 544, Mr. Justice Brewer said:

"The case falls within the general rule that a decree made by consent of counsel, without fraud or collusion, can not be set aside by rehearing, appeal, or review. *Webb v. Webb*, 3 Swanst. 658; *Harrison v. Rumsey*, 2 Ves. Sr. 488; *Bradish v. Gee*, 1 Ambl. 229; S. C. 1 Kenyon, K. B. 73; *Downing v. Cage*, 1 Eq. Cas. Abr. 165; *Toder v. Sansam*, 1 Bro. P. C. 468; *French v. Shotwell*, 5 Johns. ch. 555."

No better discussion of the force and validity of consent decrees can be found than that shown in *Adler v. Van Kirk Land, etc., Co.*, 114 Ala. 551, 21 So. 490, 62 Am. St. Rep. 133, where the court said:

"It is averred in the bill that the decree in the foreclosure suit was 'solely upon the consent of the parties to said cause, and that no judicial ascertainment of the facts stated in the bill filed in said cause was ever had'; and that 'said consent decree does not and did not constitute an adjudication of said cause.' The purpose of the pleader in making this averment was, doubtless, to state as a fact that the decree was merely a consent decree, a decree agreed upon by the parties, and upon such consent rendered by the court, without the ascertainment of the truth of the facts averred in the bill or of the rights of the parties therein asserted; and, as a conclusion of law flowing from these facts, that the decree does not operate an adjudication against the land and construction company of the matters embraced in the lis pendens of the foreclosure suit, and the argument is that the decree is not an estoppel of record against the company as to the amount by the decree declared to be owing upon the demands secured by the mortgage.

"Whatever effect such a conclusion, if logically deducible from the premises stated, would have upon the rights of the parties in this cause under the averments contained in the bill it is not necessary to consider, and this because the conclusion is a non sequitur. In the absence of fraud in its procurement, and between parties sui juris, who are competent to make the consent not standing in confidential relations to each other, a judgment or decree of a court having jurisdiction of the subject matter, rendered by consent of parties, though without any ascertainment by the court of the truth of the facts averred, is, according to the great weight of American authority, as binding and conclusive between the parties and their privies as if the suit had been an adversary one, and the conclusions embodied in the decree had been rendered upon controverted issues of fact and a due consideration thereof by the court; *Freeman on Judgments*, sec. 705; *Gifford v. Thorn*, 9 N. J. Eq. 722; *French v. Shotwell*, 5 Johns. ch. 568; *Walsh v. Walsh*, 116 Mass. 383; 17 Am. Rep. 162; *Dunman v. Hartwell*, 9 Tex. 495; 60 Am. Dec. 177; *Nashville, etc., Ry. Co. v. United States*, 113 U. S. 261; *Curry v. Peebles*, 83 Ala. 228; *Rogers v. Prattville Mfg. Co.*, 81 Ala. 483; 60 Am. Rep. 171; *Patillo v. Taylor*, 83 Ala. 233.

"The fact that the decree in the foreclosure suit was rendered by consent of parties does not, therefore, detract from its dignity, or lessen its conclusiveness, as an adjudication between the parties. Not only is such its effect, but its consent is a waiver of error, precluding a review of the decree upon appeal and, as a general rule, upon a bill of review; *Thompson v. Maxwell*, 95 U. S. 391; *Nashville, etc. Ry. Co. v. United States*, 113 U. S. 266; 2 *Daniell's Chancery Pleading and Practice*, 5th Am. Ed. 1576; *Dunman v. Hartwell*, 9 Tex. 495; 60 Am. Dec. 176; *Curry v. Peebles*, 83 Ala. 227."

To the same effect see *Short v. Taylor*, 137 Mo. 517, 59 Am. St. Rep. 508.

Courts of equity have plenary powers to make such decrees as are required to meet the situation presented.

Mr. Justice Story in his work on Equity Pleading, after speaking of the limits of the powers of courts of law, said:

"But courts of equity are not so restrained. Although they have prescribed forms of proceeding, the latter are flexible, and may be suited to the different postures of

cases. They may adjust their decrees so as to meet most, if not all, of these exigencies; and they may vary, qualify, restrain and model the remedy so as to suit it to mutual and adverse claims, controlling equities and the real and substantial rights of all the parties. * * * So that one of the most striking and distinctive features of courts of equity is that they can adapt their decrees to all the varieties of circumstances which may arise, and adjust them to all the peculiar rights of all the parties in interest."

Broad decrees are necessary in these antitrust suits. The defendants here have been sued many times and several injunctive decrees have been entered against them. These were ineffective and so the agreement to the decree of February 27, 1920, was asked and defendants accepted the offered decree. The decree does prohibit the doing of a business ordinarily lawful, but if it is necessary to prevent the business in order to keep the defendants within the law, the business should be stopped. Certainly the subject-matter of the original bill was broad enough to justify a court, even without any agreement, in entering such a decree as was needed to prevent the practices described in the bill. Decrees may prevent "doing specific things" and courts are not powerless to enforce the act (antitrust) or to suppress the illegal combination, and powerless to protect the rights of the public as against that combination. *Northern Securities Co. v. United States*, 193 U. S. 197. See also *Standard Oil Co. v. United States*, 221 U. S. 1, 77, 78; *United States v. American Tobacco Co.*, 221 U. S. 106; *Gompers v. Buck Stove & Range Co.*, 221 U. S. 418, 438; *United States v. Union Pacific R. R. Co.*, 226 U. S. 470, 474. See also *United States v. Railway Employees*, 283 Fed. 479, where it was held:

"Rights guaranteed by the Constitution are not so absolute that they may be exercised under all circumstances, and without any qualification. but, like other rights, must always be exercised with reasonable regard for the conflicting rights of others.

"Where peaceable and lawful acts in the conduct of a strike of railway employees are so interwoven with the whole plan of intimidation and obstruction that to enjoin only assaults and other acts of violence, leaving defendants free to pursue the open and ostensibly peaceful part of their program, would be an idle ceremony, such act will likewise be enjoined."

8. Answering paragraph 8 of the petition for rehearing of the California Cooperative Canneries the interveners herein named admit that jurisdictional allegations should appear of record, but say that, when the jurisdictional allegations appear of record, there is no requirement of law that facts supporting the allegations shall be also of record, and it is within the right of the defendants in a named case, of which the court has jurisdiction, to consent to a decree without admitting the truth of the allegations.

And these interveners further show that this court had full jurisdiction of the subject matter of the suit and of the parties: and the parties, the only ones directly affected by the judgment, consented to the decree herein, thus making unnecessary the introduction of any evidence or the recital of any facts found.

The canneries, in paragraph 8 of their petition for rehearing, cite the cases of *Terral v. Burke Construction Co.*, 257 U. S. 529, and *Iowa v. Illinois*, 147 U. S. 1. These cases deal with the old equity rule that permitted a plaintiff to set down a case on bill and answer. It is true that the rule was that when a case was set down on bill and answer, only the averments of the bill not denied by the answer were accepted as true. But the case here was not set down on bill and answer. A decree was entered by consent, and the cases cited have no application whatever to any issue now pending before this court.

9. Answering paragraph 9 of the petition for rehearing in this case, interveners aforesaid admit that Federal courts are courts of statutory jurisdiction, and admit that the allegations of the pleadings should show jurisdiction of the subject matter, but these interveners aver that when, as in this case, jurisdiction is shown by the bill of complaint, the exercise of authority by the court can only be controlled by authorized proceedings to set aside what has been done; that a final decree having been entered in this cause and no appeal therefrom having been taken, this court now can not review the manner of exercising the authority which was exercised in the entry of the decree of February 27, 1920.

The petitioner for review in paragraph 9 of said petition makes numerous citations of cases and texts. These, and similar ones elsewhere in the motion, appear formidable, but they are formidable only in volume. Speaking generally they establish principles disputed by no one, and wholly irrelevant to any legal issue here, or they are merely irrelevant.

Occasionally, however, as might be expected where so many cases are copied from an undigested Digest, some relevant principles are found, and these in no case support the theory of the petitioners for rehearing, and in many cases support the conclusions of this court in denying that petition. The cases of *Dred Scott v. Sanford*, 19 How.

393, 15 L. Ed. 691; *Turner v. Bank*, 4 Dallas 11; *Johnson v. Ashton*, 8 Peters 148; *Ex parte Smith*, 94 U. S. 456; *Robison v. Cease*, 97 U. S. 648 are cited to establish the proposition that jurisdiction is not presumed in the Federal court and that "when a plaintiff sues in a court of the United States, it is necessary that he should show in his pleadings that the suit he brings is within the jurisdiction of the court, and that he is entitled to sue there."

The above quotation, taken from the bottom of page 401 and top of page 402 of the official opinion in the *Dred Scott* case, unquestionably states the law, and the other cases just cited follow in the announcement of a similar principle.

But the principle has no application here. In this case the statutes of the United States specifically and definitely give jurisdiction to this court in this kind of a case, and there can be no question of jurisdiction. There was no denial of the jurisdiction of the court and no plea thereto. And further, in the *Dred Scott* case the Supreme Court, at page 402, said:

"If, however, the fact of citizenship is averred in the declaration and the defendant does not deny it and put it in issue by plea in abatement, he can not offer evidence at the trial to disprove it, and consequently can not avail himself of the objection in the Appellate Court unless the defect should be apparent in some other part of the record."

And further said the court:

"The undisputed averment of citizenship in the declaration must be taken in this court to be true."

Petitioner for rehearing having established what no one denies, that the jurisdiction must appear on the face of the pleadings, then proceeds to copy a long list of cases and to make reference to certain section of *Corpus Juris* and other textbooks. Evidently the compiler of the motion for rehearing did not stop carefully, to read the cases and texts cited. It may be helpful to the court to make reference to what was decided in these cases and what was stated by these texts.

The Constitution of the United States is cited, showing where is vested the judicial power of the United States. And then the case of *Muskra v. United States*, 219 U. S. 346, 55 L. Ed. 246, is cited. This case merely holds what no one disputes, that there must be a cause for controversy before the court has jurisdiction and that the constitutionality of a statute can not be submitted to the court for consideration unless the question arises in a justiciable controversy. (See p. 361 of the official opinion.)

The next case, *Fairchild v. Hughes*, decided by the Supreme Court of the United States February 27, 1922, 66 L. Ed. advance sheets 260, merely announces the same principle as that stated in *Muskra v. United States*.

In the next case, *Windsor v. McVeigh*, 93 U. S. 274, 23 L. Ed. 914, the Supreme Court, at page 233 of the official edition, quotes from the case of *Cornell v. Williams*, 20 Wallace, 250, as follows:

"The jurisdiction," says the justice, "having attached in the case, everything done within the power of that jurisdiction, when collaterally questioned, is held conclusive of the rights of the parties, unless impeached for fraud."

McGuire v. Conwine, 101 U. S. 108, 25 L. Ed. 899, announces a similar general principle and one equally inapplicable to any issue here.

The next case cited in the petition for rehearing is that of *Reynolds v. Stockton*, 140 U. S. 254, 35 L. Ed. 464. At page 271 of the official opinion the principle of that case is shown in words as follows:

"In other words, that when a complaint tenders one cause of action and in that suit service on, or appearance of, the defendant is made, a subsequent judgment therein, rendered in the absence of the defendant, upon another and different cause of action than that stated in the complaint, is without binding force."

The principle stated is good law, but has no possible application to the facts now before the court.

United States v. Trans-Missouri Freight Association, 58 Fed. 58, is the next cited. The principal purpose of this case seems to have been to show that, when a case is heard on the bill and answer, allegations of the bill denied in the answer are not taken as true, a proposition no one disputes, and which is not in conflict with what the court did in this case. The case, however, was reversed on other points by the Supreme Court of the United States in 166 U. S. 290, 41 L. Ed. 1007.

Kreider v. Cole, 149 Fed. 647, similarly is inapplicable to any issue in this case.

In *People's Bank v. Gibson*, 161 Fed. 286, next cited by petitioner for rehearing herein, the court announced a principle directly in conflict with what the canneries is herein contending for. The court there said:

"When a case is set down for hearing on bill and answer, all the facts well pleaded in the answer are taken as true, whether responsive to the bill or not (*Perkins v. Nichols*, 11 Allen (Mass.), 542; *American Carpet Lining Co. v. Chipman*, 146 Mass.

385, 16 L. Ed. 425); but, where it is set down for hearing on bill, answer, and replication, only those averments of the answer which are responsive to the bill are taken as true. All allegations therein in avoidance or justification are denied by the replication, and are taken as untrue. *Van Dyke v. Van Dyke*, 26 N. J. Eq. 180, 181; *Story's Equity Pleading* (10th ed.), p. 418, note 3."

Under the new rules of equity replications are not required to be filed and the case stands as though a replication had been filed (equity rule 40 of this court), so there is nothing helpful to the petitioner for rehearing in this case.

The seven cases cited next by petitioner from various State courts are along lines similar to those herein referred to, and the same can be said of the textbooks.

Petitioner for rehearing then cites *Corpus Juris* and refers to several pages of both volumes 15 and 21. The references are to statements of well-known principles, none of which has been violated by what has heretofore taken place in this case, and they generally support what has been here adjudicated by refusing to permit the intervention of the canneries.

Fairly representative of the principles set out in volume 15 of *Corpus Juris*, we quote from pages 729 and 730, as follows:

"Since jurisdiction is the power to hear and determine, it does not depend either upon the regularity of the exercise of that power or upon the correctness or rightfulness of the decision made, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly, subject to the qualification that the court can render only such judgment as does not transcend in extent or character the law which is applicable to that class of cases."

The principles stated in the quotation above are supported by notes of decisions of the Federal and many State courts, and are applicable here. This court had jurisdiction of the subject matter, and, whether or not it erred in entering a judgment, is a question that can not now be raised.

Fairly illustrative of the references to 21 *Corpus Juris* and applicable to the situation here, we quote from the text, pages 169 and 170, as follows:

"If there is not manifestly an entire lack of equity jurisdiction, the court will leave the jurisdiction where the parties, by their acquiescence, have placed it. In such case the objection must be raised at the proper time, and in the proper manner, or else it is waived. In other words where a case is presented within the general field of equity jurisdiction, any feature which might lead the court to decline jurisdiction or to relegate the party to law in the particular case must be seasonably presented or the party will be deemed to have submitted to an adjudication in equity."

In support of this text *Corpus Juris* cites more than a page of cases taken from State and Federal courts. If these interveners wished merely quantity, and desired to give an adumbration of a large number of cases in support of the principles for which they contend, they would copy the title and place where are reported all of these cases.

One of the cases supporting the quotation above is so direct and so applicable that we can not refrain from quoting it. It is the case of *McGowan v. Parrish*, 237 U. S. 285, 59 L. Ed. 955. At page 295 of the official edition the Supreme Court announced, through Mr. Justice Pitney, applicable and controlling principles here. The court said:

"The equity jurisdiction having thus been properly invoked, the right of defendant to object because of the alleged existence of a legal remedy could be waived. *Reynes v. Dumont*, 130 U. S. 354, 395, 32 L. Ed. 1005, 1008, 9 Sup. Ct. Rep. 594; *Brown, B. & Co. v. Lake Superior Iron Co.* 134 U. S. 530, 536, 33 L. Ed. 1021, 1025, 10 Sup. Ct. Rep. 604; *Re Metropolitan R. Receivership* (re *Reisenberg*) 208 U. S. 90, 110, 52 L. Ed. 403, 412, 28 Sup. Ct. Rep. 219. * * *

"The consent decree not only amounted to a clear and express waiver of jurisdictional objections but it rendered irrelevant, so far as the present parties are concerned, all questions as to the effect of the contracts in creating a lien upon the proceeds of the ice claim."

Petitioner concludes paragraph 9 of its petition for rehearing by citing 2 R. C. L. 31, section 9. The citation would appear to have been made for the purpose of showing a reason why the petition should not be granted. It is commendable of counsel to furnish the authorities to the court even if the authorities are against it. So applicable is this citation that we beg leave to quote it in full:

"A judgment or decree rendered by the consent of the parties is in the nature of a solemn contract and is in effect an admission by the parties that the decree is a just determination of their rights on the real facts of the case, had they been proved. As a result such a decree or judgment is absolutely conclusive between the parties, and it can neither be amended nor in any way waived without a like consent, nor can it be appealed from or reviewed on a writ of error. Thus consent to the rendition of a de-

cree in proceedings for the foreclosure of a mortgage is a waiver of error precluding a review on appeal."

The quotation above is supported by authority, and among the authorities is the case of *Adler v. Van Kirk Land & Construction Co.*, 114 Ala. 551, 21 Southern 490, 62 A. S. R. 133, relied on ante, page 13.

10. Answering the argument contained in paragraph 10 of the petition for rehearing filed by California Cooperative Canneries, the interveners herein before named submit: Whether or not this court has authority to impose penalties in this case is not involved, as no penalty was imposed. The issue is whether or not the court had jurisdiction of the subject matter in such way as to authorize it to act, and it is respectfully submitted that jurisdiction of the subject matter of the suit is specifically and definitely granted by the provisions of the antitrust laws, and that under such provisions this court had authority to enjoin monopoly and attempts at monopoly and to prevent as well as to restrain acts in violation of or tending to violate the antitrust laws; that, under the allegations of the original bill in this case, defendants were guilty of monopoly, or of attempts to monopolize, and of restraints of trade, and that what the court did, and what it was its duty to do, was so to enjoin the defendants as to prevent the accomplishment and continuation of the illegal attempts and the illegal acts. "Intent and the consequent dangerous probability" (Swift case ante 9) were prevented.

And in doing what was done in this case, in the entry of the consent decree, this court acted within its jurisdiction, power, and authority, and such decree is in every respect valid, and, having been entered at a prior term of this court, and no appeal therefrom having been taken, errors, if any, of the court in entering such decree can not now be considered.

In referring to the long list of cases cited by the petitioner in paragraph 10 of its petition for review, these interveners herein briefly analyze such cases: The first case cited, that of *Windsor v. McVeigh*, 93 U. S. 274, 23 L. Ed. 914, merely announces the well-known, undisputed, and here irrelevant principle that a criminal sentence without hearing is improper. The next case, that of *Campbell v. Porter*, 162 U. S. 478, 40 L. Ed. 1044, states that questions of jurisdiction may be raised by either party to the cause or by the court, a principle that we do not deny, but which has nothing to do with the case here.

Cooper v. Reynolds, 10 Wall. 308, 19 L. Ed. 931, holds what we here contend, that mere error in the acts of the court, the court having jurisdiction of the subject matter, can not now be availed of, even if the Canneries was a party to the cause. The court, at page 316 of the official edition, said:

"Nor can it disregard that judgment, or refuse to give it effect, on any other ground than a want of jurisdiction in the court which rendered it.

"It is of no avail, therefore, to show that there are errors in that record, unless they be such as prove that the court had no jurisdiction of the case or that the judgment rendered was beyond its power."

Nash v. Williams, 22 Wall. 226, 22 L. Ed. 254, announces the principle for which these interveners contend, in language as follows:

"The settled rule of law is, that jurisdiction having attached in the original case, everything done within the power of that jurisdiction, when collaterally questioned, is to be held conclusive of the rights of the parties, unless impeached for fraud. Every intendment is made to support the proceeding. It is regarded as if it were regular in all things and irreversible for error. In the absence of fraud no question can be collaterally entertained as to anything lying within the jurisdictional sphere of the original case. Infinite confusion and mischiefs would ensue if the rule were otherwise."

In the *United States v. Walker*, 109 U. S. 258, 27 L. Ed. 927, it is held that the court must not go beyond its jurisdictional power in entering judgments, a principle which we do not deny and which has no application here because the court, even if it erred, had jurisdiction to enter an injunction order enjoining the commission of the offenses alleged to have been committed and threatened.

Re *Sawyer*, 144 U. S. 200, 34 L. Ed. 402, holds that jurisdiction of a court of equity, "unless enlarged by express statute," is limited. Here the jurisdiction of the court of equity has been enlarged by express statute.

In *Ex parte Neilsen*, 131 U. S. 176, 33 L. Ed. 118, the court held that a judgment of a court having no jurisdiction over the subject matter was void, an elementary principle which no one denies.

In *Ex parte Cuddy*, 131 U. S. 280, 33 L. Ed. 154, the whole question of jurisdiction is elaborately discussed, and it is held that jurisdiction is presumed in the absence of something of record to the contrary, and that every intendment is made in support of the jurisdiction. The discussion, while somewhat lengthy, is so fundamental, and so clearly establishes the contention of the interveners here, that it is deemed proper to

quote it at length. Mr. Justice Harlan, in the course of his able opinion in the case just cited, said:

"The district court possesses superior jurisdiction, within the meaning of the familiar rule that the judgments of courts of that character can not be assailed collaterally, except upon grounds that impeach their jurisdiction. In *Kempe's Lessee v. Kennedy*, 9 U. S. 5 Cranch. 173, 185 (3 L. Ed. 70), Chief Justice Marshall, after observing that the words 'inferior court' apply to courts of special and limited authority, erected on such principles that their proceedings must show jurisdiction, said: 'The courts of the United States are all of limited jurisdiction, and their proceedings are erroneous if the jurisdiction be not shown upon them. Judgments rendered in such cases may certainly be reversed, but this court is not prepared to say that they are absolute nullities, which may be totally disregarded.' In *McCormick v. Sullivan*, 23 U. S. 10, Wheat. 192, 199 (6 L. Ed. 300), where the question was whether a decree in a suit in the Federal District Court of Ohio, which did not show that the parties were citizens of different States, was *coram non jure* and void, the court said that the reason assigned for holding that decree void 'proceeds upon an incorrect view of the character and jurisdiction of the inferior courts of the United States. They are all of limited jurisdiction; but they are not, on that account, inferior courts in the technical sense of those words, whose judgments, taken alone, are to be disregarded. If the jurisdiction be not alleged in the proceedings, their judgments and decrees are erroneous, and may, upon a writ of error or appeal, be reversed for that cause. But they are not absolute nullities.' And in *Galpin v. Page*, 85 U. S. 18 Wall. 350, 365 (21 L. Ed. 959, 962) the court said: 'It is undoubtedly true that a superior court of general jurisdiction, proceeding within the general scope of its powers, is presumed to act rightly. All intendment of law in such cases are in favor of its acts. It is presumed to have jurisdiction to give the judgments it renders until the contrary appears. And this presumption embraces jurisdiction not only of the cause or subject matter of the action in which the judgment is given, but of the parties also.' The general rule that, unless the contrary appears from the record, a cause is deemed to be without the jurisdiction of a circuit or district court of the United States—their jurisdiction being limited by the Constitution and acts of Congress—has no application where the judgment of such courts are attacked collaterally.

"Unless, therefore, the want of jurisdiction as to subject matter or parties appear in some proper form, every intendment must be made in support of the judgment of a court of that character."

In *United States v. American Tobacco Co.*, 191 Fed. 371, at page 383 of the opinion, there is a discussion of the power of the court to enter particular injunctive provisions. We do not understand that discussion as being applicable to the general question of jurisdiction. But if it is, there is nothing said in the opinion contrary to the contentions of the interveners and plaintiff in this case.

In *Swift & Co. v. United States*, and *Commission v. Peaslee*, 177 Mass. 267, cited supra, discussed in *United States v. United States Steel Corporation*, 251 U. S., at page 465 of the opinion, it is shown that injunctions may prevent "the dangerous probability as well as the completed result" of a violation of the antitrust statutes.

Kreider v. Cole, 149 Fed. 647, merely states what no one disputes, that questions of jurisdiction are fundamental. The various State cases to which reference is made in paragraph 10 of the petition for rehearing go no further than to hold generally that jurisdiction is fundamental, that it can not be waived, and that courts without jurisdiction can not enter any kind of judgment. The fallacy of the argument of the petitioner for rehearing is that he erroneously assumes this court to be without jurisdiction. There is no basis for such an assumption. The court had jurisdiction by specific statutory provisions, and its action was consented to, and no effort to reverse the action was had during the term or by appeal. If there could be shown to be error in the decree of February 27, 1920, it could not now be remedied. Judgment has become final and conclusive.

The petitioner is seeking the review, in paragraph 10, also refers again to volume 15 of *Corpus Juris*. The principles, fundamental and elementary, that jurisdiction must exist to authorize action by a court, are supported by the citations from this textbook. Not one of the citations conflicts with the action of this court in overruling the application of the California Cooperative Canneries to intervene herein. And not a one of the principles cited shows or tends to show that the judgment rendered in this case on February 27, 1920, is void. Briefly, to sum up the discussion in *Corpus Juris*, the principles are:

"Jurisdiction of the subject matter is the power to hear and determine cases of the general class to which the proceedings in question belong, the power to deal with the general subject involved in the action, and, as used in the constitutions and statutes, the word 'jurisdiction' means jurisdiction as to subject matter only, unless

an exception arises by reason of its employment in a broader sense. Such jurisdiction the court acquires by the act of its creation, and possesses inherently by its constitution, and it is not dependent upon the sufficiency of the bill or complaint, or plaintiff's right to the relief demanded, the regularity of the proceedings, or the correctness of the decision rendered."

Of course jurisdiction must exist, and the lack of jurisdiction can not be waived. But where the court has jurisdiction of the general subject matter, the right to decide questions comprehended in the general jurisdiction but not specially within the particular jurisdiction involved in the case may be waived, and in this class of cases, as said by Judge Purnell, "Consent confers jurisdiction." See *Mitchell v. Mitchell*, 147 Fed. 280, citing *Bardes v. Bank*, 178 U. S. 524, 44 L. Ed. 1175.

11. Answering paragraph 11 of the petition for rehearing filed herein, these interveners do not dispute the proposition that the jurisdiction of Federal courts is dependent upon Federal statutes, nor do these interveners insist that consent of parties will give jurisdiction over the subject matter. They do aver that consent of parties will give jurisdiction over persons, and that by the allegations of the original bill in this cause this court had undisputed jurisdiction to render the decree of February 27, 1920. *United States v. Mayer*, 235 U. S. 55, 70, 50 L. Ed. 129, 136.

And these interveners further say that the defendants to the original decree having agreed thereto, and no other person can object to such an agreement, and that the term of this court at which said decree was entered having expired, this court now has neither authority nor jurisdiction to set aside said decree. *United States v. Mayer*, *supra*.

Referring to the cases cited by interveners at the end of paragraph 11 and in paragraph 11 of their petition for review, these interveners say that, except as hereinafter stated, they have already, in preceding parts of this answer, and objections, discussed such cases. To save the time of the court, and to render it such aid as is possible, interveners will discuss those cases cited by the petitioner in paragraph 11 of its petition which have not already been discussed.

In *Sevileta, etc., v. Belen Land Grant*, 242 U. S. 595, 61 L. Ed. 514, the Supreme Court held that consent could not change a statute which prohibited the exercise of jurisdiction. Obviously such a holding does not affect the issues here.

In *Harding v. Harding*, 198 U. S. 317, 49 L. Ed. 1066, there was involved a question of the validity of a decree made in a separation suit between husband and wife, and the question was determinable under statutes of the State of Illinois. The particular question has nothing to do with this case, but the Supreme Court did state the general rule of law as to consent decrees, and that statement is applicable here. The statement reads:

"Thus, in *Knobloch v. Mueller*, the court said (123 Ill. 565, 17 N. E. 699):

"Decrees of courts of chancery, in respect of matters within their jurisdiction, are as binding and conclusive upon the parties and their privies as are judgments at law; and a decree by consent in an amicable suit has been held to have an additional claim to be considered final. *Allason v. Stark*, 9 Ad. & El. 255. Decree so entered by consent can not be reversed, set aside, or impeached by bill of review or bill in the nature of a bill of review, except for fraud, unless it be shown that the consent was not in fact given, or that something was inserted, as by consent, that was not consented to. 2 Dan. Ch. Pr. 1576; *Maxwell Land-Grant & R. Co. v. R. Co.* 95 U. S. 391, 540; *Cronk v. Trumble*; 66 Ill. 432; *Haas v. Chicago Bldg. Soc.* 80 Ill. 248; *Atkinson v. Manks*, 1 Cow. 693; *Winchester v. Winchester*, 121 Mass. 127; *Allason v. Stark*, 9 Ad. & El. 225; *Alexander v. Ramsay*, 5 Bell, App. 69. See also note to *Duchess of Kingston's Case*, 2 Smith, Lead. Cas. 826 et seq. It is the general doctrine that such a decree is not reversible upon an appeal or writ of error, or by bill of review for error. *Armstrong v. Cooper*, 11 Ill. 540."

Pittsburgh, C. & St. L. Ry. Co. v. Ramsay, 22 Wall. 322, 22 L. Ed. 823, is an opinion stating the law as interveners herein contend, the opinion being sufficiently shown by the second headnote which reads:

"Consent of parties can not give the courts of the United States jurisdiction, but the parties may admit the existence of facts which show jurisdiction, and the courts may act judicially upon such an admission."

In *Marietta v. Henderson*, 121 Ga. 399, 49 S. E. 312, there had been a consent decree enjoining certain obstructions. Subsequently the Legislature of the State of Georgia authorized the particular obstructions so enjoined, and the court held that the legislature, having changed the law, the decree could be likewise changed. The principles are stated as follows:

"While a judgment is a contract of record, the agreement which the law implies from such a contract is simply that the parties will stand to and abide what has been decreed in the case upon the law and the facts when involved or which could have

been properly involved. * * * A new right had been acquired, which was not and could not have been involved in the controversy resulting in the judgment."

Another volume of *Ruling Case Law*, volume 7, is cited here. All this citation holds is that jurisdiction of the subject matter can not be granted by consent, but that jurisdiction of the person can be obtained by consent.

12. Answering paragraph 12 of the petition for rehearing herein, these interveners say that the opinion of this court denying the intervention of the petitioner is referred to for a correct statement of such opinion. And these interveners further replying to said paragraph say that the jurisdiction of this court was not obtained or granted by consent, but grew out of the allegations of the original bill, which allegations show jurisdiction in this court under the antitrust statutes.

Interveners do not again discuss citations at the bottom of paragraph 12 of the petition, as these have already been discussed hereinbefore.

13. Answering paragraph 13 of the petition for rehearing herein, these interveners say that, whatever right a court has to correct its error when it has exceeded its jurisdiction is immaterial here, as this court has not exceeded its jurisdiction and the cases cited and the argument made are equally irrelevant to any issue here.

14. Answering paragraph 14 of the petition for rehearing, these interveners deny the same, and say that not one of the authorities cited sustains the statement contained in said paragraph 14.

15. Answering paragraph 15 of the petition for rehearing herein, these interveners deny the same, and say that in truth and in fact the petitioner for review has no right whatsoever enforceable against Armour & Co., and that the original petition of intervention filed by petitioner shows on its face that petitioner is without any interest in the subject matter of the decree heretofore entered in this case.

These interveners further say that if the petitioner, the California Cooperative Canneries, ever did have any valid contract, which it denied, that its remedy, if any it has, is by suit at law and not by an intervention in a proceeding in equity.

The question was before the court in *Consolidated Fuel Company v. St. L. & S. W. Ry. Co.*, 250 Fed. 395, 398, 399, 162 C. C. A. 465, where it was said:

"We have been unable to find any authority that would allow a common carrier to go into a court of equity to obtain specific performance of such a contract as is involved in this action. To take jurisdiction in equity of the case made by the complaint would be to destroy all distinction between actions at law and in equity. If we shall take jurisdiction in this case, and specifically enforce a contract for the sale and delivery of coal, where could we stop? The next contract presented for us would be for the sale and delivery of engines, for the sale and delivery of railroad ties, for the sale and delivery of cars, or for the sale and delivery of a thousand other articles, which go to make up the equipment of a railroad."

It will also be recalled that the contract which petitioner claims it has with Armour & Co. fixes the prices such as "shall be the prices used by the California Packing Corporation." Such a provision would probably prevent petitioner from recovering, even at law. (See *Troy Laundry & Machinery Co. v. Dolph*, 138 U. S. 617, 34 L. Ed. 1083.)

16. Answering paragraph 16 of the petition for rehearing herein, these interveners say that they deny the same, and respectfully show that said paragraph is but a reiteration of arguments theretofore made in the petition, and presents no new fact, or new contention, or new argument.

17. Answering paragraph 17 of the petition for rehearing herein, these interveners say that they deny the same, and respectfully show that there is no conflict in ruling between the ruling of Mr. Justice Stafford, permitting the American Wholesale Grocers' Association to intervene, and the ruling of Mr. Justice Bailey, denying the California Cooperative Canneries the right to intervene. The condition of the American Wholesale Grocers' Association and the wholesale grocers named hereinbefore and other wholesale grocers' associations is different from that of the California Cooperative Canneries. The grocers and their associations seek only to maintain the decree of February 27, 1920, while the canneries seek to destroy that decree.

For convenience, and in order to show the distinction between the two applications for intervention, we quote the opinions on both interventions. Mr. Justice Stafford said:

"Without deciding that petitioners have an undeniable legal right to intervene it is considered that upon the facts alleged in their petition it is fair and just that they should be allowed to intervene, not to take control of the plaintiff's side of the proceedings, but for the limited purpose stated in their petition, namely, to be heard in opposition to any modification of the decree that would deprive them of the protection now secured by it for the following reasons, when taken together:

"1. The decree was in part, at least, the fruit of their own efforts.

"2. They abandoned the pursuit of other remedies in reliance upon this decree.

"3. The protection afforded them by this decree might have been secured in a proceeding in their own name and behalf.

"4. The change suggested would leave them in an embarrassed position in now seeking to secure the same protection.

"5. The decree ought not to be modified unless the court is convinced that the public interest requires it and the petitioners fairly represent a large and well defined portion of the public, whose position will enable them and whose interest will prompt them to present to the court facts or reasons, which, among others, the court ought to hear and consider before allowing the decree to be changed.

"This decision must not be understood as opening the door to all would-be interveners who may consider themselves interested in the decree or any change therein, but as strictly limited to the facts alleged in this petition, which are in law admitted by the motion to strike out."

Mr. Justice Bailey said:

"The California Cooperative Canneries has moved for leave to file an intervening petition in this cause, seeking to set aside or modify the consent decree heretofore entered. The interest claimed by the canneries in this suit is based upon a contract between it and one of the defendants, Armour & Co., under the terms of which the latter agreed to purchase from the canneries such products as Armour & Co. might require for the period of 10 years. The contract also contains a provision that in case of material interference by governments' action Armour & Co. might terminate the agreement upon 60 days' notice.

"The canneries claim that the consent decree entered is void as to it, for these reasons: That it is a consent decree based upon an agreement made between the Government and the defendants prior to the bringing of the suit, which provided that this suit should be brought and this particular decree entered by consent; that in the decree the defendants maintain the truth of the allegations of their answers, which deny any wrongdoing on the part of the defendants, and that there was therefore not only no sufficient finding of facts to authorize the decree, but even an express refusal to admit such facts; and in addition that the whole proceedings were a fraud upon the court.

"None of the parties to the suit are before the court seeking to set aside the decree. It was entered on February 27, 1920; and pursuant to its provisions several of the defendants have disposed of large interests in what have been called 'unrelated commodities,' doubtless in some cases at considerable loss. If the decree were set aside it would be impossible to restore the status quo. Without going into the question of laches in the application for leave to intervene, for the petition sets up grounds which might be sufficient to avoid that defense, I think that the motion for leave to intervene should be overruled.

"Under the present equity rules no recital of facts upon which the decree is based is necessary, and the refusal of the defendants to admit any violation of the law may well have been a precaution against the use of such admissions in a criminal prosecution, although the statute itself provides against such use. Parties may compromise their difference and a consent decree as between them is certainly of fully as binding force as a decree rendered after a full hearing on the facts. That such a decree is entered pursuant to an agreement made prior to the bringing of the suit does not, in my opinion, render the decree less effective, where the court has not been, by any deception as to the facts, induced to enter a decree which may be injurious to third parties or in excess of the jurisdiction of the court.

"If the decree was entered into by Armour & Co. solely for the purpose of preventing the fulfillment of legal obligations it might owe to the canneries under it, an action at law in the proper forum would afford relief.

"The motion for leave to intervene will be overruled."

An interesting discussion of this question, showing that not only is there no conflict of decision between the respective judges, but that same are in strict harmony, is found in the case of *King v. Barr*, 262 Fed. 56, 59, and 60. The decision in *King v. Barr* is so directly applicable here that we may be pardoned for quoting some of it. The opinion was of the circuit judges of the ninth district and was written by Ross, circuit judge, who said:

"The contention made in the assignment of errors, and also in the brief of the appellant, that the court below was without any jurisdiction of the case, is obviously without any merit, first, because, if so, all of its proceedings were absolutely void, and consequently without effect upon the appellant; and, secondly, because it is only in a valid pending proceeding in which any party is under any circumstances permitted to intervene. * * *

"* * * The final decree was entered at Boise, Idaho, February 15, 1918, and it appears from the affidavit of the petitioner's counsel that the petition for and the

accompanying bill in intervention were not delivered to the clerk of the court for the judge until November 2 of the same year, more than six months after the entry of the final decree establishing the rights of the respective parties to the suit, and long after the expiration of the term of the court during which the decree was entered. Nothing is better settled than that errors, if any, in a final judgment, can only be corrected by appeal, unless steps be taken in the trial court for that purpose during the term at which such judgment is rendered." (*Bronson v. Schulten*, 104 U. S. 410, 415, 416, 26 L. Ed. 797, and cases there cited.)

A concise and accurate description of a consent decree is given in 23 Cyc. 729, as follows:

"A judgment by consent of the parties is more than a mere contract in pais; having the sanction of the court and entered as its determination of the controversy, it has all the force and effect of any other judgment, being conclusive as an estoppel upon the parties and their privies."

No one can intervene in opposition to what has gone before in the action. This is a rule long and universally applied in courts of equity. The Supreme Court of the United States, in prescribing equity rules, recognized the principle and concluded equity rule 37 by providing that "intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding."

While such language is not used in equity rule 15 of this court, rule 15 not conflicting with but being less inclusive than equity rule 37 of the Supreme Court of the United States, this court will recognize rule 37. (*Ryan v. McAdoo*, 46 App. D. C. 117.)

See also *Charleston Ry. Co. v. Pope*, 122 Ga. 577, 579, where Judge, later Mr. Justice, Lamar, held that "an intervener took the suit as it found it."

The office of an intervention was stated in *Seaboard Air Line Ry. v. Trust Co.*, 125 Ga. 463, 465, as follows:

"The office of an intervention is to cause a party to be made to a pending proceeding, not to establish that the proceeding should not exist."

Intervention to be made a defendant for the purpose of opposing the proceedings is not permissible in equity.

In *Consolidated Gas Co. v. Newton*, 256 Fed. 238, 244, it was said:

"The long-settled practice in equity is that a person can not be made a party defendant on his own application, unless so required by statute." (*Toler v. East Tennessee, V. & G. Ry. Co.* (C. C.) 67 Fed. 163, per Lurton, J., afterwards a justice of the Supreme Court; *Coleman v. Martin*, 6 Blatchf. 119, Fed. Cas. No. 2985; *Drake v. Goodridge*, 6 Blatchf. 151, Fed. Cas. No. 4062; *Gregory v. Pike*, 67 Fed. 837, 15 C. C. A. 33.)

Adler v. Seaman, decided by the Eighth Circuit Court of Appeals, 266 Fed. 828, 841, holds:

"If they intervene, they can not challenge the propriety of the main litigation, but must accept it." (Equity rule 37, *Jennings v. Smith* (D. C.) 242 Fed. 561, 564, *Seaboard Air Line Ry. v. Trust Co.*, 125 Ga. 463, 465, 54 S. E. 138; *Charleston, etc. Ry. v. Pope*, 122 Ga. 577, 50 S. E. 374.)

18. Answering paragraph 18 of the petition for rehearing herein, these petitioners deny the same.

Wherefore, having fully answered, and having shown the inapplicability of the cases and tests cited by the petitioner for rehearing, and having shown the propriety of the opinion and judgment of this court denying the California Cooperative Canneries the right to intervene herein, these interveners pray that the petition for rehearing be denied and that a decree to that end be entered.

American Wholesale Grocers' Association: Henry G. Sears Co.; John Hoffman & Sons Co.; Mason, Ehrman & Co.; J. M. Radford Grocery Co.; Southern Distributing Co.; Hall Grocery Co.; Albert Mackie & Co. (Ltd.); The Hicks Co.; W. D. Cleveland & Sons; Rapides Grocery Co.; Oliver Finnie Grocery Co., by Edgar Watkins, attorney.

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